INDIA

TRADE SUMMARY

The U.S. trade deficit with India was $8.1 billion in 2003, an increase of $349 million from $7.7 billion in 2002. U.S. goods exports in 2003 were $5.0 billion, up 22 percent from the previous year. Corresponding U.S. imports from India were $13.1 billion, up 10.4 percent. India is currently the 24th largest export market for U.S. goods.

U.S. exports of private commercial services (i.e., excluding military and government) to India were $3.3 billion in 2002 (latest data available), and U.S. imports were $1.7 billion. Sales of services in India by majority U.S.-owned affiliates were $1.1 billion in 2001 (latest data available), while sales of services in the United States by majority India-owned firms were $325 million.

The stock of U.S. foreign direct investment (FDI) in India in 2002 was $3.7 billion, up from $2.8 billion in 2001. U.S. FDI in India is concentrated largely in the manufacturing, utilities, and banking sectors.

IMPORT POLICIES

India’s economy is one of the most closed in the world. Thus, India's tariffs remain among the highest in the world.

Over the last thirteen years, beginning with its economic reform program initiated in 1991, India has taken noteworthy steps to open its markets. A progressively more open and transparent trade regime stimulated a strong increase in U.S.-India trade and investment in the first half of the 1990s. U.S exports to India stagnated in 1996 as the reform process stalled. While U.S. exports showed signs of renewed upward momentum in 2003, any substantial expansion in U.S.-India trade will be unlikely without significant additional Indian liberalization.

In January 2004, the Indian government announced a reduction of the basic 25 percent ceiling tariff rate to 20 percent (with several notable exceptions). In addition to the basic customs duty, regardless of the rate, the Government of India (GOI) assesses a 1 percent customs-handling fee. The GOI also eliminated a 4 percent Special Additional Duty (SAD) which had been levied on virtually all imports since the 1998/99 budget. The GOI includes tariffs in calculating the base value upon which to assess additional levies. The GOI has made substantial progress to simplify its applied tariff structure to two tiers (10 percent on inputs and 20 percent on finished products) by March 2004.

In 2003, the average duty rate in India was 29 percent, down from 32 percent in 2002. While the average duty was again reduced in January 2004, India's tariffs remain among the world's highest. Applied duties were reduced in 2004 on certain selected products. These include: coal; nickel and nickel articles; power transmission and distribution project equipment; electricity meters; certain raw materials and inputs for optical fibers and cables; capital goods for manufacturing electronic goods; certain telecommunication infrastructure equipment; cellular telephones; VCDs and DVDs; lifesaving bulk drugs, formulations, and medical equipment; parts of artificial limbs and certain rehabilitation aids; medical, surgical, dental, and veterinary furniture; mosquito nets treated with pesticide; aviation turbine fuel, and equipment for industrial and agricultural water supply projects. The reduction in the customs duty for textile products from 25 percent to 20 percent could be negated for goods where the alternate specific rate of customs duty is greater than the *ad valorem* rate. Numerous textile 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.

The United States has actively sought market-opening opportunities for U.S. interests in the Indian market bilaterally and multilaterally in the Doha Development Round. In this regard, United States Trade Representative Zoellick (the USTR) and Indian Minister of Commerce and Industry Jaitley held several

meetings in 2003-2004. Recognizing the importance of South Asian markets, including their enormous potential for United States exports, the USTR also appointed the first-ever Assistant United States Trade Representative (AUSTR) for South Asia. The new AUSTR is responsible for United States trade and investment relations with India as well as with other countries in the region. Since late 2003 when he assumed his responsibilities, the AUSTR for South Asia visited India three times; met regularly with Indian diplomatic and trade officials; and, met frequently with U.S. private sector representatives to try to open India's markets. As part of the United States-India Economic Dialogue, the United States-India Trade Policy Working Group met regularly at the technical and Ministerial levels to cover the full range of bilateral trade issues. While India's tariff reductions have helped some U.S. producers, further reductions of basic tariff rates and elimination of additional charges would benefit a wide range of U.S. exports, both agricultural and industrial.

