INDIA

TRADE SUMMARY

The U.S. goods trade deficit with India was $11.7 billion in 2006, an increase of $920 million from $10.8 billion in 2005. U.S. goods exports in 2006 were $10.1 billion, up 26.3 percent from the previous year. Corresponding U.S. imports from India were $21.8 billion, up 16.1 percent. India is currently the 21st largest export market for U.S. goods.

U.S. exports of private commercial services (i.e., excluding military and government) to India were $5.2 billion in 2005 (latest data available), and U.S. imports were $5.0 billion. Sales of services in India by majority U.S.-owned affiliates were $2.2 billion in 2004 (latest data available), while sales of services in the United States by majority India-owned firms were $1.8 billion.

The stock of U.S. foreign direct investment (FDI) in India in 2005 was $8.5 billion (latest data available), up from $7.7 billion in 2004. U.S. FDI in India is concentrated largely in the information, manufacturing and banking sectors.

IMPORT POLICIES

India's tariffs remain high. U.S. producers encounter tariff and non-tariff barriers that impede their exports, despite the government of India's (GOI) economic reform program initiated in 1991. While U.S. exports continued to grow in 2006 – continuing a positive growth trend since 2001 – substantial expansion in bilateral trade will depend on continued and significant additional Indian liberalization.

The GOI has made substantial progress in restructuring tariffs applied to non-agricultural goods. In February 2007, the GOI's 2007-2008 budget proposes to reduce the peak applied duty on most non-agricultural products from 12.5 percent to 10 percent. Despite tariff cuts on these goods, India's maximum (peak) tariff applied to non-agricultural goods has increased substantially over the years. The government applies high tariffs to petrochemicals, automobiles, motorcycles and finished steel products. Also, the U.S. textile industry continues to have concerns about non-transparent applications of tariffs and taxes. India's agricultural tariffs – which are among the highest in the world – remain untouched.

India's simple average applied tariff rate was 27 percent in 2005, including excise taxes. The GOI in February 2007 announced cuts deeper than that level in the basic custom duty on many raw materials and intermediates. For example, polyester fibers, yarn and other raw materials was lowered from 10 percent to 7.5 percent. The GOI also adjusted downward tariffs on chemicals and plastics from 12.5 percent to 7.5 percent.

The GOI assesses a 1 percent customs handling fee on all imports in addition to the applied customs duty. The GOI's 2007-2008 budget proposes to levy an additional education "cess" of 1 percent on top of the 2 percent education fund assessment already levied on all sales, both imported and domestic. The education "cess" is a surcharge applied to nearly all direct and indirect taxes to help finance education. The GOI includes tariffs in calculating the value upon which to assess additional charges, except where specifically exempted. Finally, various states apply local duties within their jurisdictions in many cases. The cumulative effect of these various additional charges renders the effective applied duties substantially higher on retail prices of imported goods.

The United States has actively sought market-opening opportunities in India, both bilaterally and multilaterally in the Doha Development Round. The U.S. Trade Representative (USTR) and India's Minister of Commerce chair the United States-India Trade Policy Forum (TPF) meeting, which was constituted during Prime Minister Sing's visit to Washington in 2005. As part of the United States-India Economic Dialogue, the TPF meets regularly through its five focus groups – agriculture, innovation and creativity (including Intellectual Property Rights), investment, services, and tariff and non-tariff barriers – to discuss the full range of bilateral trade and investment issues.

In the World Trade Organization (WTO), India has bound tariffs in 2006 on 73.8 percent of its tariff lines, an increase from the 68 percent of lines bound in 2005. However, the majority of these bindings exceed India's applied rates of duty. In agriculture, India's WTO bound tariffs range from 100 percent to 300 percent, also higher than the applied rates in many product areas.

