INDIA

TRADE SUMMARY

The U.S. goods trade deficit with India was $4.7 billion in 2009, down $3.3 billion from 2008. U.S. goods exports in 2009 were $16.5 billion, down 6.9 percent from the previous year. Corresponding U.S. imports from India were $21.2 billion, down 17.6 percent. India is currently the 17th largest export market for U.S. goods.

U.S. exports of private commercial services (*i.e.*, excluding military and government) to India were $10.5 billion in 2008 (latest data available), and U.S. imports were $12.1 billion. Sales of services in India by majority U.S.-owned affiliates were $7.6 billion in 2007 (latest data available), while sales of services in the United States by majority India-owned firms were $5.0 billion.

The stock of U.S. foreign direct investment (FDI) in India was $16.1 billion in 2008 (latest data available), up from $14.5 billion in 2007. U.S. FDI in India is led by the information, and manufacturing sectors.

IMPORT POLICIES

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

Tariffs and other Charges on Imports

India's tariff regime is characterized by pronounced disparities in bound rates, *i.e.*, the rates that under WTO rules generally cannot be exceeded, versus applied rates, the actual rates charged. According to the WTO, India's average bound tariff rate was 48.6 percent, while its applied tariff for FY2008 (latest data available) was 11.5 percent across all goods. India has bound all agricultural tariff lines in the WTO, while over 30 percent of India's non-agricultural tariffs remain unbound, *i.e.*, there is no WTO ceiling on the rate. India's bound industrial tariffs average approximately 35 percent, compared to an average applied rate of 10.1 percent on industrial goods in 2008 (latest data available).

India's average applied tariff on industrial goods remains high due high tariffs on automobiles, motorcycles, natural rubber, textiles and apparel, and fish. In November 2008, India increased tariffs on certain steel products from zero percent to 5 percent. Also, the U.S. textile industry continues to have concerns about the nontransparent application of tariffs and taxes. Over the past several years, however, the government has steadily reduced MFN tariffs applied to non-agricultural goods, including a reduction in the applied duty on most industrial products from 15 percent in FY2005-06, to 12.5 percent in FY2006-07, and to 10 percent in FY2007-08. The government of India's FY2008-09 and FY2009-10 budgets maintained the applied duty on these products at 10 percent. In order to boost the local manufacturing sector, India has taken steps to reduce and simplify the general rate of central excise duty for domestic products (CENVAT) and "additional duty" for imported goods (to be applied on top of import tariffs). In

December 2008, India reduced excise duties on most products from 14 percent to 10 percent. In February 2009, as part of an economic stimulus package, India again cut the excise duty on most products, this time to 8 percent. In July 2009, to further simplify the tariff structure, India implemented dual excise tax rates of 4 percent and 8 percent *ad valorem*. However, the rate of duty actually increased from 4 percent to 8 percent on several items (*e.g.*, manmade textiles, ceramic tiles, plywood, wood products, writing ink, zip fasteners, and MP3/MP4 players). Because India imposes a separate charge on imports equivalent to the excise tax, the total assessment for imported products changes as these excise taxes change.

Many of India's bound tariff rates on agricultural products are among the highest in the world, ranging between 100 percent and 300 percent, and averaging 114.2 percent. While many of India's applied tariffs are lower (averaging 32.2 percent on agricultural goods in 2008), they still represent a significant barrier to trade in agricultural goods. Tariffs on potatoes, apples, grapes, pistachios, and citrus, as well as processed foods (*e.g.*, chocolate and confectionery, frozen french fries and other prepared foods used in quick-service restaurants, cookies, savory snacks, canned soup, and mixed vegetable juice) remain high at 30 percent or more. Further, given the large disparities between bound and applied rates, U.S. exporters face greater uncertainty, because India has considerable flexibility to change tariff rates at any time. For example, in April 2008, India, in an effort to curb inflation, reduced applied duties on crude edible oils from 20 percent to zero percent, refined oils from 20 percent to 7.5 percent, and butter from 40 percent to 30 percent. However, in November 2008, India raised crude soy oil duties back to 20 percent; then, it reduced them again to zero percent in March 2009. Benefitting from the lower duty and other supply factors, U.S. soybean oil exports to India from October 2008-September 2009 totaled about $140 million, up from virtually zero since 2002.

