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TRADE POLICY REVIEW

Report by the Secretariat

INDIA

This report, prepared for the fifth Trade Policy Review of India, has been drawn up by the WTO Secretariat on its own responsibility. The Secretariat has, as required by the Agreement establishing the Trade Policy Review Mechanism (Annex 3 of the Marrakesh Agreement Establishing the World Trade Organization), sought clarification from India on its trade policies and practices.

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CONTENTS

Page

SUMMARY ix
(1) ECONOMIC ENVIRONMENT ix
(2) TRADE AND INVESTMENT POLICY FRAMEWORK x
(3) TRADE POLICY BY MEASURE xi
(4) TRADE POLICIES BY SECTOR xiii

I. ECONOMIC ENVIRONMENT 1
(1) OVERVIEW 1
(2) RECENT ECONOMIC DEVELOPMENTS 1
(3) FISCAL POLICY 6
(4) MONETARY AND EXCHANGE RATE POLICY 10
(5) BALANCE OF PAYMENTS 12
(6) DEVELOPMENTS IN TRADE 14
(i) Composition of trade in goods 14
(ii) Direction of trade in goods 16
(iii) Trade in services 16
(7) DEVELOPMENTS IN FOREIGN DIRECT INVESTMENT 18

II. TRADE POLICY REGIME: FRAMEWORK AND OBJECTIVES 20
(1) OVERVIEW 20
(2) TRADE POLICY FORMULATION AND IMPLEMENTATION 20
(i) Institutional and legal framework 20
(ii) Trade policy formulation, implementation, and objectives 23
(3) TRADE AGREEMENTS AND ARRANGEMENTS 26
(i) World Trade Organization 26
(ii) Regional trade agreements 27
(4) INVESTMENT REGIME 28
(i) Business environment 28
(ii) Foreign investment regime 31

III. TRADE POLICIES AND PRACTICES BY MEASURE 35
(1) INTRODUCTION 35
(2) MEASURES DIRECTLY AFFECTING IMPORTS 36
(i) Customs procedures 36
(ii) Customs valuation and clearance 39
(iii) Rules of origin 42
(iv) Tariffs 43
(v) Other charges affecting imports 50
(vi) Import prohibitions, restrictions, and licensing 53
(vii) State trading 58
(viii) Contingency measures 60

Page

(ix) Technical regulations and standards 67
(x) Sanitary and phytosanitary measures (SPS) 71

(3) MEASURES DIRECTLY AFFECTING EXPORTS 74
(i) Procedures 74
(ii) Quality control and preshipment inspection 75
(iii) Export taxes, charges, and levies 76
(iv) Minimum export prices 77
(v) Export prohibitions, restrictions, and licensing 78
(vi) State trading 79
(vii) Export support 81
(viii) Export promotion and marketing assistance 88
(ix) Export finance and insurance 89

(4) MEASURES AFFECTING PRODUCTION AND TRADE 91
(i) Incentives 91
(ii) Role of state-owned enterprises (other than state-trading companies), and disinvestment 96
(iii) Competition policy 98
(iv) Price controls 102
(v) Government procurement 106
(vi) Intellectual property rights 112

IV. TRADE POLICIES BY SELECTED SECTOR 125

(1) OVERVIEW 125

(2) AGRICULTURE 126
(i) General overview 126
(ii) Agricultural policy objectives 128

(3) SERVICES 138
(i) Overview 138
(ii) Financial services 140
(iii) Telecommunications 157
(iv) Transport 162
(v) Tourism 174

REFERENCES 179

APPENDIX TABLES 187

CHARTS

Page

I. ECONOMIC ENVIRONMENT

I.1 Product composition of merchandise trade, 2006/07 and 2009/10 15
I.2 Direction of merchandise trade, 2006/07 and 2009/10 17

III. TRADE POLICIES AND PRACTICES BY MEASURE

III.1 Distribution of MFN applied tariff rates, 2010/11 45
III.2 Average applied MFN and bound tariff rates, by HS section, 2010/11 47
III.3 Import licensing, by HS section, 2010/11 55
III.4 Anti-dumping measures, January 2006-December 2010 64
III.5 Loans by the Export-Import Bank of India, by sector, 2006/07 and 2009/10 90
III.6 Explicit subsidies, 2006/07 and 2010/11 92