For example, India's applied – and WTO bound – base tariff on imports of spirits is 150 percent *ad valorem*. Since 2001, India has applied "additional duties" on imports of wines and spirits, which are assessed on top of the basic customs duty and vary depending on the per-case CIF value of the imported products. In March 2006, India's Finance Ministry established a 4 percent *ad valorem* "extra additional duty" on all imports, including wines and spirits, with a few exceptions. The extra additional duty is applied on top of the basic customs duty and additional duty. The application of the additional and extra additional duties on top of the base tariff yields effective tariff rates on imported spirits that range from 225 percent to 550 percent *ad valorem*. The applied tariff on wines is 100 percent *ad valorem* (the bound rate is 150 percent) and, along with additional and extra additional duties, yield effective tariff rates of 150 percent to 264 percent *ad valorem*. In December 2006, the United States requested to join the European Communities' WTO dispute settlement consultations on India's additional and extra additional duties on wines and spirits. India rejected that request. On March 6, 2007, the United States requested WTO dispute settlement consultations with India over the additional and extra additional duties.

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

Import Licensing

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

India also maintains a negative import list. The negative list is currently divided into three categories: (1) banned or prohibited items (e.g., tallow, fat, and oils of animal origin); (2) restricted items which require a non-automatic import license (e.g., livestock products, certain chemicals); and (3) "canalized" items (e.g.,

petroleum products, some pharmaceuticals, and bulk grains) importable only by government trading monopolies subject to cabinet approval regarding timing and quantity.

India has liberalized many restrictions on the importation of capital goods. The government allows imports of second-hand capital goods by the end-users without requiring an import license, provided the goods have a residual life of five years. Refurbished computer spare parts can only be imported if an Indian Chartered Engineer certifies that the equipment retains at least 80 percent of its residual life, while refurbished computer parts from domestic sources are not subject to this requirement.

India requires foreign exporters of unshredded scrap metal to register with the Director General of Foreign Trade (DGFT) in the Indian Department of Commerce to enable such products to enter the Indian market. The registration process has been hampered by inefficiency and a lack of transparency. The United States continues to urge the DGFT to implement a transparent registration system.

Fertilizer Subsidy Regime

The Indian government subsidizes di-ammonium phosphate (DAP) fertilizer. Under the current system, the GOI sets a maximum retail price that can be charged to farmers for DAP. This price is not adequate to cover the cost of producing or importing DAP. The excess costs for domestic producers and importers are subsidized and at different levels that favor domestic DAP over imports. From July 2004 through June 2005, base rate subsidies were equalized but final subsidy amounts continued to disadvantage imports. The disadvantage has limited regular commercial import transactions. In addition to this disadvantage, the current system fixes the subsidy on a retroactive basis and in a non-transparent manner, which in turn acts as a further deterrent for importers. The United States continues to press India to end its costly, trade-distorting treatment of DAP.

Customs Procedures

The GOI appears to apply discretionary customs valuation criteria to import transactions. Valuation procedures allow Customs to reject the declared transaction value of an import when a sale is deemed to involve 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 increase tariff rates. The United States is working through the WTO Committee on Customs Valuation to obtain further information from India on its valuation methods and will continue to examine the customs valuation procedures for consistency with India's obligations under the WTO Customs Valuation Agreement.

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

In line with its unofficial policy of revising edible oil reference prices once every 15 days, the Indian government announced reduced tariff values for palm and soybean oils in January 2006. India continues to maintain a reference price system for soybean oil to address alleged under-invoicing. The reference price is the basis upon which India assesses its 45 percent customs duty. When the GOI reference price for soybean oil rises above the transaction price, the effective rate of duty may also increase above India's 45 percent WTO-bound tariff. Although the reviews are done periodically, India has not formally defined this procedure, making it non-transparent and unpredictable. Exports of U.S. crude soybean oil to India are negligible after reaching a peak of $25 million in 2002. The U.S. Government continues to raise this

issue with India, but has not received a response from the Indian government that clarifies its policy and the reference price scheme's relationship to India's WTO commitments.

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

Indian Customs has taken the position that certain types of automatic teller machines (ATMs) do not qualify as ATMs and, therefore, are not entitled to duty-free treatment under the WTO Information Technology Agreement.

In 2005, India proposed a Draft Integrated Food Law. U.S. industry remains concerned that, if enacted, the proposed law would provide inadequate due process because it: (1) imposes the burden of proof on the food producer when food products are "seized" by a food inspector; and (2) provides limited procedural options to permit food manufacturers to appeal inspector decisions.