With the exception of wine, spirits, and other alcoholic beverages, the government applies an "additional duty" (AD) at a rate equal to the CENVAT rate applicable to domestic products. The AD is calculated on top of the tariff. In July 2007, after the United States initiated WTO dispute settlement procedures to challenge the AD on alcoholic beverages, India issued a customs notification exempting alcoholic beverages from the rates of additional duty set forth in a prior customs notification. Under the prior customs notification, imports of alcoholic beverages were subject to rates of additional duty ranging from 20 percent to 150 percent *ad valorem* (and in some cases higher specific duties). On the same date it exempted alcoholic beverages from the rates of additional duty, the government raised the applied tariff on wine from 100 percent to India's WTO bound rate of 150 percent. The applied tariff on distilled spirits remained at 150 percent. When India exempted alcoholic beverages from the AD, it announced it was doing so *in lieu* of applying state-level excise duties on wine and spirits. The European Union has requested WTO dispute settlement consultations regarding several of these state-level taxes alleging that they result in imported wine and spirits being taxed at a higher rate than like domestic products. The United States is continuing to monitor the situation.

In October 2008, the WTO Appellate Body ruled in favor of the United States with respect to its challenge to the AD on alcoholic beverages and the "extra additional duty" (EAD) on a variety of imports. The Appellate Body agreed with the United States that any import charges aimed at offsetting internal taxes cannot result in a higher amount being charged to imports than to like domestic products and considered that to the extent either the AD or the EAD result in charges on imports in excess of charges on like domestic products it would be inconsistent with India's WTO tariff commitments.

Currently, imports also are subject to state-level value added taxes (with a few exceptions, such as entertainment and luxury taxes) and the Central Sales Tax, as well as various local taxes and charges. In March 2006, the government established a 4 percent *ad valorem* EAD. The EAD (also referred to as the "extra additional duty") applies to all imports, including alcoholic beverages, except those exempted from the duty pursuant to a customs notification. The EAD is calculated on top of the tariff and AD. In September 2007, the government issued a customs notification allowing importers to apply for a refund of the EAD paid on imports subsequently sold within India and for which the importer has paid state-level value added taxes. Importers report that the refund procedures are cumbersome and time consuming. India announced its intention to implement a national goods and services tax (GST) by April 2011 that would replace most indirect taxes and various charges on imports.

The government publishes applied tariff and rates of other duties and charges applicable to imports. To determine the applied tariff or rate of other duty or charge applicable to a particular product, importers must consult separate customs and excise tax schedules and cross reference these schedules with any applicable customs or excise notification that may subject the product to higher or lower rates than set forth in the schedules (assuming the importer is able to determine that any such notification exists). This system lacks transparency and imposes significant burdens on importers. India is currently developing an online database with searchable applied tariff and other duties and charges rates, but it is not yet available.

Import Licensing

India maintains a "negative list" of imported products subject to various forms of nontariff regulation. The "negative list" is currently divided into three categories: banned or prohibited items (*e.g.*, tallow, fat, and oils of animal origin); restricted items that require an import license (*e.g.*, livestock products, certain chemicals); and "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, however, often fails to observe customary transparency requirements, such as publication of information in the Official Gazette or notification to WTO Committees, which in practice, presents a barrier to trade.

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 at least 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. The government has required import licenses for all imports of remanufactured goods since 2006. India's Foreign Trade Policy provides no criteria for different levels of transformation that would distinguish remanufactured, refurbished, reconditioned, and second-hand goods. As with licensing requirements on other products, U.S. industry representatives report that the requirement is onerous as implemented: the license application requires excessive details; quantity limitations are set on specific part numbers; the delay between application and grant of the license is long and creates uncertainty; and in some cases industry representatives report that they have been unable to obtain a license. The U.S. Government has raised concerns about these issues in the TPF, including in October 2009, and at the WTO.

