INDIA

TRADE SUMMARY

The U.S. trade deficit with India was $7.7 billion in 2002, an increase of $1.7 billion from $6.0 billion in 2001. U.S. goods exports in 2002 were $4.1 billion, up 9.1 percent from the previous year. Corresponding U.S. imports from India were $11.8 billion, up 21.4 percent. India is currently the 27th largest export market for U.S. goods.

U.S. exports of private commercial services (i.e., excluding military and government) to India were $2.8 billion in 2001 (latest data available), and U.S. imports were $1.7 billion. Sales of services in India by majority U.S.-owned affiliates were $992 million in 2000 (latest data available), while sales of services in the United States by majority India-owned firms were $196 million.

The stock of U.S. foreign direct investment (FDI) in India in 2001 was $1.7 billion, up from $1.4 billion in 2000. U.S. FDI in India is concentrated largely in manufacturing, telecommunications, banking and finance sectors.

IMPORT POLICIES

In 1991, the beginning of a program of economic reforms began moving India towards a more open and transparent trade regime which, in the first half of the 1990s, resulted in a significant increase in U.S.-India trade and investment. As the reform process stalled, U.S. exports to India have stagnated since 1996, but with significant additional Indian liberalization, U.S.-India trade could expand substantially.

The Indian government maintains a basic ceiling tariff rate (with a few exceptions) of 30 percent. Since the 1998/99 budget, a "special additional duty" (SAD) of 4 percent, intended to be equivalent to sales tax paid by domestic producers, has been levied on imports. The SAD is assessed on the value of imports, including customs duties, increasing the effective tariff rate paid on imports. In April 2001, India eliminated all quantitative restrictions (QRs) on imports it had justified on balance of payments grounds, but continues to use other non-tariff barriers. In its 2002/03 budget, the Indian Government reconfirmed its plan to introduce a two-tiered custom duty structure of 10 percent (for intermediate goods) and 20 percent (for finished goods) by April 2004. A four-tiered system is currently in place. The Indian Government's 2002/2003 budget reduced the peak tariff from 35 percent to 30 percent. However, the four-percent SAD was retained.

In 2002, the average duty rate in India was 32 percent. Basic customs tariffs were reduced in 2002 on certain selected products including: specified equipment for setting up of earth stations for broadcasting (to 25 percent from 35 percent); copper rod and wire (to 25 percent from 35 percent); personal care raw materials (to 160 percent from 170 percent); pistachio nuts (to 30 percent from 35 percent); raisins (to 105 percent from 115 percent); distilled spirits (to 182 percent from 210 percent); aircraft (to zero percent from 3 percent), refractory raw materials (to 15-25 percent from 35 percent), specified items of reeling, twisting, weaving and processing machinery for silk textiles (to 10 percent from 35 percent); information technology hardware (to 5 percent from 25-35 percent); kerosene (to 20 percent from 35 percent); and floppy diskettes (to 10 percent from 15 percent). In the recent past, India has selectively lowered tariffs on some capital goods and semi-manufactured inputs to help Indian manufacturers. Despite reforms, Indian tariffs are still among the highest in the world, especially for goods that are produced domestically.

India maintains a variety of additional charges on imports, described by authorities as equal to domestic taxes on local production and labeled as "countervailing duties." Although India calls these charges "countervailing duties," they should not be confused with countervailing measures against injurious, unfairly subsidized imports as provided for in the WTO Agreement on Subsidies and Countervailing Measures. India's "countervailing duties" serve to further raise the cost of imports as they enter the stream of domestic commerce. For example, the effective duty on imported soda ash, which carried a 20 percent basic customs duty in 2002, is nearly 45 percent when additional countervailing duties and special additional duties are factored in. Industry reports that countervailing duties and infrastructure taxes for sugar and gum reached 57 percent in 2002. High effective rates also affect chocolate and confectionery products (57 percent); mayonnaise

(57 percent); poultry meat (108 percent); peanut butter (35 percent); appliances (39 percent); raisins (113 percent); camera parts and accessories (51 percent); motorcycles (more than 90 percent); medical equipment (up to 51 percent); plywood and veneer products (59 percent); lumber (35 percent); restaurant equipment (51 percent); and toys and sporting goods (30 percent to 51 percent). Exorbitant effective rates of 340 percent are assessed on distilled spirits imports and 264 percent on wine and sparkling wines. U.S. producers also allege that the 32 percent excise tax on carbonated soft drinks assessed in 2002 represents a *de facto* discriminatory government policy because the carbonated soft drink market is supplied predominantly by foreign-owned producers. For textile products, U.S. industry has found that additional and special additional duties increase the effective tariff on imports to between 35 percent and 55 percent.

The Central Value Added Tax (CENVAT) currently varies from 8 percent to 32 percent. The Government of India plans to unify the CENVAT at 16 percent by March 31, 2004 when it would be applied to the two-tiered tariff system. This tax is assessed on the value of imports, including customs duties, thereby raising the effective tariff paid on imports.