STANDARDS, TESTING, LABELING AND CERTIFICATION

The GOI has identified over 100 specific commodities (including food preservatives and additives, milk powder, infant milk foods, certain types of cement, household and similar electrical appliances, gas cylinders, tires, and multi-purpose dry cell batteries) that the Bureau of Indian Standards (BIS) must certify before the products are allowed to enter the country. A system now exists by which foreign companies can receive automatic certification for products made outside India, provided BIS has first inspected and licensed the production facility (at the manufacturer's expense). Licensing fees include the cost of the initial inspector's visit and tests, an annual fee of approximately $2,000 and a marking fee that ranges from 0.2 percent to 1 percent of the value of certified goods imported into or produced in India.

In 2004, Indian Customs began to require registration or an exemption certificate for imported boric acid. The Ministry of Agriculture's Central Insecticides Board and Registration Committee has not published adequate information on the criteria and procedures for obtaining this documentation. Imports of boric acid are, therefore, effectively blocked. Indian government rulemaking has been *ad hoc* and confusing. India may be the only country that requires registration of boric acid intended for non-insecticide use. U.S. industry is required to register, although 90 percent of all boric acid imports into India are for non-insecticide uses (such as glassmaking) and should qualify for an exemption. India's boric acid producers are not subject to the same requirements. The U.S. Government has raised this issue with the GOI on numerous occasions, but India has taken little action to address the concerns except to web-post general contact information indicating which ministries are responsible for issuing no-objection certificates to import non-insecticidal boric acid, based on the end use of the product.

The U.S. Government is increasingly concerned over India's failure to notify certain technical regulations to the WTO. India's procedures for establishing vehicle emissions standards, for example, are vague and non-transparent. The emissions standards seem to favor small displacement motorcycles that are primarily manufactured by Indian producers. Even the latest low-emission technology used by U.S. manufacturers of large motorcycles – which are not manufactured in India – fails to meet India's prohibitive requirements. The U.S. Embassy and private industry have sought to convince the GOI that very stringent emissions standards for large motorcycles already widely in use in many countries (e.g., the United States or European Union), address India's environmental concerns.

In bilateral and multilateral forums, the U.S. Government has discussed with, and raised concerns about, the Indian government's use and implementation of technical regulations, standards and conformity procedures. For example, the United States raised concerns about India's implementation in 2006 of new regulatory requirements for medical devices. While welcoming regulations that improve product safety and effectiveness, U.S. companies report that the "guidelines" are causing confusion, and they would benefit from greater clarity and consistency with international standards and practice.

The GOI is considering making mandatory a new certification system for tires. Industry alleges that this would require, among other things, foreign tire manufacturers to retest their tires in India, subject them to higher licensing fees than domestic manufacturers, and emboss the logo of the BIS along with an approval number to gain access to the Indian market. Tire industries in the United States, the European Community, and Japan have raised concerns about this new measure unnecessarily restricting trade by requiring redundant testing, labeling and conformity assessment, which significantly increases costs to tire manufacturers. The U.S. Government conveyed industry's concerns bilaterally to India's Ministry of Commerce and BIS. Additionally, the United States raised the issue before the WTO Technical Barriers to Trade Committee, along with the European Community and Korea.

The state of Maharashtra's Food and Drug Administration (FDA) has tried to restrict sales of dietary supplements in tablet or capsule form to pharmacies by reclassifying such products from foods to drugs. An interim stay order issued by the Maharashtra High Court has prevented implementation of the Maharashtra FDA's measure. India also enacted the Food and Safety Standards law that U.S. companies' hope will clarify the legal status of dietary supplements. It is still unclear which ministry will be responsible for implementing the law.

In September 2005, as part of the U.S.-India Commercial Dialogue, officials of the U.S. Government and the Indian government initiated a Standards Dialogue Working Group to seek transparency and understanding of how standards impact upon our bilateral commerce. Three sessions of the dialogue were held in 2005, and several more meetings were held in 2006. More Commercial Dialogue sessions are anticipated in 2007.