Since 2004, India has subjected imported boric acid to stringent regulatory requirements that should be applied only to imports used as insecticide. Traders (*i.e.*, wholesalers) of boric acid for non-insecticidal use remain unable to import boric acid for resale because they are not end users of the product and cannot obtain no-objection certificates (NOCs) from ministries. NOCs are required before applying for import permits from the Ministry of Agriculture's Central Insecticides Board & Registration Committee. Instead, traders fall under the stringent regulations applicable to insecticidal boric acid. Meanwhile, local refiners continue to be able to produce and sell non-insecticidal boric acid, with a requirement only to maintain records showing they are not selling to insecticidal end users. The United States continues to engage the government, requesting that India end its practice of treating all industrial boric acid imported by traders as an insecticide and to withdraw the import permit system for this product. This issue has been raised in the WTO Committee on Import Licensing Procedures as well as in the October 2009 TPF and in follow-up communication.

Customs Procedures

Issues have emerged regarding the application of customs valuation criteria to import transactions. Valuation procedures allow India's customs officials to reject the declared transaction value of an import when a sale is deemed to involve a lower price compared to the ordinary competitive price. U.S. exporters have reported that India's customs valuation methodologies do not reflect actual transaction values and effectively increase tariff rates. The United States is working through the WTO Committee on Customs Valuation and through other bilateral channels to address this issue.

U.S. industry has reported a number of difficulties with India's customs valuation methodologies and the lack of transparency provided by its customs valuation process. U.S. companies have complained that, since September 2007, India has inappropriately included certain royalties in the customs valuation of imported digital video disc (DVD) analog master tapes and digital linear tapes and has assessed customs duties, (going back as far as five years for some importers), using a revised valuation methodology. In addition, U.S. industry has noted that the customs valuation issues have resulted in the detention of these products at the border by India's customs officials. The United States is especially concerned about reports that customs valuation investigations by Indian Customs have, in some cases, led to excessive searches of property and severe harassment of U.S. company representatives. The United States has raised questions about India's valuation methodology and procedures in the WTO Committee on Customs Valuation, the TPF, and the U.S.-India Information and Communications Technology (ICT) Working Group, including during a November 2009 meeting in Washington.

India's customs officials generally require extensive documentation, which inhibits the free flow of trade and leads to frequent and lengthy processing delays. In large part this red tape is a consequence of India's complex tariff structure and multiple exemptions, which may vary according to product, user, or intended use. While difficulties persist, India has shown improvement in this area through automation of trade procedures and other initiatives. According to the World Bank, over the past four years, the number of days needed to complete an import transaction in India has been halved to 20 days (compared with 11 for the OECD average), and there have been some reductions in the number of required documents.

Motor vehicles may be imported through only three specific ports and only from the country of manufacture. Only right-hand drive vehicles may be imported.

GOVERNMENT PROCUREMENT

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

India does not have an authority responsible for regulating procurement policies and overseeing compliance with the procurement procedures. However, a central purchasing agency, the Directorate General of Supplies and Disposal, and state-level central purchasing organizations enter contracts with registered suppliers for goods and standard items in conformity with the GFR. Sector-specific procurement policies apply in certain areas, such as defense procurement. India's defense "offsets" program requires companies to invest 30 percent or more of the value of contracts above a certain value in Indian produced parts, equipment, or services. These offset requirements are often so onerous that they dissuade foreign companies from bidding.

India's government procurement practices and procedures are not 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.

India is not a signatory to the WTO Agreement on Government Procurement (GPA) but obtained "observer" status in the WTO Committee on Government Procurement in February 2010.

EXPORT SUBSIDIES

The tax exemption for profits from export earnings has been completely phased out, but tax holidays continue for export-oriented enterprises and exporters in Special Economic Zones. 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's textile industry enjoys subsidies through modernization schemes, such as the Technology Upgradation Fund Scheme and the Scheme for Integrated Textile Parks. India has not submitted a notification to the WTO Committee on Subsidies and Countervailing Measures since 2001.