In the World Trade Organization (WTO), India has bound tariffs on 68 percent of its industrial good imports. The majority of these bindings exceed current Indian applied rates of duty. In agriculture, India's Uruguay Round tariff bindings, ranging from 100 percent to 300 percent, are also higher than applied rates in many product areas.

The Indian government publishes tariffs and import tax rates, but they are not transparent. There is no single official publication that includes all necessary information. 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. Furthermore, different classification nomenclatures for tariffs and excise taxes cause confusion.

Import Licensing

As a result of a WTO ruling, India has eliminated import licensing on most consumer goods. The cumbersome and non-transparent regime limits market access for U.S. goods which otherwise would be competitive. In February 2002 the Government of India eliminated its licensing requirements for imported motion pictures.

The GOI requires special licenses for importing motorcycles. These are virtually unobtainable. The GOI prescribes the requirements and conditions for allowing imported vehicles of any type into India. These special 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. Certain importers are eligible to import vehicles without a license, but only if offset by exports attributable to that importer.

India continues to maintain 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 government allows imports of all second-hand capital goods by actual users without license, provided the goods have a residual life of five years.

Canalization

Some commodity imports must be channeled ("canalized") through public sector companies, although many such items have been decontrolled. The remaining canalized items are primarily petroleum products (although canalization of crude oil was eliminated in April 2002), some pharmaceuticals, and bulk grains (wheat, rice, and maize).

Fertilizer Subsidy Regime

The Indian government subsidizes di-ammonium phosphate (DAP) fertilizer. That is, the government maintains a maximum retail price for farmers while subsidizing domestic producers and importers, but at different levels. Prior to 2000, the subsidy differential was minimal and encouraged both the import of finished DAP and domestic production. Since then a large subsidy differential put DAP importers at a competitive disadvantage such that imports from the United States have virtually disappeared from what had been a large U.S. export market ($414 million in 1999).

The Government of India is currently reviewing its subsidy regime but has made no commitment to eliminate the disparity in subsidy levels for domestic and imported DAP. The United States has asked India to end its differential subsidy treatment. The Indian government has not yet responded.. As soon as India reconvenes its government after the national elections in April 2004, the United States will continue its efforts to resolve this issue.

Customs Procedures

The Government of India applies discretionary customs valuation criteria to import transactions. Pursuant to amendments to its valuation procedures issued September 7, 2001, these criteria appear to allow Customs to reject the declared transaction value of an import because a particular sale: (a) was not undertaken "in the ordinary course of trade under fully competitive conditions;" or (b) involved a "reduction from the ordinary competitive price." U.S. exporters have reported that India's customs valuation methodologies do not reflect actual transaction values and effectively raise tariff rates. The United States is using the WTO Committee on Customs Valuation to obtain further information from India on the operation of these amendments, and will continue to examine the customs valuation procedures for consistency with India's obligations under the WTO Agreement on Customs Valuation.

Indian Customs requires extensive documentation. Processing delays often occur. In large part the 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.

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. Whether to impose or withdraw the minimum import price for these products is the subject of an Indian government legal confrontation with the Indian courts. The Indian government's appeal is pending in the Indian Supreme Court and the minimum price regime remains in place.

India introduced a reference price system for soybean oil in September 2002 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 states that the reference price is adjusted on a weekly basis if published world prices differ by either a 10 percent increase or decrease. 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 after accounting for $25 million in 2002. India has not been responsive to United States requests for relief from this practice.

In 2002, Indian Customs began to value imported movies according to net profits rather than the printing price of the film copy. The motion picture industry appealed the change in past practice, arguing that the new practice amounted to double taxation of film screening revenue. In March 2003, Indian Customs

reversed itself; issuing notification that henceforth imported films would be valued based on the cost of the print alone.