Progress made thus far in reducing tariffs has helped U.S. producers, but further reductions of basic tariff rates and elimination of additional duties would benefit a wide range of U.S. exports. The United States has asked for a change to a specific (per kilogram) duty on pistachios, where under-invoicing by competing suppliers creates unfair competition and limits U.S. market access. Other industries that would benefit from reduced tariff rates include (current basic tariff rates in parentheses): fertilizers (5 percent to 30 percent); wood products (5 percent to 30 percent); agricultural chemicals (30 percent); jewelry (30 percent); precious metal findings (30 percent); soda ash (20 percent); camera components (15 percent); instant print film (15 percent); paper and paper board (30 percent); ferrous waste and scrap (40 percent); computers, office machinery, and spares (5 percent to 30 percent); motorcycles (60 percent); completely built up (cbu) motor vehicles, completely knocked down (ckd) and semi-knocked down (skd) motor vehicle kits (105 percent), and automotive parts and components (30 percent); air conditioners (30 percent) and refrigeration equipment (25 percent); heavy equipment spares (25 percent to 30 percent); medical equipment components (5 percent to 15 percent); copper waste and scrap (25 percent); hand tools (30 percent); cling peaches (30 percent); canned peaches and fruit cocktails (30 percent); citrus fruits (25 percent to 40 percent); sweet cherries (30 percent); fruit/vegetable juice (30 percent); apples (50 percent); raisins (105 percent); pears (40 percent); grapes (30 percent); soybeans (30 percent); wine and sparkling wines (100 percent); distilled spirits (182 percent); carbonated soft drink concentrates (160 percent); crude corn oil (100 percent); refined corn oil (100 percent); peanut butter (30 percent); pistachios (30 percent); salad dressing (30 percent), canned soup (30 percent), frozen french fries (30 percent), dehydrated potatoes (35 percent) and textiles and apparel (up to 35 percent).

In the World Trade Organization (WTO), India has committed to a two-tiered tariff regime for industrial products, binding tariffs on items in excess of 40 percent at a rate of 40 percent and binding items with tariffs below 40 percent at 25 percent, although some industrial goods (e.g., automobiles) and many consumer products were excluded from India's offer. As a consequence, India's scope of bindings on industrial goods increased substantially from 12 percent of imports to 68 percent. The majority of these bindings exceed current Indian applied rates of duty. In agriculture, Uruguay Round tariff bindings, ranging from 100 percent to 300 percent, are higher than applied rates in many product areas.

As a result of the Uruguay Round, India committed to reduce and bind its tariffs on textile and apparel products. In October 2000, the Government of India reduced duties on 195 tariff lines (including textured yarn of nylon, polyester filament yarn, fabrics, sportswear and home textiles) in accordance with the United States-India Market Access Agreement for Textiles and Clothing of January 1, 1995. However, numerous trade barriers still exist, and India remains one of the most heavily protected textile markets in the world, according to the U.S. textile industry.

Import Licensing

As a result of a WTO ruling, India has eliminated restrictive import licensing on most

consumer goods. However, U.S. industries still must deal with India's onerous licensing regime in other areas. The cumbersome and non-transparent regime limits market access for U.S. goods which otherwise would be competitive. For example, import licenses are required for pesticides/insecticides, some fruits and vegetables, breeding stock, and most pharmaceutical/chemical products. In February 2002 the Government of India eliminated its licensing requirements for foreign motion pictures.

In the motorcycle sector, special sales import licenses are necessary and are extremely difficult to obtain. Further, these licenses are granted only to foreign nationals permanently settling in India, to foreign nationals working in India for foreign firms holding greater than 30 percent equity, or to embassies located in India.

Even after the last of India's balance of payments related restrictions were eliminated on April 1, 2001, India still 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 an import license (e.g., livestock products); and (3) "canalized" items 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 importation of all second-hand capital goods by actual users is permitted without license, provided the goods have a residual life of five years. In March 1993, India abolished the two-tiered exchange rate regime, moving to a single market-determined exchange rate for trade transactions and inward remittances. The rupee is convertible on current account transactions, with indicative limits remaining on foreign exchange for travel and tourism. Capital account transactions for foreign investors, both portfolio and direct, are fully convertible. However, Indian firms and individuals remain subject to capital account restrictions, even though the Indian Government has taken steps in the last year to relax the scope of these restrictions.

Canalization

Some commodity imports must be channeled ("canalized") through public sector companies, although many such items have been decontrolled. The canalized items remaining are primarily petroleum products (although canalization of crude was eliminated in April 2002), some pharmaceuticals, and bulk grains (wheat, rice, and maize). Under an April 1999 WTO dispute settlement ruling, India is committed to removing many of its "canalization" requirements, but little progress has been made.

Fertilizer Subsidy Regime

The Indian Government maintains a subsidy regime for diammonium phosphate (DAP) fertilizer. Under the current DAP subsidy scheme, the Indian government maintains a maximum retail price on DAP while subsidizing domestic producers and importers, but at different levels. Despite periodic adjustments, the subsidy differential continues to hinder severely the U.S. fertilizer industry's ability to sell DAP to the Indian market.

This subsidy regime is currently under review by the Government of India which has yet to make any commitment to eliminate the disparity in subsidy levels for domestic and imported DAP.