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

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

India was listed on the Priority Watch List in the 2009 Special 301 report. India needs to improve its IPR regime by providing stronger protection for copyrights, trademarks and patents, as well as effective protection against unfair commercial use of undisclosed test and other data generated to obtain marketing approval for pharmaceutical and agrochemical products. In addition, India has not yet enacted legislation to implement the provisions of the WIPO Internet Treaties. Large-scale copyright piracy, especially in the software, optical media, and publishing industries, continues to be a major problem. While India continues to consider optical disc legislation to combat optical disc piracy, it has not taken steps to introduce such legislation. India's criminal IPR enforcement regime remains weak, especially at the federal level, but enforcement at the state level has improved through enhanced coordination with industry. More police action against those engaged in manufacturing, distributing, or selling pirated and counterfeit goods as well as expeditious judicial dispositions for criminal IPR infringement actions and imposition of deterrent-level sentences, is needed.

SERVICES BARRIERS

Indian government entities have a strong ownership presence in some major services industries such as banking and insurance, while 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, car rental, and a wide range of business consulting services. While India has submitted initial and revised offers for improved services commitments in the WTO Doha Round, these offers do not remove existing limitations or promise new liberalization in such key sectors as distribution, express delivery, telecommunications, financial services, and the professions.

Insurance

Foreign equity participation in the Indian insurance sector is limited to 26 percent of paid-up capital. India introduced legislation in late 2008 that would allow foreign equity participation to 49 percent and also allow for participation in the market by foreign re-insurers, but the legislation was not passed before Parliament adjourned prior to elections in the first half of 2009. After a new government was formed in May 2009, the Insurance Bill was referred to the Standing Committee on Finance for report preparation but is still awaiting re-introduction to Parliament.

Banking

Entry of foreign banks in the Indian market remains highly constrained. Under India's branch authorization policy, foreign banks are required to submit their internal branch expansion plans on an annual basis, but their ability to expand is severely limited by nontransparent quotas on branch office expansion.

Foreign banks may not own more than 5 percent of an Indian private bank without approval of the RBI. Total foreign ownership of a private Indian bank cannot exceed 74 percent. In 2005, RBI developed a roadmap that would allow foreign banks to enter into merger and acquisition transactions with any private sector bank in India starting in April 2009. However, the roadmap was not implemented due to coordination problems between the RBI and Ministry of Finance.

Audiovisual and Communications Services

Although India has removed most barriers to the import of motion pictures, U.S. companies have continued to experience difficulty in importing film/video publicity materials and are unable to license movie related merchandise due to royalty remittance restrictions. U.S. companies also continue to face difficulties with a "Downlink Policy" issued by India in 2005. The Downlink Policy applies to international content providers that downlink programming from a satellite into India and requires that they establish a registered office in India or designate a local agent. The government reportedly implemented this rule to ensure greater oversight over programming content. However, U.S. companies note that most other countries (including the United States) do not require a license for the downlinking of programming and that India can control content through its licensed entities (such as cable companies or "Direct-to-Home" (DTH) satellite providers). Companies claim that this policy is overly burdensome, results in a taxable presence in India and should be amended to avoid the taxable presence. The United States continues to raise this issue with India's Ministry of Information and Broadcasting, including most recently at the United States-India ICT Working Group meeting in Washington in November 2009.

All pay television content providers are required to make their content available to all cable and satellite television system operators. The Telecom Regulatory Authority of India (TRAI) continues to impose price controls on cable television until it determines that other television platforms (*e.g.,* satellite, Internet) are widely adopted. While TRAI has recently opened a public consultation on the pricing of channels carried by DTH platforms, it is not clear if it will also conduct a similar consultation for cable television.

Accounting

Foreign accounting firms can practice in India if their home country provides reciprocity to Indian firms. Only firms established as a partnership may provide financial auditing services, and foreign licensed accountants may not be equity partners in an Indian accounting firm. India also maintains burdensome restrictions on the use of foreign firm names, the number of firm partners, and the number of trainees per partner. Additional restrictions include limits on the number of the banking and insurance sector clients an auditing firm may serve simultaneously as well as the requirement for firms to "rotate off" clients every few years. Finally, there is a lack of independent oversight in the accounting industry. A quality review board established in 2006 is funded with industry money but has yet to carry out any investigations. India's Limited Liability Partnership (LLP) Act, 2008, took effect in March 2009. The law aims to give professionals such as chartered accountants, lawyers, and venture capitalists more flexibility in setting up LLP firms.