STANDARDS, TESTING, LABELING AND CERTIFICATION

The government has identified 159 specific commodities (including food preservatives, milk powder, condensed milk, infant milk foods, color dyes, steel, cement, electrical appliances and dry cell batteries) that the Bureau of Indian Standards (BIS) must certify before the products are allowed to enter the country. To be certified, exporters/manufacturers must either establish a presence in India or name a local Indian 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, as the WTO Agreement on Technical Barriers to Trade (TBT) requires. In November 2003 the GOI withdrew 33 steel products from the list. To facilitate trade, the GOI announced in January 2004 that importers could obtain BIS certification after importing affected products.

In 2001, the Indian Ministry of Health and BIS proposed new product standards for distilled spirits. U.S. industry viewed the proposed standards as potential trade barriers. After a request from the United States, the Indian government is in the process of revising the draft standards before recirculating them for comment.

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 that 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 non-transparent.

In 2001, India began enforcing a ban on textile and apparel imports that contain certain dyes. U.S. industry is concerned that India’s textile dye testing 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. They find that the requirements for prepackaged goods and for imported fabric are expensive and virtually impossible to implement. In January 2004, the GOI relaxed its textile-testing requirement by announcing that it would accept, as proof of the absence of azo-dye, certification that the exporting country had banned azo-dyes in textiles.

Sanitary and Phytosanitary (SPS) Measures

India applies a range of sanitary and phytosanitary measures which pose obstacles for U.S. agricultural exports. Measures include compulsory detention and laboratory testing of several imported food products. The GOI recently announced a change, but the government has not yet identified the products to be covered. Domestic food products are not subjected to the same testing requirements. In 2003, the U.S. Government raised this national treatment issue bilaterally. India agreed to investigate its current practices but has yet to provide a response.

In 2003, the Ministry of Health implemented amendments under its Prevention of Food Adulteration Act (PFA) that could restrict Indian imports of several agricultural products. In addition, at the end of 2003, the Ministry of Agriculture issued a set of new regulations and quarantine requirements for imports of agricultural products. The Indian government implemented both new amendments to the PFA and import regulations on January 1, 2004 without scientific justification or WTO notification. India’s new regulations could significantly affect U.S. exports of almonds, raisins, pistachios, pulses, wheat, soybean oil, fresh fruits and vegetables coated with wax, and beverages (soft drinks, fruit and vegetable juices, fruit pulp, etc.). Furthermore, new requirements on Solid Wood Packaging Material (SWPM) may

extend the negative impact on U.S. exports to nonagricultural products. Shortly thereafter, upon learning of India's action, the U.S. Government requested that India delay implementation and notify these new regulations to the WTO. On March 4, 2004, the Indian government notified its phytosanitary regulation to the WTO, although it did not suspend its implementation. On March 23, 2004, India decided to allow U.S. almonds shipped not later than May 4, 2004 to enter India according to the pre-January 1, 2004 import requirements. In practical terms, this means that U.S. almond consignments may enter the Indian market through mid-June under the old import regime. We remain optimistic that a long-term solution will follow.

U.S. agricultural officials proposed to hold regular bilateral meetings with Indian representatives on sanitary and phytosanitary issues. These meetings would provide a forum to discuss bilateral plant protection and quarantine issues, such as Indian SPS requirements for U.S. soybeans and U.S. requirements for Indian mangoes. The first SPS bilateral meeting is tentatively scheduled for spring 2004.

In addition, India is currently reviewing its policy for evaluating the safety of biologically engineered foods. In 2002, the Genetic Engineering Approval Committee (GEAC), the Indian government's regulatory body for biotechnology products, conditionally approved the import of refined soy oil and crude de-gummed soy oil. It declined, however, to consider importation of a corn-soy blend (CSB) without a special U.S.- issued certification. Even if a satisfactory certificate were available, the GEAC has not specified the criteria on which it would evaluate the safety of CSB. In the absence of a policy framework for assessing the safety of biotechnology foods, the decision-making process within the GEAC is slow, non-transparent and of questionable scientific justification. Meanwhile, Indian researchers are engaged in the domestic development of agricultural products derived from biotechnology 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. The United States has no bilateral government procurement obligations to India. Indian government procurement practices and procedures are neither transparent nor standardized. Foreign firms do not generally win Indian government contracts.