Customs Procedures

The Government of India fixes minimum import prices for certain imported steel products, including hot-rolled steel coils, cold rolled steel coils, hot rolled sheets, tin plates, electrical sheets, and alloy steel bars and rods Under the Indian minimum reference price valuation regime, importation of, for example, prime hot-rolled steel coils is allowed only if the minimum C.I.F. customs value is $302 per ton. Minimum import prices on primary steel products were withdrawn on January 1, 2000, but were re-imposed on February 26, 2000, after the Calcutta High Court ordered a stay of the Indian Government's decision to withdraw minimum import prices for those products. The Indian Government appealed the High Court's stay order to the Indian Supreme Court. That appeal is pending and the minimum price regime remains still in place.

The Government of India applies discretionary criteria that appear to allow rejection of a declared transaction value of imported goods based upon a judgment by Customs that a

particular sale was not done "in the ordinary course of trade under fully competitive conditions" or involved a "reduction from the ordinary competitive price." The U.S. Government is reviewing these actions with regard to their consistency with India's obligations under the WTO Agreement on Customs Valuation.

In September 2002, India introduced a reference price system for customs valuation of edible (including soybean) oils and raised the reference price in December 2002. Periodically, the reference price has exceeded the transaction price. Payment of duties on the higher reference price resulted in an effective tariff rate in excess of India's WTO bound rate. Indian Customs also changed past practice for movies imported by the Motion Picture Association of America by establishing the customs value based on "deemed" net profits rather than the printing price of the film copy. MPAA members appealed the change, pointing out that the new practice amounted to double taxation of film screening revenue. The appeal remained pending at the close of 2002. Other U.S. exporters cite product valuation methodologies used by Indian Customs which do not reflect actual market transaction prices and effectively raise tariff rates.

Trade liberalization has not eased some of the most burdensome aspects of customs procedures. Documentation requirements are extensive and delays are frequent. Delays in customs procedures are also due to the complexity of the tariff structure and multiplicity of exemptions, which may vary according to product, user, or specific export promotion programs. To improve the classification of products and reduce red tape, the government promulgated an Ordinance, effective February 1, 2003, to implement a new 8-digit (up from 6 digits) custom classification system.

STANDARDS, TESTING, LABELING AND CERTIFICATION

The government has thus far identified 133 specific commodities (including food preservatives, milk powder, condensed milk, infant milk foods, color dyes, steel, cement, electrical appliances and dry cell batteries) that must be certified by the Bureau of Indian Standards before entering the country. To receive such certification, exporters/manufacturers must either establish a presence or name a local representative to accept responsibility, pay an annual fee as well as a percentage of the invoice value of shipments to India, and subject all certified exports to inspection. India has been slow to notify these and other standards to the WTO, as required by the WTO Agreement on Technical Barriers to Trade (TBT).

In 2001, the Indian Ministry of Health and the Bureau of Indian Standards each proposed new product standards for distilled spirits. The intent of the new standards is unclear. If enacted as proposed, exports to the Indian market of U.S. distilled spirits products could be severely impeded. U.S. industry has commented on these proposals and has sought to work with the Indian Government to clarify these standards before implementation.

India has adopted some of the most stringent emissions standards for imported, large displacement motorcycles. India's standards are written to favor small displacement four-stroke motorcycles which are primarily manufactured by Indian producers. Even the latest low-emission technology used by U.S. manufacturers fails to meet India's requirements. In addition, India's procedures for establishing emissions standards are vague and lack transparency, a central element of the WTO Agreement on Technical Barriers to Trade.

In 2001, India began enforcing a ban on textile and apparel imports that contain certain dyes. The U.S. textile industry has expressed concerns regarding India's textile dye testing requirements, claiming that the requirements significantly hamper trade by increasing costs and creating delays at the border. The U.S. textile and apparel industries have also raised concerns about India's marking and labeling regulations, stating that the requirements for prepackaged goods and for imported fabric are expensive and virtually impossible to implement.

Sanitary and Phytosanitary (SPS) Restrictions

India applies a range of SPS measures that have not been justified as science-based and, therefore, do not conform to international standards or the WTO SPS Agreement. India's

SPS requirements are restrictive and lack transparency. For example, many of India's quarantine pests are already present in India, while others do not pose a significant level of risk. These requirements are a major hindrance to U.S. agricultural exports to India, particularly for soybeans. Furthermore, there is compulsory detention and laboratory testing of all imported food products. Domestic food products are not subjected to the same testing requirements.

The Indian Government has issued excessively restrictive plant protection rules on soybeans. Indian and U.S. agricultural officials are discussing alternative, more reasonable measures. India is in the process of developing a policy for assessing the safety of biotechnology foods. In 2002, the Genetic Engineering Approval Committee (GEAC), the Indian Government's regulatory body for biotech products, conditionally approved the import of refined soy oil and crude degummed soy oil, but initially rejected, without explanation, importation of corn-soy blend. The GEAC later agreed to review that decision once it received additional information from the applicants. The GEAC has not specified the criteria on which it will base its decision. In the absence of a policy for assessing the safety of biotechnology foods, the decision-making process within the GEAC has been neither timely, transparent, nor science-based. In the meantime, Indian researchers are currently developing domestically bioengineered foods such as mustard, potatoes, tomatoes, cabbage, cauliflower, chilies, groundnuts, and rice.