IV. TRADE POLICIES BY SELECTED SECTOR

IV.1 Trade in services, 2006/07 and 2009/10 139

TABLES

I. ECONOMIC ENVIRONMENT

I.1 Selected macroeconomic indicators, 2006-11 2
I.2 Basic economic and social indicators, 2006-11 4
I.3 Central Government's tax revenue, 2006-11 7
I.4 Balance of payments, 2006-11 12
I.5 Foreign direct investment inflows/outflows, by economic activity, 2006-11 18
I.6 Foreign direct investment inflows/outflows, by origin, 2006-11 18

II. TRADE AND INVESTMENT REGIMES

II.1 Enforcement of legislation: the case of the Competition Act 2002 22
II.2 Hierarchy of legal and regulatory instruments, 2011 22
II.3 Main institutions involved in trade policy formulation and implementation, 2011 23
II.4 Changes in export policy: the case of cotton and onions, August 2009-March 2011 25
II.5 WTO dispute settlement cases involving India, 2007-11 26
II.6 Setting up a business, 2011 29
II.7 Industries for which industrial licensing is compulsory, 2011 30
II.8 Sectors where FDI is prohibited, 2011 33

III. TRADE POLICIES AND PRACTICES BY MEASURE

III.1 Metallic waste and scrap subject to preshipment inspection, 2011 39
III.2 Tariff values (reference prices), 2006-11 41
III.3 Rules of origin under preferential trade agreements, 2011 42
III.4 Tariff structure, 2006/07 and 2010/11 44
III.5 Summary analysis of the tariff, 2006/07 and 2010/11 46
III.6 Products subject to tariff-rate quotas, 2006-11 48
III.7 Summary analysis of the preferential tariff, 2010/11 49
III.8 Summary analysis of India's imports charges, 2010/11 51

Page

III.9 Import prohibitions, 2011 53
III.10 Items whose import is free, subject to minimum import price, 2010/11 57
III.11 Value of imports subject to state trading, 2007-11 59
III.12 Standards, 2007-10 68
III.13 Sanitary and phytosanitary legislation, 2011 72
III.14 Plant quarantine, 2011 74
III.15 Export taxes, 2011 77
III.16 Export cess, 2011 77
III.17 Exports subject to state trading, 2007-11 80
III.18 Incentives granted to SEZ units, 2011 83
III.19 Exports from SEZs, 2007-10 83
III.20 Incentives granted to EOUs, 2011 85
III.21 Exports from EOUs, 2007-10 85
III.22 Tax incentives phased out, 2006-10 91
III.23 Preferential interest rates to exporters, 2007-11 93
III.24 Targets for lending to priority sectors, 2011 94
III.25 Products reserved for MSEs, 2011 95
III.26 Overview of disinvestment, 2007-11 97
III.27 Government procurement methods, 2011 108
III.28 Capital defence procurement, 2011 112
III.29 Intellectual property legislation, 2011 113

IV. TRADE POLICIES BY SELECTED SECTOR

IV.1 Selected indicators for agriculture, 2006-10 126
IV.2 Institutions involved in formulating and implementing agricultural policy, 2010 128
IV.3 Agriculture sector schemes/programmes, 2011 133
IV.4 Subsidies in agriculture inputs, 2006-10 136
IV.5 Trends in the banking sector's gross loans and deposits and prudential indicators, 2006-10 142
IV.6 Insurance and reinsurance market, end-December 2010 150
IV.7 Insurance set asides for social and rural sectors, 2011 152
IV.8 Securities market, 2008-11 154
IV.9 Market-access and national-treatment conditions for foreign investment in the securities market, 2011 156
IV.10 Selected telecom indicators, 2007-10 158
IV.11 Road concession contracts, 2011 170
IV.12 Selected incentives to road concessionaires, 2011 171
IV.13 Selected support schemes for tourism, 2011 175

APPENDIX TABLES

I. ECONOMIC ENVIRONMENT

AI.1 Merchandise exports, by group of products, 2006-10 189
AI.2 Merchandise imports, by group of products, 2006-10 190
AI.3 Merchandise exports, by destination, 2006-10 191
AI.4 Merchandise imports, by origin, 2006-10 192

II. TRADE AND INVESTMENT REGIMES

AII.1 Jurisdiction between central and state legislatures, 2011 193
AII.2 Notifications to the WTO, 1 January 2007-30 June 2011 195

Page

AII.3 Overview of India's preferential trade agreements, 2011 197
AII.4 Policy on foreign direct investment, 2011 203