EXPORT SUBSIDIES

Export earnings are mostly exempt from income and other taxes. Exporters may also enjoy a variety of tariff incentives and promotional import licensing schemes, some of which are contingent upon export. Export promotion measures include duty exemptions or concessional tariffs on raw material and capital inputs. These measures have caused concern for the agrochemical sector in particular. 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 at subsidized prices. In April 2001, this 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 programs have been identified that are believed to benefit India's textile and apparel exports.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

INDIA

Intellectual property protection in India is weak. The USTR placed India on the Priority Watch list as part of the 2003 "Special 301" process.

Patents

India's patent law excludes from product patent protection 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. As a result, many U.S.-invented drugs are widely reproduced in India without license. In 2003, a U.S. firm reported that its agricultural biotechnology cottonseeds were being copied and marketed without license or GOI regulatory approval. U.S. agro-chemical 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.

To meet its Uruguay Round obligations under the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), the GOI has until January 1, 2005 to provide product patent protection, including for pharmaceuticals and agro-chemicals. In 2003, the GOI reaffirmed its intention to honor this commitment and began work on drafting legislation to amend its Patent Act for the third time. In August 2001, after a prolonged debate, the Indian Parliament passed the Protection of Plant Varieties and Farmers' Rights Act that would provide patent-like protection for plant varieties, fulfilling another of its TRIPS commitments. The GOI has not yet implemented this law.

The May 2002 Patent Law amendment (which became effective in May 2003) contains numerous categories of inventions that are not patentable even though the TRIPS Agreement requires that patents be available for all inventions, with limited exceptions, regardless of field of technology. The 2002 amendment also does not provide adequate process protection for products that cannot be patented in India. Article 28 (b) of the TRIPs Agreement requires that where the subject matter of a patent is a process, the exclusive rights extend to the product obtained directly by that process. Under the Indian regime, if the product is made in another country, it can readily be imported because the product is not subject to patent protection. As a consequence, the process patent can easily be circumvented and has largely lost its effectiveness. India also does not 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 does not provide protection for clinical trial data that companies must submit to the government to obtain marketing approval of their pharmaceutical products. In 2003, the GOI debated the provision of data exclusivity protection but took no action. As a result, 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 United States continues to press for passage of a TRIPS-compliant regime within the agreed upon time frame. A small, but growing, domestic Indian constituency, comprised of Indian pharmaceutical companies, technology firms and educational and research institutions, favors an improved patent regime, including full product patent protection.

Copyrights

India implemented a strengthened copyright law in May 1995, creating one of the most modern systems for copyright protection in the developing world. In the year 2000, certain amendments to the Indian Copyright Act substantially weakened the Act's once-strong software protection. These exceptions allow

decompilation of a computer program, permit reproduction of a computer program so as to observe its functionality, and allow multiple copies of a computer program for personal, non-commercial use. The United States believes that the exceptions provided in the amendments are too broad and will lead to increased piracy. Article 13 of the TRIPS Agreement allows WTO Members to limit intellectual property protection as long as the exceptions or limitations do not unreasonably prejudice the right holder's interests or conflict with the normal exploitation of the work. Other amendments in 2000, designed to meet TRIPs obligations, increased the period of protection of performers' rights from 25 years to 50 years, and extended the provisions of the Act to broadcasts and performances made in other countries only on a reciprocal basis.