Legal Services

Foreign law firms are not authorized to open offices in India. Foreign legal service 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 liberalizing foreign access to the legal services sector at the WTO. The United States-India Legal Services Working Group, an initiative created at the TPF meeting in December 2006, has faced difficulty in starting a substantive dialogue due to opposition within certain quarters of the Indian legal profession. With U.S. Government assistance, U.S. and Indian panel members met informally during a legal conference in India in early 2009. However, in June 2009, the Bar Council of India (BCI), the legal governing body in India (membership in BCI is mandatory to practice law in India), passed a resolution (No. 66/2009) confining all discussions regarding legal services to representatives of the American Bar Association (ABA) and members of BCI – and that the ABA should constitute a committee for the purpose of these discussions. This resolution appeared to be a withdrawal of Indian participation from the Working Group on Legal Services established by the two governments. During the October 2009 TPF Services Focus Group discussion, Ministry of Commerce and Industry officials reported no progress on legal services in part due to opposition from BCI.

In December 2009, the Bombay High Court ruled that under existing law – principally, the 1961 Advocates Act and the 1973 Foreign Exchange Regulation Act – foreign law firms may not establish offices in India and that foreign lawyers may not engage in legal practice in India, including corporate advisory and other "non-litigious" activities. The court directed the Indian central government to clarify the scope of work foreign law firms could undertake.

Telecommunications

Despite India's 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. In addition, many pro-competition recommendations of the TRAI have been delayed or rejected by India's Department of Telecommunications (DOT) without adequate explanation.

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

India maintains limits on foreign direct and foreign indirect investment in several areas: cable networks (49 percent); satellite uplinking (49 percent); DTH broadcasting (49 percent with FDI limited to 20 percent); and the uplinking of news and current affairs television channels (26 percent). TRAI, in August 2008 recommendations to the DOT, suggested that foreign direct investment for cable networks, DTH and satellite uplinking should be increased to 74 percent. The current limits negatively impact the ability of U.S. companies to invest in this sector.

India has been working for over a year to formalize its policies for the allocation of wireless spectrum to serve India's rapidly expanding and lucrative wireless telecommunications industry. The auction of spectrum for providing third generation (3G) services has been postponed several times, with the latest announcements indicating that India hopes to conclude the auction on April 9, 2010, though this deadline appears to be difficult for the government to meet. This auction will be open to existing operators, license holders, and foreign companies. However, even if spectrum is won at auction, any new companies would need to first obtain a Unified Access Service (UAS) license, which carries a burdensome licensing fee of approximately $360 million. This puts U.S. companies interested in entering into partnerships to obtain spectrum at a competitive disadvantage *vis-à-vis* companies that are already in the market and were not required to pay the high UAS fee. A pre-bid conference for the auction of 3G Spectrum was held in New Delhi on November 16, 2009, but DOT has yet to respond to bidders nor clarified the process' next steps.

DOT's recently released 3G spectrum auction "Information Memorandum" permits foreign companies to participate in the auction without first obtaining a telecommunications license or securing a joint venture partner. Only those operators that are successful in the upcoming auctions will have to obtain a license and find an Indian partner with which to establish a joint venture (existing regulations restrict foreign holdings to 74 percent and mandate that an Indian entity hold the remaining 26 percent). However, under India's current mergers and acquisition (M&A) policy, a three-year waiting period is required before a license holder can merge with another operator. This disadvantages foreign entities seeking to enter the market and bid in the upcoming auction, because after winning 3G spectrum they would have to choose from a more limited pool of potential joint venture candidates, since some license holders would be restricted from merging with foreign entities under the current M&A policy. The Information Memorandum does not address many important issues that could impact the participation of foreign companies in the upcoming auction, such as: the method of future spectrum allocation and assignment (2G or 3G); spectrum sharing and trading rules; and spectrum and licensing fees.