GOVERNMENT PROCUREMENT

India is not a signatory to the WTO Agreement on Government Procurement. Indian government procurement practices and procedures generally discriminate against foreign suppliers, and are neither transparent nor standardized. In 2002, the state-owned Oil and Natural Gas Company (ONGC) issued a competitive tender for seismic survey services. A U.S. firm appeared to win the contract when it was determined to be the lowest qualified supplier at a public opening of the bids. However, two weeks later the contract was awarded quietly to a Russian company which ONGC earlier had publicly disqualified on technical grounds. This action violated ONGC's own published tender rules. The Ministry of Petroleum and Natural Gas subsequently said the Russian firm's offer was 31 percent lower than the U.S. firm's but did not provide an explanation for the apparent breach of the procurement rules.

India largely abolished specific price and quality preferences for local suppliers in June 1992. Recipients of preferential treatment are now supposedly limited to the small-scale industrial and handicrafts sectors, which represent a very small share of total government procurement. However, despite the easing of "buy local" requirements, Indian procuring entities continue to favor local suppliers in most contracts where they offer acceptable prices and quality. Reports persist that government-owned companies cash performance bonds of foreign companies even when there has been no dispute over performance.

Another problem area involves the practice of some major government entities using foreign bids to pressure domestic producers to lower their prices or permitting the local bidder to resubmit tenders when a foreign contractor has underbid them. When foreign financing is involved, principal government agencies tend to follow multilateral development bank requirements for international tenders. However, in other purchases, current procurement practices typically result in discrimination against foreign suppliers when domestic suppliers offer goods or services of comparable quality and price.

EXPORT SUBSIDIES

Export earnings are exempt from income and trade taxes, and exporters may enjoy a variety of tariff incentives and promotional import licensing schemes, some of which carry export requirements. Export promotion measures include duty exemptions or concessional tariffs on raw material and capital inputs. These subsidies have caused concern for U.S. industries, particularly the agrochemical sector. According to industry representatives, since no corporate taxes are levied on income generated from exports by Indian companies, this enables them to price goods below international competitive levels while maintaining a constant profit margin. Commercial banks also provide export financing on concessional terms. The 2000/01 budget provided for the elimination of the tax exemption on export income over five years in equal steps. The 2002/03 budget made

10 percent of export income taxable for the fiscal year ending March 31, 2003 for all export-oriented units. In October 2000, the Indian Government decided to export surplus wheat stocks at subsidized prices. In April 2001, this export subsidy scheme was extended to cover rice. The sale of government-held stocks of these products for export, at prices significantly lower than the domestic price, appears to be inconsistent with India’s WTO commitments. Several export subsidy programs have been identified that are believed to benefit India's textile and apparel manufacturers.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

Intellectual property protection is weak and the USTR listed India on its Priority Watch list as part of the "Special 301" process in 2002. In the past, India has been listed as a "priority foreign country." In February 1992, following a nine-month investigation under the "Special 301" process, the USTR determined that India's denial of adequate and effective intellectual property protection was unreasonable and burdened or restricted U.S. commerce, especially in the area of patent protection. As a result, in April 1992, the President suspended duty-free privileges under the Generalized System of Preferences (GSP) for $60 million in trade from India. This suspension applied principally to pharmaceuticals, chemicals, and related products. Benefits on certain chemicals, added to GSP in June 1992, were withheld from India, increasing the trade for which GSP is suspended to approximately $80 million. Significant revisions to India's copyright law in May 1994 led to the downgrading of India as "priority foreign country" to the "priority watch list," a designation under which India has remained since 1995.

Patents

India's patent protection is weak and has adverse effects on U.S. pharmaceutical and chemical firms. India's patent act prohibits patents for any invention intended for use or capable of being used as a food, medicine, or drug, or relating to substances prepared or produced by chemical processes. Many U.S.-invented drugs are widely reproduced in India since product patent protection is not available. U.S. agrochemical industries have joined other industries in raising concern about India's inadequate intellectual property protection. As a result, industries have withheld marketing and production of compounds in India. U.S. industry estimates that export sales losses, as a result, range from $5 million to $25 million.

Adequate protection of intellectual property must be provided if India is to meet its Uruguay Round obligations under the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS). In May 2002, the Indian government amended its Patent Law, an action that partially fulfilled TRIPS commitments that should have been met by January 2000. In August 2001, after a prolonged debate, the Indian Parliament passed the Protection of Plant Varieties and Farmers' Rights Act, providing patent protection for plant varieties, fulfilling another of its TRIPS commitments. The Indian Government has announced its intention to conform fully to the remaining IPR-related requirements of the Uruguay Round.