The GOI is not a party to either the 1996 WIPO Copyright Treaty (WCT) or the WIPO Performances and Phonograms Treaty (WPPT). A "core group" of GOI officials, local industry representatives, academics and lawyers have been discussing amendments to the Indian Copyright Act which would enable India to implement these treaties. They have yet to introduce the necessary legislation. United States' attempts to provide useful input into this process continue to be disregarded.

Piracy of copyrighted materials (particularly software, films, popular fiction works and certain textbooks) remains a problem for U.S. and Indian producers. Pirated semiconductors are sold in violation of copyright and semiconductor mask laws. India has not adopted an optical disk law to deal with optical media piracy. 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 minimum criminal penalties, including mandatory minimum jail terms that U.S. industry believes would go far in controlling piracy, if implemented. Other steps to improve copyright enforcement include: the establishment of a copyright enforcement advisory council with responsibility for policy development and coordination; and the initiation of a program for training police officers and prosecutors concerned with enforcement of copyright laws. Due to 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 videocassettes, 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 2002. 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 $376 million in 2002. 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. 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 were published in September 2003. 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. That is, owners of foreign trademarks who register them in India must use the trademarks on local production. Non-use of such trademarks in India may result in their cancellation.

The required registration of a trademark license (described by U.S. industry as highly bureaucratic and time-consuming) has 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. The Indian courts, however, have upheld trademark owner rights in infringement cases.

Enforcement

India needs to reform substantially its criminal justice system. In addition, U.S. industry reports significant weaknesses with India’s border protection against counterfeit and pirated goods. India needs to address the high volume of exports of domestically produced counterfeit goods.

India’s criminal IPR enforcement regime remains weak, with few reported convictions for copyright infringements resulting from raids, including raids against recidivists. Adjudication of cases is extremely slow. Criminal enforcement with regard to motion pictures improved somewhat in 2003. No criminal software end-user piracy cases have resulted in convictions to date; although, the first criminal end-user raid ever conducted in India occurred in March 2003. Obstruction of raids, leaks of confidential information, delays in criminal case preparation and the lack of adequately trained officials have further hampered the criminal process.

Recent amendments to the Code of Civil Procedure requiring that civil cases must be completed within one year may provide more expeditious disposition of the civil cases undertaken by U.S. industry in Indian courts.

SERVICES BARRIERS

Indian government entities run many major services industries either partially or entirely. Nevertheless, 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. While India has submitted an initial WTO GATS offer to provide further services liberalization, it does not go far enough in removing existing restrictions in its services market in key sectors such as professional services, telecommunications and financial services. The United States will continue to press India for further market opening in these

sectors and its services market overall to provide additional export opportunities for U.S. services providers.

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 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 September 2003, 35 foreign banks with 207 branches 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). India did not, however, 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 74 percent from 49 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 countries with fully convertible currencies. The Securities and Exchange Board of India now permits FIIs to trade in all exchange-traded derivative products, subject to trading limits for members and their clients in the derivatives market.

Audiovisual and Communications Services

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. An annual remittance ceiling of $6 million on all foreign film producers was eliminated in November 2001. U.S. companies have experienced difficulty in importing film/video publicity materials.

Legislation passed in December 2002 allowed the GOI to put in place the Conditional Access System (CAS) for cable television whereby TV subscribers would be required to install set-top-box decoders to view premium channels. The aim of this CAS legislation was to address public grievances about arbitrary hikes in cable subscription fees; and to provide greater choice to subscribers to pay for only those channels they wish to receive instead of one fixed price for the entire package. The Government saw CAS as a means to increase transparency and prevent tax leakage by preventing cable operators from under-reporting their subscriber bases. By providing tighter regulation of the cable industry as a whole, CAS was expected to help reduce the problem of pirated broadcasts. The Government announced plans to implement the CAS system in the four largest metropolitan areas by July 15, 2003. As of March 2004, the GOI indefinitely postponed CAS implementation on the advice of its regulator that continues to study the issue.