III. TRADE POLICIES AND PRACTICES BY MEASURE

AIII.1 IEC exemptions for imports and exports, 2011 207
AIII.2 Cesses and surcharges levied by the Central Government, 2011 208
AIII.3 Safeguard investigations, 2008-11 210
AIII.4 Other institutions responsible for standards formulation and enforcement, 2011 212
AIII.5 Export prohibitions, 2011 214
AIII.6 Export incentives schemes, 2007-11 216
AIII.7 Amount forgone/disbursed on imports under export promotion schemes, 2007-10 219
AIII.8 Revenue forgone under the Income Tax Act 1961, 2006-10 220
AIII.9 Selected incentive schemes/programmes for MSMEs, 2011 222
AIII.10 Central public sector enterprises, 2011 225

IV. TRADE POLICIES BY SELECTED SECTOR

AIV.1 India's banking system, 2007 and 2010 231
AIV.2 Telecom licensing regimes, 2011 234
AIV.3 Auctioning of 3G and BWA spectrums, 2010 235

SUMMARY

1. During the period under review, India has continued to reap benefits from the process of trade liberalization and structural reform initiated in the early 1990s. This contributed to the high GDP growth rates achieved, the resilience of the Indian economy to the global financial crisis, and the expansion of both exports and imports. India responded to the global crisis by implementing an important stimulus package consisting of increased spending, lower excise and customs duties, and support measures. Reflecting India's shift towards lower tariffs, the simple average MFN tariff rate declined to 12% in 2010/11, from 15.1% in 2006/07.

2. India uses trade policy actively, sometimes as an instrument to attain its long-term goals, such as promoting overall economic growth, or fostering industrialization, development, or self-sufficiency. India aims at providing a stable trade policy environment to attain these goals. In certain circumstances, however, India also makes use of trade policy instruments to attain short-term objectives, such as containing inflation, which may detract somewhat from the stability sought, as this requires constant fine tuning of policies, rendering the trade regime more complex and creating additional costs.

(1) ECONOMIC ENVIRONMENT

3. The Indian economy continued to expand at a fast pace during the review period, despite the mild slowdown caused by the global financial crisis in 2008/09. Annual real GDP growth averaged over 8.4% between 2006/07 and 2010/11, supported primarily by strong domestic demand. Growth was particularly strong in 2006/07 and 2007/08, exceeding 9%, driven mainly by private investment and consumption. In the wake of the global financial crisis, growth was driven by government spending. In this respect, to face the financial crisis, the Government conducted a very proactive policy, introducing a large stimulus package consisting of increased spending, lower excise and customs duties, and subsidies. However, as inflation started to accelerate and growth strengthened, the Government reversed some of these stimulus measures. GDP growth at 2004/05 market prices reached 10.1% at an annual rate in April-December 2010. Growth has been led by services and manufacturing, with agriculture growing much more slowly. India's growth prospects remain strong, as potential GDP growth has been estimated at between 8% and 8.5%. However, sustained non-inflationary growth will require addressing bottlenecks and investing in infrastructure and education. It will also need the simplification of the business environment by eliminating overregulation, and defining more transparent trade and investment regimes.

4. India's process of fiscal consolidation, which began in 2004, has not resulted yet in the intended decrease in the fiscal deficit. Throughout the review period, India continued to post sizeable public sector deficits. Its public finances deteriorated partly as a result of lower revenue and the impact on spending of the stimulus package in the wake of the global financial crisis. Hence the consolidated fiscal deficit reached 9.5% of GDP in 2009/10. More recently, the focus of fiscal policy has been shifted back to achieving fiscal consolidation and tax rationalization. As a result, a gradual reform of the tax structure was implemented, to reduce customs and excise duties and rely more on direct taxes, particularly corporate income tax and on service tax revenues. However, indirect taxes, including taxes that fall solely or mainly on imports, continue to be an important source of revenue, and changes in their levels are a much used policy tool. For some time, India has intended to introduce a goods and services tax (GST) and consolidate several pieces of legislation regarding taxation. A new tax Code has been drafted to simplify the tax regime and increase reliance on direct rather than indirect taxes.