SANITARY AND PHYTOSANITARY (SPS) MEASURES

The U.S. Government has raised concerns with the GOI regarding India's failure to notify certain SPS measures to the WTO. Bilateral technical level discussions within the Trade Policy Forum's Agriculture Focus Group are ongoing and have resulted in long-term agreements to allow continued entry for key U.S. export commodities such as almonds. The U.S. Government continues to impress upon India the need to base its SPS measures on science, including those affecting almonds, apples, bovine genetics, dairy products, pulses, poultry, pet food, specific pathogen free eggs, forest products, and food derived from biotechnology.

The U.S. Government calls for establishing food standards on the basis of risk analysis and strongly recommends that the results of a risk assessment must be taken into consideration in risk management decisions. The U.S. objects to India's use of undefined principles, which can result in an unscientific application of risk management. The end result can potentially block trade in food and agricultural products.

GOI implementation of the "Plant Quarantine (Regulation of Import into India) Order, 2003" and its amendments, prior to notifying them to the WTO SPS Committee, threatens U.S. exports of U.S. pulses, fresh fruits and vegetables, among others. Through substantial effort, the U.S. Department of Agriculture

has maintained market access for these products, but such access is continually under threat from opaque and unscientific regulations.

The Indian government has implemented several sanitary restrictions that do not appear to be based on Office of International Epizootics (OIE) and CODEX recommendations. The OIE and CODEX are the international standard setting bodies for animal health issues and food products, respectively, recognized in the WTO Sanitary and Phytosanitary Agreement. Such restrictions have unduly restricted Indian imports of poultry and poultry products, pet food, bovine genetics, and dairy products.

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

On August 24, 2006, the government enacted an integrated food law, which is called the "Food Safety and Standards Act, 2006." This new legislation attempts to consolidate the existing multitude of laws and regulations governing the food and food-processing sectors. It also establishes a Food Safety and Standards Authority (FSSA). The FSSA will be responsible for establishing food safety standards for packaged and processed foods and regulating India's manufacturing storage, distribution, sale, and import sectors. Reportedly, under the FSSA's authority, all existing regulations, including PFA Rules (1955), EPA Rules (1989), and Plant Quarantine (2003), would be repealed with a view toward adopting international norms and food regulatory systems. At this time, it is unclear which Ministry will house the FSSA.

GOVERNMENT PROCUREMENT

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

EXPORT SUBSIDIES

The tax exemption for profits from export earnings was phased out over a five-year period that ended in March 2005. Tax holidays continue for Export Oriented Units and exporters in Special Economic Zones. In addition to these programs, India continues to maintain several duty drawback programs that appear to allow for drawback in excess of duties levied on imported inputs. India also provides pre-shipment and post-shipment export financing to exporters at a preferential rate. India also provides incentives to its textile industry through several programs, such as the Technology Upgradation Fund Scheme (TUFS) and the Scheme for Integrated Textile Parks (SITP). India has not submitted a notification to the WTO Committee on Subsidies and Countervailing Measures since 2001.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

India amended its patent laws effective January 1, 2005. Large-scale copyright piracy, especially in the software, optical media, and publishing industries, continues to be a major problem. The United States retained India on the "Priority Watch List" as part of the 2006 Special 301 review. These issues are discussed in the Trade Policy Forum's Innovation and Creativity Focus Group.

Patents

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

Additionally, the U.S. Government is aware of growing concerns by some pharmaceutical companies that the application of the new pre-grant opposition rules and post-grant challenge opportunity impede timely grant of patent applications for new compounds and protection once granted. The law also contains ambiguities concerning the enforcement of patents issued from mailbox applications.

Indian law does not provide for adequate protection against unfair commercial use of test or other data that companies submit in order to obtain government marketing approval for their pharmaceutical or agricultural chemical products. The GOI currently is preparing a report that will make a recommendation on adopting data protection legislation for submission to Parliament in 2007. Without specific protection against unfair commercial use of clinical test data, companies in India are able to copy certain pharmaceutical products and seek immediate government approval for marketing based on the original developer's data. Recognizing the role that effective data protection plays in fostering innovation and investment, a small but growing domestic Indian constituency, comprised of Indian pharmaceutical companies, technology firms, and educational and research institutions, favors changes to improve protection of data.