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. At present, news channels are permitted to have up to 26 percent foreign equity investment. As of August 2003, they also have to ensure that a A dominant Indian partner, i.e., one who has the financial strength to hold 74 percent equity, owns the 51 percent Indian equity. In addition, operational control of the editorial content must be in Indian hands. The Indian government has also announced other minimum capitalization requirements.

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. 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.

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 positive steps towards liberalizing the telecommunications market and introducing private investment and competition in basic telecommunications services. 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 basic, including cellular, and value-added telecommunications services. Foreign equity in value-added services is limited to 51 percent. For basic services, the limit is 49 percent. 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 extend 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 other basic telecommunications service providers, 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.

Private competitive carriers are concerned about the neutrality and fairness of government policy. 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 not established a timetable.

American telecommunications companies have complained about the restrictive polices adopted by incumbent Indian international service provider VSNL on international bandwidth, cable access, and landing stations in India. They allege discriminatory and monopolistic practices by VSNL and have requested the Indian government to intervene to ensure VSNL makes available submarine cable capacity to other suppliers on a reasonable and non-discriminatory basis.

In October 2003 the Indian cabinet approved the introduction of a single license regime for cellular and basic telecommunications services. India continues to modernize its regulatory framework, with a draft "convergence bill which is pending parliamentary consideration. The bill will consolidate authority over telecommunications, the Internet, and broadcasting in a single, super regulator.

In January 2003, the Telecom Regulatory Authority of India (TRAI) implemented an interconnection Access Deficit Charge which, though revised in October 2003, appears to remain inconsistent with India's legal and regulatory requirements that such charges be cost-based, completely neutral, and non-discriminatory.

Internet telephony became legal in India in 2002, but this long-awaited liberalization came with several restrictions. Only Internet Service Providers (ISPs) are allowed to offer Internet telephony within their service areas, and telephone-to-telephone communications through the Internet remain illegal.

Distribution Services: Direct Selling

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 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, most often in the direction of further deregulation. The process is not always transparent and the restrictions on combined FDI and portfolio investment are inconsistent across industries.

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 the case of the non-news journals and magazines. 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 74 percent from 49 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 have 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.

In spite of recent changes to Indian investment policy allowing higher FDI or equity limits and dropping requirements on foreign investors to divest significant portions of their holdings over time, many investors who entered the market prior to the changes continue to be held by the outdated provisions on the grounds they are bound by company-specific agreements. For example, a U.S. soft drink manufacturer which entered the Indian market under the old regulations was compelled by the GOI in 2002 to divest 49 percent of its Indian shareholding in favor of Indian investors (which the company completed in 2003) even though new regulations in effect at the time no longer required it to do so.

Trade-Related Investment Measures (TRIMS)

In July 2000, the United States initiated a dispute settlement proceeding in the WTO, joined later by the EU, challenging India's compliance with its commitments under the Agreement on Trade-Related Investment Measures (TRIMS). As a result, on March 14, 2002, India 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 export performance requirements for foreign automakers.

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 languish for years, Indian firms face few if any disincentives to engaging in anticompetitive business practices.

The Indian Parliament approved competition legislation in 2002 that provided for a new regulatory authority, the Competition Commission of India (CCI) to replace the Monopolies and Restrictive Trade Practices Commission (MRTPC). The new law does not prohibit monopolies but does charge the CCI with regulating unfair practices and promoting policies that favor competition. The government issued the implementing rules for the Competition Act in April 2003.

OTHER BARRIERS

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

India's drug policy is an issue of concern for U.S. pharmaceutical companies. In view of the lack of adequate and effective intellectual property protection coupled with a rigid government-controlled pricing system that does not adequately reward innovation, they find it nearly impossible to maintain viable pharmaceuticals businesses in India. This prevents pharmaceutical companies from placing the best and latest innovative drugs on the Indian market.

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, pesticide manufacturers whose products have been approved at the national level and banned at the state

level, and distilled spirits producers who face non-uniform state-level taxes despite the national government's directive to harmonize such taxes.