Indian law provides patent protection on the processes for making pharmaceuticals and agrochemicals. The May 2002 Patent Law amendment increased the process patent period (previously 7 years) and product patent period, where available, to 20 years (previously 14 years) from the date of patent application filing. The 2002 amendments did not grant product patents for drugs/pharmaceuticals. Under TRIPS, India has until 2005 to implement such patent protection. In addition, the amendments contained new provisions on compulsory licensing and exclusive marketing rights that are not clear and may not be TRIPS compliant. The amendments also give the government the power to acquire a patentee’s exclusive rights on grounds of national emergency without providing any guidance on what constitutes such a national emergency. The government is in the process of establishing implementing regulations that may eliminate some of these ambiguities. It remains to be seen whether the regulations will make the provisions of the law TRIPS compliant. India also fails to protect biotechnological inventions, methods used with respect to agriculture and horticulture, and processes for the treatment of humans, animals, or plants. Indian policy guidelines normally limit recurring royalty payments, including patent licensing payments, to eight percent of the selling price (net of certain taxes and purchases). Royalties and lump sum payments are taxed at a 30 percent rate.

Indian law fails to provide any protection for clinical trial data submitted by companies to the government in seeking market approval of their pharmaceutical products. Such data exclusivity protection is a TRIPS obligation (Article 39.3) which the Indian Government has not met. Companies in India are permitted to copy pharmaceutical products (as there is no product patent) and seek immediate government approval for marketing based on the original developer's clinical data.

The Indian Government has announced its intention to take full advantage of the transition period permitted developing countries under TRIPS (i.e., until January 1, 2005) before implementing full patent protection for pharmaceutical and agricultural chemical products. The United States continues to press for passage of a TRIPS compliant regime and to urge accelerated implementation of the TRIPS patent provisions. A small, but growing, domestic Indian constituency, made up of Indian pharmaceutical companies, technology firms and educational and research institutions, favors an improved patent regime, including full product patent protection. India's decision in August 1998 to join the Paris Convention and the Patent Cooperation Treaty, effective from December 1998, was a sign of improved IPR protection.

Copyrights

Under pressure from its own domestic industry, India implemented a strengthened copyright law in May 1995, incorporating standards comparable to international standards for copyright protection. However, piracy of copyrighted materials (particularly popular fiction works and certain textbooks) remains a problem for U.S. and Indian producers. Optical disk, video, record, tape, and software piracy are also widespread, but enforcement has improved. Pirated semiconductors are sold in violation of copyright and semiconductor mask laws. Indian copyright law has undergone a series of changes over the last 10 years to provide stronger remedies against piracy and to protect computer software. In 1994, Parliament passed a comprehensive amendment to the Copyright Act of 1957. India's law now provides: rental rights for video cassettes; protection for works transmitted by satellite, cable, or other means of simultaneous communication; collective administration of rights; and limiting judicial discretion with respect to the level of penalties imposed on copyright pirates. However, there is no statutory presumption of copyright ownership and the defendant's "actual knowledge" of infringement must be proven. In addition, India has not adopted an optical disk law. In December 1999, as part of its TRIPS obligations, the Indian government passed an amendment to the Copyright Act of 1957, increasing the period of protection of performers' rights from 25 years to 50 years, and extending the provisions of the Act to broadcasts and performances made in other countries only on a reciprocal basis.

Indian copyright law offers strong protection, but the Indian Constitution gives enforcement responsibility to state governments. Classification of copyright and trademark infringements as "cognizable offenses" has expanded police search and seizure authority, while the formation of appellate boards has speeded prosecution. The amended law also provides for new minimum criminal penalties, including mandatory minimum jail terms, that U.S. industry believes will go far in controlling piracy, if implemented. Other steps to improve copyright enforcement include: the establishment of a copyright enforcement advisory council, including a judiciary commissioner, with responsibility for policy development and coordination; the initiation of a program for training police officers and prosecutors concerned with enforcement of copyright laws; and the compilation of data on copyright offenses on a nationwide basis to assist in enforcement and application of penalties. However, because of backlogs in the court system and documentary and other procedural requirements, few cases have been prosecuted recently. While a significant number of police raids have been planned and executed, the law requires that in order to seize allegedly infringing equipment, the police must witness its use in an infringing act.

Cable television piracy continues to be a significant problem, with estimates of tens of thousands of illegal systems in operation in India at this time. Copyrighted U.S. product is transmitted over this medium without authorization, often using pirated video cassettes, VCDs, or DVDs as source materials. This widespread copyright infringement has a significant detrimental effect on all motion picture market segments – theatrical, home video and television – in India. 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. At the same time, anti-piracy efforts in the business applications software field have produced a slight drop in the business software piracy rate from 78 percent in 1995 to 70 percent in 2001. According to a recent report by the Intellectual Property Rights Alliance, trade losses due to the piracy of U.S. motion pictures, sound recordings and musical compositions, computer programs, and books totaled $343 million in 2001. The Information Technology Act of 2000 provides a legal framework for the prevention of piracy and protection of intellectual property rights to include penalties for the unauthorized copying of computer software.