Copyrights

India's copyright laws need updating and enforcement is weak. The GOI has proposed amendments that would update the copyright laws to address issues related to the Internet and digital works. However, the proposed amendments have some deficiencies. For example, the law does not appear to provide adequate legal protection and effective legal remedies against circumvention of effective technological protection measures. The GOI is not a party to either the 1996 WIPO Copyright Treaty (WCT) or the WIPO Performances and Phonograms Treaty (WPPT).

Piracy of copyrighted materials (primarily software, films, popular fiction works and certain textbooks) remains a problem for both U.S. and Indian producers. Costs to the U.S. industry amounted to nearly $440 million in 2005. Pirated semiconductors are often sold in violation of copyright and semiconductor mask laws. India has not adopted an optical disc law to deal with optical media piracy, although inter-ministerial consultations to examine whether optical disk legislation is necessary are now underway. Classification of copyright and trademark infringements as "cognizable offenses" has expanded police search and seizure authority. The law provides for minimum criminal penalties, including mandatory minimum jail terms, though these penalties are not often implemented effectively.

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

Cable television piracy continues to be a significant problem, with estimates of tens of thousands of cable operators who operate without a license in India. Copyrighted U.S. product also is transmitted without authorization by licensed cable operators often using pirated videocassettes, video compact discs (VCDs), or DVDs as source materials. This has had a significant detrimental effect on all motion picture market segments in India – theatrical, home video, and television. For instance, pirated videos are available in major cities before their local theatrical release. While noting pockets of positive movement, the United States continues to press for adequate and effective copyright protection.

Enforcement

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

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

SERVICES BARRIERS

Indian government entities have a strong ownership presence in some major services industries such as banking and insurance. Nevertheless, private firms play a preponderant or exclusive role in a number of rapidly growing parts of the services sector, including the information technology sector, advertising, the professions, car rental, and a wide range of business consulting services. There is a growing public awareness of India's potential as a major services exporter and increasing demand for a more open services market. While India has submitted an initial offer to provide further services liberalization in the WTO Doha Round, the offer does not remove existing limitations in such key sectors as distribution, telecommunications, financial services and the professions. The United States will continue to press India bilaterally in the Trade Policy Forum's Services Focus Group and at the WTO to open its services markets.

Insurance

The Insurance Regulatory and Development Authority (IRDA) law opened India's insurance market to private participation with a limit on foreign equity of 26 percent of paid-up capital. In addition, all partners must divest ownership stakes to a maximum of 26 percent within ten years of the joint venture's formation. In July 2004, the GOI announced its intention to amend the IRDA law to increase that cap to 49 percent. However, opposition from Leftist parties has thus far prevented the GOI from allowing greater foreign participation in the insurance sector.

Banking

Foreign banks may operate in India through one of three channels: a direct branch, a wholly-owned subsidiary, or through a stake in a private Indian bank. However, no foreign bank may purchase more than 5 percent of an Indian private bank without approval of the Reserve Bank of India (RBI), and no non-bank, foreign or domestic, may purchase more than 10 percent of such banks without RBI approval. All foreign stakes, taken together, cannot exceed 74 percent of the capital of an Indian private bank. Although India has opened up to privately-held banks, most Indian banks are government-owned, and entry of foreign banks remains highly regulated. State-owned banks hold roughly 80 percent of the assets of the banking system, although private banks are growing rapidly.