The Indian government continues to hold equity in three telecommunications firms: a 26 percent interest in the international carrier, VSNL; a 56 percent stake in MTNL, which primarily serves Delhi and Mumbai; and the 100 percent ownership of BSNL, which provides domestic services throughout the rest of India. These ownership stakes have caused private competitive carriers to express concern about the fairness of India's general telecommunications policies. By way of example, valuable wireless spectrum has been allocated and will be set aside for MTNL and BSNL and not subject to competitive bidding, potentially giving these companies an advantage.

India does not allow a company to provide Internet telephony over networks connected to the public switched telecommunications network, unless it obtains a telecommunications license. U.S. industry views India's requirement as overly burdensome for companies interested only in providing Internet telephony. Following a public consultation process initiated in May 2008, TRAI forwarded recommendations to the DOT in August 2008, suggesting that the barriers to the provision of Internet telephony be eliminated entirely. Although the DOT has told the United States that it is reviewing the recommendations on a priority basis, to date, the DOT has not ruled on them.

U.S. satellite operators have long complained about the closed and protected satellite services market in India. In practice, even though current Indian regulations do not preclude the use of foreign satellites, foreign satellite capacity must be provided through the Indian Space Research Organization (ISRO). That is, the foreign operator must sell its capacity to ISRO, a direct competitor, who then resells it to the customer. This middleman scenario raises a number of concerns: first, it creates additional costs for the consumer (a markup added by ISRO); second, it allows ISRO to negotiate contract terms with the goal (explicitly stated at times) of moving the service to one of ISRO's satellites once capacity is available; and third, the market grows at a rate determined by ISRO. The United States began a bilateral discussion with India on satellite services in October 2009 to discuss the concerns raised by its industry with respect to the provision of satellite capacity to Indian entities.

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

Distribution Services

The retail sector in India is largely closed to foreign investment. In January 2006, the government began allowing FDI in single brand retail stores, subject to a foreign equity cap of 51 percent and government approval and FDI of 100 percent in cash and carry (wholesale) outlets. Multi-brand retail, however, is completely closed to foreign direct investment, even as Indian multi-brand retail outlets are expanding dramatically. Direct selling companies face uncertainty due to periodic government efforts to incorrectly interpret their activities as a violation of the Prize Chits and Money Circulation Schemes (Banning) Act of 1978. Industry groups would like to see the Department of Industrial Policy and Promotion issue a press note that would establish the definition of direct selling and clarify any ambiguity. Allegedly arbitrary legal actions (including raids and seizures of property) were taken in 2006 against a U.S. direct selling company operating in India with Foreign Investment Promotion Board approval. The case remains with the courts and could go to trial at any time.

Postal and Express Delivery

India's Department of Post supports amending the 1898 Post Office Act. An amendment introduced in 2006 included several provisions with potentially negative effects for private express delivery companies, such as: a provision requiring private delivery companies to contribute to financing the postal operator's universal service obligation; expansion of the postal monopoly to cover all "letters" up to 300 grams; and new limitations on foreign investment in private delivery services, which might force foreign owned express delivery companies to divest from their current levels of investment in India. The proposed legislation was officially withdrawn in January 2009 due to opposition from many stakeholders, including courier services companies. In mid-2009, the Indian Department of Post requested that the Administrative Staff College of India (ASCI) prepare another comprehensive postal bill to replace the India Postal Act of 1898. The United States continues to urge India to adopt postal reforms that draw on global best practices, including the promotion of free competition and a level playing field for foreign express delivery and other courier services suppliers, and to pursue reforms in an open and transparent manner.

Education

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

INVESTMENT BARRIERS

India and the United States announced the launch of Bilateral Investment Treaty negotiations in September 2008 and both sides have committed to taking further initiatives to create a more conducive environment for bilateral investment flows. In November 2009, the U.S. Department of Commerce International Trade Administration's "Invest in America" program and "Invest India," a Joint Venture of the Ministry of Commerce and Industry's Department of Industrial Policy and Promotion (DIPP), signed a Memorandum of Intent to facilitate exchange of information on FDI in their respective countries for investors of the other country.