5. Merchandise trade as a percentage of GDP continues to increase despite the adverse

effects of the global financial crisis, illustrating India's increasing participation in the global economy. Imports continued to grow faster than exports, leading to a widening of the trade deficit. India posts a structural trade deficit, partly explained by its large population and development needs. Strong domestic demand and rising oil prices have contributed to the widening of the trade deficit, leading to a current account deficit throughout the review period. The deficit has been financed through large capital inflows, both foreign direct and portfolio investment, attracted by expanding domestic demand and the good prospects of the economy. Capital inflows have been somewhat volatile; this volatility has been largely accommodated by letting the exchange rate adjust. Although the floating exchange rate regime has served India well in accommodating short-term capital inflows, policies need to be designed to attract more medium- and long-term capital, particularly given India's infrastructure and general investment needs. The Government's recent decision to increase investor limits in the corporate and government bond markets is a step in this direction.

(2) TRADE AND INVESTMENT POLICY FRAMEWORK

6. India is an original Member of the WTO and provides at least MFN treatment to all Members and other trading partners. India accepted the Fourth and Fifth Protocols and is a Member of the Information Technology Agreement. India is a strong advocate of the multilateral trading system and has historically been party to few regional agreements. However, despite India's reservations, regionalism has increasingly become an element of its overall trade policy objective of enhanced market access for exports. This is evidenced by the seven preferential agreements it signed during the period under review and the negotiation of other agreements.

7. India's trade policy objectives are stipulated in its Foreign Trade Policy (FTP), which is issued every five years, but revised periodically, through the issuance of notifications, to take into account internal and external factors. In its 2004-09 FTP, India highlighted the need to expand trade, setting two objectives: to double India's share of global merchandise trade within five years; and to use trade expansion as a policy to promote economic growth and employment generation. In the context of the global crisis, India has sought to arrest and reverse the declining trend of exports and to provide additional support especially to the sectors hit badly by the global recession, as asserted in the 2009-14 FTP. India's short-term objective, in accordance with the latest FTP, is to achieve annual export growth of 15%; the long-term objective is to accelerate export growth to 25% per annum and double India's share in global trade by 2020. In order to meet these objectives, India implements a mix of policies including tax incentives, export promotion, and credit facilitation schemes, to "neutralize" the cost of imported inputs used in exports; however, such schemes may contribute to the complexity of India's trade regime. In its attempt to increase exports, the Government is also aiming to improve infrastructure. In the latest Budget, the authorities have further expressed the need to promote market and product diversification.

8. Measures to attract foreign direct investment (FDI) have included gradually increasing the number of sectors in which FDI is permitted and reducing sectoral restrictions. Therefore, most sectors are currently at least partially open to FDI, subject to a cap and specific conditions. However, FDI is prohibited in a number of sectors/activities, such as retail trading, some real estate activities, manufacture of tobacco and tobacco substitute, and some agriculture activities. A recent consolidation of all prior regulations on FDI is aimed at clarifying India's FDI policy and provides for better understanding and predictability of the foreign investment rules among foreign investors and sectoral regulators.

(3) TRADE POLICY BY MEASURE

9. India has continued to streamline customs procedures and implement trade facilitation measures. An electronic system for customs clearance has been introduced and a risk management system is in place to selectively screen high- and medium-risk cargo for customs examination. Despite the implementation of these measures, India's import regime remains complex, especially its licensing and permit system, and its tariff structure, which has multiple exemptions, with rates varying according to product, user or specific export promotion programme.

10. India's tariff is announced in the annual Budget; however, individual tariff rates may be changed during the year. In addition to the standard tariff rate, importers are required to pay an additional duty ("countervailing duty") and a special additional duty instead of local taxes. To determine the "effective" applied tariff rate (i.e. basic duties and other customs duty) on a particular product, separate customs and excise tax schedules must be consulted, which adds to the complexity of the tariff. India's tariff comprises mainly *ad valorem* rates (some 94% of tariff lines), levied on the c.i.f. value of imports, and some alternate or specific duties (6.1% of all tariff lines).

11. In general, the value of imports is based on the transaction value. A landing charge (for loading, unloading, and handling) of 1% is added to the c.i.f. value, to calculate the transaction value (earlier known as "assessable value"). India uses "tariff values"(reference prices), to calculate customs duty levied on imports of, *inter alia*, certain palm oils, as well as crude soybean oil, poppy seeds, and brass scrap. These "tariff values" must in principle be revised every two weeks and adjusted to align them with international market prices. In practice, however, some of the "tariff values" applied by India have remained unchanged since 2006.