The RBI has granted operating approval to 31 new foreign banks or bank branches since issuing new guidelines in 1993. As of January 2007, there were 29 foreign banks with 255 branch offices operating in India. Under India's branch authorization policy, foreign banks are required to bring in an assigned capital of $25 million at the time of the opening of their first branch and also are required to submit their internal branch expansion plans on an annual basis. Five U.S. banks now have a total of 16 branches in India. They operate under restrictive conditions including directed lending and asset allocation requirements. Their ability to expand organically is severely limited by non-transparent quotas on branch office expansion and the granting of licenses by the RBI. Under its WTO commitments, India pledges to grant 12 new foreign branch office licenses annually, but according to Indian government sources, the GOI issued 20 licenses in 2006. In contrast, domestic private Indian banks received 100 branch office licenses in 2006. Foreign banks are allowed to establish wholly-owned subsidiaries but must divest their ownership stakes down to 26 percent by 2009, making this option largely unattractive. As a result, there are no wholly-owned subsidiaries of foreign banks in India.

Foreign ownership of the banking system is capped by law at 15 percent. Aggregate foreign direct investment (FDI), foreign institutional investment (FII) or portfolio investment and investments by non-resident Indians is capped at 49 percent (up to 74 percent with permission of a bank's Board). Ownership by foreign individuals is capped at 10 percent. In addition, voting rights in a local bank are capped at 10 percent for all aggregate foreign investors.

Audiovisual and Communications Services

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

Entertainment taxes on motion pictures are estimated on a countrywide basis by U.S. industry at 35 percent to 40 percent of the admission price. Such taxes vary by state, from 15 percent to over 100 percent. Some states charge zero or lower tax rates on films in the local language than on films in other languages.

In March 2004, in the face of considerable distributor and consumer resistance, as well as confusion surrounding pricing issues and other rules, the GOI suspended implementation of the Conditional Access System (CAS) for cable television. However, CAS was implemented, in accordance with a Delhi High Court Order, on January 1, 2007. The CAS requires television subscribers to install set-top-box decoders to view premium channels. By providing tighter regulation of the cable industry as a whole, CAS is expected to help reduce the problem of pirated broadcasts.

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

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

Accounting

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

Construction, Architecture and Engineering

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

Legal Services

India requires that anyone wishing to practice law must enroll as a member of the Bar Council, and if that person happens to be a foreign national, then he must belong to a country that allows Indian nationals reciprocal rights to practice in their country. FDI is not permitted in this sector, and international law firms are also not authorized to open offices in India. Foreign services providers may be engaged as employees or consultants in local law firms, but they cannot sign legal documents, represent clients, or be appointed as partners. India has not made any offers for opening up the legal services sector at the WTO. In 2006, the U.S. Government and the Indian government announced the formation, under the Trade Policy Forum, of a bilateral Legal Services Working Group to promote greater cooperation between U.S. and Indian lawyers and to address market access issues.

Telecommunications

India has taken positive steps towards liberalizing, and introducing private investment and competition in, its telecommunications services market. Concerns remain regarding India's weak multilateral commitments in basic and value-added telecommunications services and the apparent bias of telecommunications policy towards government-owned services providers. Despite many pro-competitive recommendations the telecommunications regulator proposes after a process of public consultations, the Department of Telecommunications (DOT) often delays adoption of those recommendations or rejects them without adequate explanation.

India's national telecommunications policy allows private participation in the provision of all types of telecommunications services. In November 2005, foreign equity limits were raised from 49 percent to 74 percent for National and International Long Distance (NLD/ILD) services. However, inter-ministerial differences related to the implementing regulations have prevented companies from taking advantage of the market opening. Thus, while companies may obtain a license for NLD and/or ILD services, the absence of implementing regulations causes a great deal of uncertainty in the market. The GOI has proposed new requirements on how international networks are managed in India, which U.S. operators believe seriously impede their ability to do business. In the face of widespread complaints, the GOI agreed to delay implementation of these rules for a third time (until early 2007) while it finds a solution to address industry concerns. The U.S. Government is currently confirming reports that the GOI has taken steps to mitigate industry concerns.

Competitive carriers have expressed concerns about the neutrality and fairness of government policy. The GOI retains a significant ownership stake and interest in the financial health of three telecommunications firms, all of which formerly enjoyed monopoly status in their areas of operation. The government holds a 26 percent interest in the international carrier, VSNL; a 56 percent interest in MTNL, which primarily serves the Delhi and Mumbai metropolitan areas; and a 100 percent interest in BSNL, which provides domestic services throughout the rest of India.