Trademarks

The Government of India has committed to upgrading its trademark regime, including according national treatment for the use of trademarks owned by foreign proprietors, providing statutory protection of service marks, and clarifying the conditions under which the cancellation of a mark due to non-use is justified. In May 1995, the Government of India introduced in Parliament a trademark bill that passed the lower house. However, opposition in the upper house stalled discussion of the legislation, which was finally passed in December 1999. Implementing regulations to put the new law into effect are still pending. Protection of foreign marks in India is still difficult, although enforcement is improving. Guidelines for foreign joint ventures have prohibited the use of "foreign" trademarks on goods produced for the domestic market (although several well-known U.S. firms were authorized in October 1991 to use their own brand names). The required registration of a trademark license (described by U.S. industry as highly bureaucratic and time-consuming) has routinely been refused on such grounds as "not in the public interest," "will not promote domestic industry," or for "balance of payments reasons." The Foreign Exchange Regulation Act (FERA), replaced by the Foreign Exchange Management Act 1999 (FEMA) in June 2000, restricts the use of trademarks by foreign firms unless they invest in India or supply technology.

Trademark owners must prove they have used their mark to avoid a counterclaim for registration cancellation due to non-use. Such proof can be difficult, given India's policy of discouraging foreign trademark use. Companies denied the right to import and sell products in India are often unable to demonstrate use of registered trademarks through local sale. Consequently, trademarks on restricted foreign goods are exposed to the risk of cancellation for non-use. The new Trademark Act provides protection for service marks for the first time. Trademarks for several single ingredient drugs cannot be registered. There have been several cases where unauthorized Indian firms have used U.S. trademarks for marketing Indian goods. However, the Indian courts have upheld trademark owner rights in infringement cases.

SERVICES BARRIERS

Indian Government entities run many major service industries either partially or entirely. However, both foreign and domestic private firms play a large role in advertising, accounting, car rental, and a wide range of consulting services. There is growing awareness of India's potential as a major services exporter and increasing demand for a more open services market.

Insurance

Prior to 2000, all insurance companies were government-owned, except for a number of private sector firms providing reinsurance brokerage services. On December 7, 1999, the Indian Parliament passed the Insurance Regulatory and Development Authority (IRDA) bill that ended the government monopoly and established an insurance regulator. The law opened India's insurance market to private participation with a limit on foreign equity in domestic companies of 26 percent of paid-up capital. In the WTO Financial Services negotiations that concluded in December 1997, India bound the limited range of insurance lines then open to foreign participation. In addition, India committed to most-favored-nation (MFN) treatment effective January 1999, for the financial services sectors, dropping a previous MFN exemption.

Banking

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 issued in January 1993 guidelines under which new private sector banks may be established. Operating approval has been granted to 25 new foreign banks or bank branches since June 1993. As of November 2002, 41 foreign banks were operating in India. Foreign bank branches and representative offices are permitted based upon reciprocity and India's estimated or perceived need for financial services. 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. Operating ratios are determined based on the foreign branch's local capital, rather than the global capital of the parent institution. India's commitments under the 1997 WTO Financial Services Agreement provided for a greater role for foreign banks starting in January 1999. Foreign banks are allowed to open twelve new branches annually (up from the prior commitment of eight per year). However, India did not agree to grant national treatment to foreign companies investing or seeking to invest in the financial services sector, nor did it make any commitments on cross-border banking. Foreign direct investment (FDI) in banking is slowly being liberalized and the foreign equity ceiling has been raised to 49 percent from 20 percent for investment in private banks. FDI in state-owned banks remains capped at 20 percent. Foreign banks may also set up subsidiaries as an alternative to branches of the parent company.

Securities

Foreign securities firms have established majority-owned joint ventures in India. Through registered brokers, foreign institutional investors (FII), such as foreign pension funds, mutual funds, and investment trusts, are permitted to invest in Indian primary and secondary markets. The equity caps for foreign portfolio investment are generally identical to the FDI equity caps, with the exception of a few specific sectors. Foreign securities firms may now purchase seats on major Indian stock exchanges, subject to the approval of a regulatory authority. In the 1998/99 budget, FIIs were allowed for the first time to invest in the debt securities of unlisted Indian companies. Indian companies no longer require prior clearance from the Reserve Bank of India for inward remittance of foreign exchange and for the issuance of shares to foreign investors. The introduction of mortgage-backed securities has, in addition, led to the creation of a secondary mortgage market. Indian mutual funds are now permitted to invest in rated securities in other countries.

Motion Pictures

Beginning in August 1992, as agreed with the United States Government, the Indian Government introduced a number of significant changes in its film import policy. Several issues of concern remained until recently, including pre-censorship "quality check" procedures and fees. The Indian Government removed the import licensing requirement for motion pictures in January 2002. However, in 2002 the Motion Picture Association of America encountered a sudden change in valuation procedures by Indian Customs (see section on customs procedures) that would result in double taxation of screening profits. An annual remittance ceiling of $6 million on all foreign film producers was eliminated in November 2001. U.S. companies also have experienced difficulty in importing film/video publicity materials. In June 2002, the Indian Government opened the news print media sector to FDI of up to 26 percent. FDI is limited to 74 percent in case of the non-news journals and magazines.