12. The simple average MFN tariff rate declined to 12% in 2010/11, from 15.1% in 2006/07. This is reflected in a decrease in both agricultural and industrial average tariffs, due to India's shift towards lower tariffs. The average for WTO non-agricultural products (8.9%) is considerably lower than the average for WTO agricultural products, which is 33.3%. In 2010/11, tariffs ranged from zero to 150%. The largest proportion of lines (71% or 8,042) was subject to a tariff rate of between 5% and 10%, while 12.8% of total lines were subject to a tariff rate greater than zero but lower than 5%. This is a major change from 2006/07, when 65% of all tariff lines were within the 10-15% range, followed by 10.4% of lines at 25-30%. The percentage of duty-free lines has increased slightly, from 2.7% to 3.2% of the total.

13. Non-*ad valorem* rates apply to 690 tariff lines of which 5 are specific rates, while 685 are alternate rates affecting textiles and clothing. The simple average applied MFN tariff including AVEs was 13.4% (12% without AVEs) in 2010/11. The inclusion of AVEs in the tariff analysis affects only industrial average tariffs, which, when including AVEs, increase from 8.6% to 10.3% (or 10.6% for WTO non-agriculture). In particular, the estimation of AVEs raises average tariff rates applied on textiles and clothing, which increase to 16.2% and 25.7%, respectively, from of 9.6% and 10% if AVEs are not included. The use of specific rates considerably increases protection for certain products, in some cases to around and above 600%.

14. India's WTO bound tariff levels are much higher than the applied rates, especially for many agricultural products. These gaps allow the Indian Government to modify tariff rates in response to domestic and international market conditions.

15. Imports may also be subject to non-tariff barriers including prohibitions, licences, and restrictions, as well as packaging, quality, and sanitary requirements. Import restrictions may be imposed on grounds of, *inter alia*, health, safety, moral and security reasons, and for self-sufficiency and

balance-of-payments reasons. On occasion, India links the use of trade policy instruments to domestic policy considerations. For instance, import restrictions and licensing requirements are relaxed when imports are necessary to alleviate inflation or supply shortages. State trading is also used as a policy tool to ensure, *inter alia*, a "fair" return to farmers, food security, the supply of fertilizer to farmers, and the functioning of the domestic price support system.

16. India is one of the most active users of anti-dumping measures among WTO Members. It initiated 209 anti-dumping investigations against 34 trading partners during the review period, compared with 176 in the period covered in its last Review, and it imposed 207 anti-dumping measures, compared with 177. The products involved included chemicals and products thereof, plastics and rubber and products thereof, base metals, and textiles and clothing. India did not take any countervailing actions during this period. Since its last Review in 2007, India has also imposed several safeguard measures. As a result of an amendment of the legislation, since 2010 safeguard measures may also take the form of quantitative restrictions.

17. SPS matters continue to be governed and enforced through a number of laws and agencies. In 2006, India passed the Food Safety and Standards Act to consolidate separate laws, and to establish an institution to deal with SPS issues. However, the rules and regulations to operationalize this Act have not been notified yet and the Act is therefore not in force.

18. As in the case of imports, export prohibitions and restrictions are mainly in place to ensure domestic supply of specific goods and thus may be removed and applied as the circumstances require. In order to reduce the anti-export bias inherent in India's import and indirect tax regimes, a number of duty remission and exemption schemes are in place to facilitate exports. Tax holidays are also available to investors through export processing zones and export-oriented units.

19. India grants direct and indirect assistance to various sectors. Most central government subsidies are destined for agriculture. Other key subsidies include those for diesel and fertilizers. The states also provide additional subsidies, especially for basic services such as education and health, electricity, and water. Price controls, which apply to some commodities, are aimed at providing subsidies to farmers and a population under the poverty line, and to ensure "reasonable price" of quality drugs.

20. Since its last Review in 2007, India has made several amendments to its competition policy legislation, and the Competition Commission of India, created under the Competition Act 2002, started operations in 2009. In addition, some aspects of the law affecting mergers and acquisitions recently entered into force. India became an observer to the WTO Agreement on Government Procurement in February 2010. Its procurement system continues to be decentralized, comprising a multiplicity of entities at different levels of Government (including numerous central public-sector enterprises), and no common legislation governing procurement. Public procurement is considered an important government policy instrument and is used to obtain certain socio-economic objectives. As a result, the Central Government maintains reservations and price preferences as part of the procurement system. However, competition from foreign suppliers is ordinarily allowed.