U.S. telecommunications companies have complained about the restrictive polices adopted by incumbent Indian international service provider VSNL on international submarine cable access and landing stations in India. U.S. companies have requested that the Indian government intervene to ensure that VSNL makes available submarine cable capacity to other suppliers and provides access to, and use of, cable landing stations on a reasonable and non-discriminatory basis. In December 2005, the Telecommunications Regulatory Authority of India (TRAI) issued recommendations in its "Measure to Promote Competition in International Private Leased Circuits in India," which were adopted by the Department of Telecommunications (DOT) in late 2006. USTR is encouraged that the DOT finally adopted the recommendations, but quick implementation by TRAI will be important to ensure that U.S. carriers enjoy equal access to essential facilities in India. If adopted, these recommendations would potentially resolve many of the U.S. telecommunications companies' problems in this market.

India's Access Deficit Charge ("ADC") regime disproportionately impacts consumers making international calls to India. India's telecommunications regulator, TRAI, implemented the ADC in 2003 in relation with its Telecommunications Interconnection Usage Charge ("IUC") Regulation. However, the ADC is not an "interconnection charge," but rather, a supplemental collection to subsidize socially desirable services and a component of India's overall universal service regime.

There have been longstanding concerns with the ADC, and in particular with the high ADC applied to inbound international long distance traffic, which is currently twice the level of the ADC for outbound international calls. The ADC paid on domestic calling in India is a mere fraction of these amounts.

Although modifications in the ADC rules in February 2006 brought significant reductions in the ADC rates for international calls, India continues to place an unreasonable and discriminatory ADC burden on foreign international service providers and their customers making calls to India. India has stated that the ADC will be cut in proportion to a glide path which allows for the ADC to enter a sunset regime in 2008. The U.S. Government will continue to monitor this issue.

Though Voice over Internet Protocol (VoIP) services were legalized in India in 2002, one U.S. trade association reports that certain restrictions imposed by TRAI on the connection of the services to a PSTN, as well as non-industry standard quality of service requirements developed by TRAI have hampered the ability of companies to expand the provision of this service in India.

U.S. satellite operators have long complained about the closed and protected satellite services market in India. For many services, specific preferences are granted to those using Indian satellites over those seeking to use a foreign satellite system, even though current Indian regulations do not preclude the use of foreign satellites. In practice, for most services, including domestic VSAT services, domestic television distribution and Direct-to-Home (DTH) television services, foreign satellite capacity must be provided through the Indian Space and Research Organization (ISRO). That is, the foreign operator must sell its capacity to ISRO, a direct competitor of the foreign operator, who then resells it to the customer. This middleman scenario raises a number of concerns: first, it creates additional costs for the consumer that pays a markup added by ISRO (the amount of which varies); second, it allows ISRO to negotiate the terms under which the foreign satellite capacity will be provided, with the goal (explicitly stated at times) of moving the service to one of ISRO's satellites once capacity is available; and third, the market grows at the rate determined by ISRO. Finally, U.S. satellite operators have said that the policy and practice involved in selling satellite services in India is opaque and confusing.

In 2004, TRAI recommended that India adopt an "open skies" policy and allow competition in the satellite services market. Prior to that date, India had already instituted a partial open skies policy with respect to international VSAT connections to the U.S. Internet Backbone for Indian ISPs. However, to date, the further liberalization proposed by the TRAI recommendations has not been adopted by the government of India, and likely faced resistance from ISRO for protectionist reasons.

Distribution Services

The retail sector in India is largely closed to foreign investment. In January 2006 the GOI began allowing foreign direct investment in single-brand retail stores, subject to a foreign equity cap of 51 percent. Foreign direct investment in multi-brand retail outlets is not permitted. With regard to directly selling, current Indian law does not sufficiently differentiate between legitimate direct selling operations and pyramid schemes.