The Cable TV Network Regulation Amendment Bill of 2000 was passed by the lower house of Parliament in August 2000. It aimed to check dissemination of "undesirable programs" by cable TV networks while empowering local authorities to take punitive measures against those violating the law. In July 2000, the Government also announced an uplinking policy that allowed all TV channels, irrespective of their equity structure, to uplink from India only if they undertake to comply with the Indian code of conduct on content. The Government of India permits FDI of up to 49 percent in Indian companies that uplink from India. Total foreign investment has been restricted to 49 percent with an FDI ceiling of 20 percent on investments by broadcasting companies and cable companies.

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. Effective July 1, 1998, the Institute of Chartered Accountants of India (ICAI) banned the use of logos of accounting firms. Financial auditing services may only be provided by firms established as a partnership. 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 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.

Express Delivery Services

U.S. industry advises that the Indian government is proposing a new regulatory framework covering express delivery services that could discriminate in favor of the government postal monopoly or domestic private operators.

Telecommunications

India has taken some positive steps towards liberalizing the telecommunications market and introducing private investment and competition in basic telecommunications services. However, concerns remain regarding interconnection charges new entrants must pay, India's weak multilateral commitments in basic telecommunications, and the apparent bias of telecommunications policy towards government-owned service providers.

The national telecommunications policy allows private participation in the provision of cellular as well as basic and value-added telephone services. Foreign equity in value-added services is limited to 51 percent. For cellular and basic services, the limit is 49 percent. However, as it has been difficult to raise the amounts of money needed to finance the new networks, creative financing arrangements have been allowed in some cases that extends the limit to 74 percent. Private operators can provide services within regional "circles" that roughly correspond to the borders of India's states. Policy uncertainty has increased the financial risk for both cellular and basic service, thus inhibiting even more rapid growth in India's telecommunications infrastructure than has occurred in the last four years. Local production requirements remain an important factor in negotiations to establish service operations.

A new telecommunications policy was released in March 1999. The Indian Government decided to allow foreign companies to acquire up to a 74 percent ownership share in Indian registered companies to establish and operate satellite systems. India announced a technology neutral regime in 1999 for cellular services. In order to remove barriers on mergers and acquisitions in the telecommunications services sector, in August 2000, the Government of India permitted foreign partners to withdraw from a venture by waiving the five-year mandatory presence in the venture.

Private competitive carriers will have a concern regarding the neutrality and fairness of government policy as long as the Indian Government 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 position in the international carrier, VSNL, a 56 percent position in MTNL, which primarily serves the Delhi and Bombay metro areas, and a 100 percent position 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 set no timetable.

In August 2000, the Indian Government opened domestic long distance telephony to the private sector with a one-time entry fee of one billion rupees ($22 million), a 15 percent revenue-sharing requirement, network infrastructure obligations, and a 49 percent foreign equity limit. As resale of network facilities and services is not allowed, many small foreign companies offering specialized services or niche

applications were effectively excluded from entering the market. India opened international long distance to competition in April 2002, but again, high entry fees, bank guarantees, minimal company net worth requirements, and unattractive revenue sharing conditions have effectively limited entry to a few, predominantly Indian-owned companies.

India continues to modernize its regulatory framework, with a draft "convergence bill" which is likely to be considered by Parliament in 2003. The bill will consolidate authority over telecommunications, the Internet, and broadcasting in a single, "super" regulator. In 2001, the Indian Government split the powers of the Telecom Regulatory Authority of India (TAI) and set up a separate appellate authority, called the Telecom Dispute Settlement Appellate Tribunal (TDSAT) which hears appeals against TAI orders as well as disputes between service providers. Industry representatives generally welcomed the ordinance as a step toward making the regulatory framework more transparent and consistent. Licensing authority, however, remains with the Department of Telecommunications and not the regulator.

India created the National Task Force on Information Technology and Software Development in 1998 to draft India's national informatics policy. As a result, on November 7, 1998, competitors to VSNL were granted licenses to operate Internet Service Providers (ISPs). Competition in this market has generated lower prices for consumers and increased opportunities for U.S. equipment suppliers. Effective April 1, 2002, Internet telephony became legal in India, but this long-awaited liberalization came with several restrictions. Only ISPs are allowed to offer Internet telephony within their service areas, and telephone-to-telephone communications through the Internet remain illegal.

INVESTMENT BARRIERS

The United States and India have not negotiated a bilateral investment treaty, although an updated agreement covering the operations of the Overseas Private Investment Corporation (OPIC), was signed in November 1997. That agreement modernizes and replaces the arrangements that had governed OPIC operations since 1957.

Equity Restrictions

Despite the recent steps aimed at liberalizing and simplifying FDI approvals, foreign equity restrictions remain in place in a number of sectors. The Indian Government continues to prohibit FDI in certain politically sensitive sectors, such as agriculture, retail trading, railways and real estate. Foreign investment is still relatively controlled with various government approvals required for many types of investments. While a key reform has allowed "automatic" FDI approval in many industries, including bulk manufacturing activities, other sectors still require approval by government agencies. The rules vary from industry to industry and are frequently changed, although most often in the direction of further deregulation. However, the process is not always transparent and the restrictions on combined FDI and portfolio investment are inconsistent across industries.