Equity Restrictions

Most sectors of the Indian economy are now at least partially open to foreign investment, although with certain important exceptions. As noted above, the government continues to prohibit or severely restrict FDI in certain politically sensitive sectors, such as agriculture, multi-brand retailing, railways, and real estate. At the same time, the government has liberalized other aspects of foreign investment and eliminated various government approval requirements. In February 2009, the DIPP issued guidelines ("Press Notes"), which asserted that a company majority-owned or controlled by resident Indians, but with some foreign investment, could conduct "downstream" investments within existing sectoral caps. However, the new guidelines created much confusion, which an additional Press Note has done nothing to dispel. The extent to which downstream investments by foreign-invested joint ventures is permitted is therefore not yet clear. After the formation of its new coalition government in June 2009, India clarified that its existing FDI norms would remain in effect. DIPP has requested public comment on a Press Note it intends to publish on April 1, 2010, and then every six months thereafter, consolidating all of the rules governing FDI. In early 2008, India's National Security Council suggested umbrella legislation, called the National Security Exception Act that would authorize the government to suspend or prohibit any foreign acquisition of, merger with, an Indian company that could be considered damaging to national interest. However, legislation has not yet been introduced to Parliament.

India's regulations and procedures governing local shareholding are often stringent and nontransparent, inhibiting inbound investment and increasing risk for new market entrants. Attempts by non-Indians to acquire 100 percent ownership of a locally traded company, permissible in principle, face regulatory hurdles that render full ownership unobtainable under current practice. Price control regulations undermine incentives for foreign investors to increase their equity holdings in certain sectors. In the power sector, some companies have reported forced renegotiation of contracts as a result of changes of government at the state and central levels.

Investment Disputes

India has had a poor track record in honoring and enforcing agreements with U.S. investors in the energy sector, but there has been some progress in recent years. In November 2008, India finally issued a settlement payment to a U.S. company for work performed for an Indian parastatal in the 1980s, following a 2006 Supreme Court of India decision in favor of the U.S. firm. The settlement payment was significantly less than the amount awarded under the Court's order.

India has also recently been helpful in convincing its state governments to settle commercial disputes involving matters under the primary jurisdiction of its states. The United States continues to urge India to create a more reliable investment climate by providing a secure legal and regulatory framework at all levels of government, as well as institutionalized dispute resolution mechanisms to expedite resolution of commercial disputes. The Government Law Ministry signed an agreement in 2007 with The Permanent Court of Arbitration, The Hague, to open a regional center in India, however, no further progress has been observed in this regard.

ANTICOMPETITIVE PRACTICES

In 2009, India took several positive steps toward implementing the Competition Act and making the Competition Commission of India (CCI) operational as an effective deterrent to anticompetitive practices. The government of India appointed a new chairperson and four new members to the CCI, established the Competition Appellate Tribunal, and notified in the Official Gazette the Act's provisions relating to anticompetitive agreements and abuse of dominant position, which are now in effect. The Act's merger provisions have not been notified in the Official Gazette pending CCI efforts to issue revised draft combination regulations. Additionally, the CCI issued other regulations, began to hire staff, and initiated some initial inquiries into alleged anticompetitive acts. The United States continues to work with India to assist the CCI in its efforts to implement the Act, including its merger control provisions, in a manner consistent with international recommended practices.

OTHER BARRIERS

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

In June 2008, India enacted export tariffs of 15 percent on all grades of iron ore, pig iron, and ferrous scrap. India revised its exports tariffs again in October and November 2008: the export tariff on pig iron has been revoked, but tariffs on iron ore and ferrous scrap remain in place. In addition, India maintains restrictions on the export of certain high-grade iron ore. These restrictions reduce Indian exports of these inputs, and may reduce supplies on international markets for raw materials used in steel production. The Indian government appears to be using these measures to improve the availability and lower prices of inputs used by India's rapidly growing steel industry. Meanwhile, India announced increased duties on imports of certain steel products in late 2008, and added certain steel items to the list of products requiring mandatory certification. The implementation date for certification of the additional products, which include some important U.S. exports, was delayed until February 2010 due to concern from India's trading partners. On December 24, 2009, India raised the export duty on two categories of iron ore. Effective immediately, the government has raised export duties on iron ore lumps to 10 percent from five percent and on iron ore fines to five percent from zero.