Postal and Express Delivery

In 2006, India's Department of Post made public a draft of the India Post Office (Amendment) Bill 2006. The draft bill updates the 1898 Post Office Act but also includes provisions with potentially harmful effects for the operations of private express delivery companies. The key issues of concern to U.S. industry are: (1) the draft bill includes a provision requiring all registered service providers to contribute to financing the regulator's universal service obligation; (2) the postal monopoly would be expanded by providing the Indian Postal Department the exclusive right to carry all "letters" up to 300 grams; (3) the bill would require registration of companies carrying anything categorized as a "postal article," effectively placing the express industry under the authority of the postal regulator, rather than an independent body; and (4) the bill would impose limits on foreign investment and might force foreign-owned express companies to divest their

existing operations in India. The U.S. Government continues to encourage the GOI to strike these problematic provisions from any final postal reform legislation as currently drafted.

Education

A Group of Ministers recommended to the Indian Cabinet in November 2006 that it introduce legislation in parliament that would allow foreign universities to establish campuses in India.

INVESTMENT BARRIERS

Equity Restrictions

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

The Indian government's stringent and non-transparent regulations and procedures governing local shareholding inhibit inward investment and increase risk to new entrants. Foreign purchaser attempts to acquire 100 percent ownership of a locally traded company, permissible in principle, faces regulatory hurdles that render 100 percent ownership unobtainable under current practice. Price control regulations have undermined incentives for foreign investors to increase their equity holdings in India. Some companies report forced renegotiation of contracts in the power sector to accommodate government changes at the state and central levels. Press Note 18, promulgated in 1998 by the Ministry of Industry, poses major impediments to investment in India by requiring prior approval of the Indian party to a joint venture before the foreign partner can pursue other investment opportunities in India. This provision was widely abused, holding foreign partners hostage, even for failed joint ventures. In January 2005, the GOI partially lifted Press Note 18 by eliminating its application to all new joint ventures and relaxing the hold local firms have on the future business plans of foreign partners for existing joint ventures.

Investment Disputes

There has been significant progress toward resolving several payment disputes that American power sector investors have with the State of Tamil Nadu. The GOI, which has limited jurisdiction over commercial disputes involving matters under state jurisdiction, has been helpful in convincing Tamil Nadu to settle these commercial disputes. The United States continues to urge the GOI that in order to create an attractive and reliable investment climate, India and its political subdivisions need to provide a secure legal and regulatory framework for the private sector, as well as institutionalized dispute resolution mechanisms to expedite resolution of commercial issues.

ANTICOMPETITIVE PRACTICES

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

OTHER BARRIERS

India has an unwritten policy that favors counter trade (a form of trade in which imports and exports are linked in individual transactions). 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 also 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 medicines policy is of concern to U.S. pharmaceutical companies. While the scope of the rigid government-controlled pricing system has been reduced, final steps to eliminate it have stalled.

Some politicians and GOI officials continue to call for expanding price controls as the preferred means to confront inflationary trends. The GOI is currently reviewing proposed legislation that would significantly expand price controls over medicines. Indian states fail to apply consistently certain national laws and regulations. This creates uncertainty for U.S. companies exporting to, and investing in, India. U.S. companies affected by such inconsistency include: cable television content providers of programming subject to conditional access system rules and distilled spirits producers who face non-uniform state-level taxes despite the national government's directive to harmonize such taxes. In addition, less than universal adoption of a state-level value added tax by all Indian states and conflicting regulations continue to hamper the free flow of goods within India.

India has continued to apply aggressively its antidumping law. During the past year for which WTO statistics are available, India initiated 36 (highest among all WTO Members) antidumping cases and imposed 14 (fourth highest among all WTO Members) antidumping measures. India's new investigations focused largely on plastics and textiles, and only one of these initiations involved U.S. exports. India's implementation of its antidumping regime has raised concerns in key areas such as transparency, due process and notification.

The United States will continue to seek clarification and address concerns both bilaterally and multilaterally. In September 2004, the United States participated in a technical exchange with Indian antidumping administrators to obtain a better understanding of India's trade remedies laws and their compliance with India's WTO obligations. The United States and India have agreed within the context of the U.S.-India Commercial Dialogue to continue these discussions on trade remedy issues and are in the process of scheduling another technical exchange.