Most sectors of the Indian economy are now at least partially open to foreign investment, with the exception of the sectors noted above. Most recently, in June 2002, the government opened the news print media sector to FDI up to 26 percent equity levels. In 2001, the government opened the defense equipment industry to private investors with an FDI limit of 26 percent. The government also raised permissible foreign equity in banking to 49 percent from 20 percent, in the ISP sector to 74 percent from 49 percent, and in pharmaceuticals to 100 percent from 74 percent.

Foreign industries have expressed concern with the Indian Government's stringent and non-transparent regulations and procedures governing local shareholding. 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, introduced by the Ministry of Industry on December 14, 1998, poses major impediments to investment in India. The following are the two most restrictive provisions of Press Note 18:

1) The automatic approval route is not available to foreign investors who wish to set up new

ventures in India or who wish to enter into new technical collaborations or trademark agreements in India, if such foreign investors have or have previously had any joint venture, technology transfer or trademark agreement in the "same" or "allied" field in India. Such foreign investors would have to obtain an approval from the Indian Government; and

2) In its application, such foreign investor would have to give reasons for which it finds it necessary to set up a new venture or enter into a technical collaboration or trademark agreement. The onus is on the investor to provide adequate justification to the satisfaction of the Indian Government that its new proposal would not jeopardize the interests of the existing venture or the stakeholders thereof. The government may, at its discretion, approve or reject the application giving reasons for such rejection.

In addition, the foreign investors who already has an equity stake in a venture in India, and who want to increase their equity stake in the company, are required to obtain a resolution of the Board of Directors of the Indian company prior to seeking Indian Government permission.

Trade-Related Investment Measures (TRIMS)

In December 1997, the Ministry of Commerce issued Public Notice No. 60, which established a new policy applicable to all existing and new foreign automobile investments in India, requiring minimum equity investment, local content requirements, export obligations, and foreign exchange balancing. In July 2000, the United States initiated a dispute settlement procedure in the WTO, joined later by the EU, challenging India's compliance with its commitments under the agreement on Trade-Related Investment Measures (TRIMS) because of this policy. In December 2001, the dispute settlement panel ruled in favor of the United States and the EU. India appealed the panel's finding in February 2002. On March 14, 2002, India withdrew its appeal, and announced a new automobile investment policy. The new automobile investment policy eliminated previous local content and minimum investment requirements. It allowed automatic approval for 100 percent foreign equity investment for manufacturing automobiles and components. In August 2002, the Indian Government removed re-export requirements for foreign auto-makers.

ANTICOMPETITIVE PRACTICES

Both state-owned and private Indian firms appear to engage in most types of anticompetitive practices with little or no fear of action by government overseers or action from the clogged court system. India suffers from a slow bureaucracy and regulatory bodies that reportedly apply monopoly and fair trade regulations selectively. While the apparent anticompetitive practices of state-owned and private firms are not viewed as major hindrances to the sale of U.S. products and services generally, the U.S. soda ash industry was denied access to the Indian market in 1996 as a result of an adverse ruling by the Indian Monopolies and Restrictive Trade Practices Commission (MRTPC). However, in July 2002 the Supreme Court of India reversed the MRTPC ruling which appeared to clear the way for U.S. soda ash exports to India. U.S. firms tend to be more concerned with such basic issues as market access, corruption, arbitrary or capricious behavior on the part of their partners or government agencies, and procurement discrimination from both public and private institutions.

The Indian Parliament is in the process of considering new competition legislation that would establish a new regulatory authority, the Competition Commission of India (CCI) to replace the MRTPC. The new law does not prohibit monopolies but does charge the CCI with regulating unfair practices and promoting policies that favor competition.

ELECTRONIC COMMERCE

The Indian Government is currently developing a policy regarding electronic commerce. In order to develop electronic commerce, India will have to change the Indian Telegraphic Act of 1885 which does not allow encrypted information to be transmitted over telephone lines. In addition to amending this act, India also plans to make amendments to the Copyright Act of 1957 in order to make circumvention of technological measures like encryption an offense. In June 2000, India passed the Information Technology Act which establishes a legal framework for authentication and origin of electronic communications through digital signatures and contains amendments to existing laws. Penalties for computer crimes, such as unauthorized access to computer networks,

introducing viruses, copying of software, and electronic forgery have been specified. In November 1998, Internet services were opened to the private sector for the first time. Private operators can now set up gateways for international connectivity. Foreign equity of up to 74 percent is permitted, and there is no limit on the number of licenses to be issued in a given area.

OTHER BARRIERS

India has an unpublished policy that favors countertrade. 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. However, the Indian Government does try to eliminate the use of re-exports in countertrade.

India's drug policy is an issue of concern for U.S. industries. The policy imposes a stringent price control regime which adversely affects U.S. companies from a commercial standpoint. There is no system allowing for automatic adjustment of prices to offset cost fluctuations. With the lack of effective intellectual property protection coupled with a rigid pricing system, U.S. industries face extreme obstacles to maintaining viable businesses in India. Industries most significantly affected are pharmaceutical companies placing the best and latest innovative drugs on the Indian market. Industry representatives have expressed interest in the government of India adopting free pricing measures.