21. Given the importance that an effective intellectual property system has on economic and social development, and the impact that intellectual property has on public policy issues (e.g. public health, the environment and food security), India, since its last review, has taken several initiatives to modernize its IPR administration and continue its efforts to enforce IPRs. However, enforcement, except at the international borders, remains under the

purview of the state governments rendering it difficult to collect data on the application of IPRs.

(4) TRADE POLICIES BY SECTOR

22. The structure of India's economy has not changed significantly since 2007. The services sector, which was the most dynamic sector during the review period, continues to be the largest contributor to GDP and has exhibited resilience to the negative effects of the global crisis. The share of the manufacturing sector in GDP has declined slightly, and so has agriculture.

23. Agriculture has been characterized by low productivity and modest growth rates. Its contribution to GDP declined from 18.1% to 16.6% in 2006/07-2009/10. However, despite this decline in its relative share, agriculture continues to be the mainstay of the majority of the population, occupying some 52% of the total workforce (including non-organized labour); the sector is also critical for achieving the Government's objectives of food security and price stability. Due to its strategic importance, India considers it necessary to maintain protection and offers this sector greater tariff protection than to others. Average tariff protection for agriculture (33.2%) remains, therefore, substantially higher than for manufactured goods (8.9%). India has also retained the price support system for basic commodities and implements other agricultural support programmes at the central and state level.

24. During the period under review, growth in manufacturing has been erratic. The sector showed robust growth over 2006/07 and 2007/08, but was subsequently affected by the economic crisis, which led to a decline in foreign demand, particularly in areas including textiles and clothing. In 2009/10, there was a resurgence of growth in the sector, mainly triggered by stronger domestic demand, particularly for consumer durables, capital goods, and industrial inputs. In general, India's tariffs are higher for processed goods than for semi-manufactures. In order to encourage investment in the manufacturing sector, India also offers a wide range of tax incentives, concessionary credit, and other types of assistance.

25. The services sector, which accounts for 56% of GDP, is the main driver of economic growth, expanding by an average 10% between 2006/07 and 2009/10. Growth in services continued to be led by the financial services subsector, and the trade, hotel, transport and communications subsectors. The importance of tourism, even though it is not apparent from GDP figures, is considerable. Tourism has good growth potential and the capacity to stimulate growth through its backward and forward linkages and cross-sectoral synergies. FDI up to 100% is allowed for most services activities, except for financial services, where limits apply to foreign ownership. However, specific market-access conditions or permits may apply, which in some cases may be more restrictive than an explicit investment cap.

26. Inadequate infrastructure has become a critical constraint to India's economic development. To address this concern, the 11th Five-Year Plan outlined a comprehensive strategy to improve both rural and urban infrastructure, including electric power, roads, railways, ports, airports, telecommunications, irrigation, drinking water, sanitation, storage, and warehousing. However, public investment alone would probably be insufficient to address India's infrastructure needs, particularly considering India's quest for fiscal consolidation. Hence, an increase in private investment in infrastructure would be necessary to attain India's goal. Further private sector investment, including foreign investment, may play an important role not only in developing infrastructure but also in providing an opportunity for foreign investors. This would result in more stable, less volatile, capital inflows.

I. ECONOMIC ENVIRONMENT

(1) OVERVIEW

1. During the period under review (2007 to end-April 2011), India continued to reap the benefits from the process of trade liberalization and structural reform initiated in the early 1990s. Annual real GDP growth averaged over 8.4% between 2006/07 and 2010/11, despite the effects of the global economic crisis, which only caused a mild slowdown. The Government conducted a very proactive policy to face the crisis, introducing a large stimulus package consisting of increased spending, lower excise and customs duties on some products, and subsidies. However, as the economy started to get back on track and as inflation started to accelerate, the Government reversed most of these stimulus measures. As has been the case for some years now, growth has been led by services and manufacturing, the two largest sectors, with agriculture growing much more slowly. India's growth prospects remain strong, as potential GDP growth has been estimated at between 8% and 8.5%. However, to achieve sustained growth at the potential rate, bottlenecks will need to be eliminated and investment will be needed in infrastructure and education. The business environment will also need to be simplified by streamlining the regulatory environment, and defining a more stable and transparent trade and investment policy.

2. India embarked on a process of fiscal consolidation in 2004. This has not resulted in the intended decrease in the fiscal deficit, partly due to the effects of the global crisis. Although progress has been made towards fiscal consolidation, achieving it remains a challenge for India, in particular considering its infrastructure needs and growth targets. Throughout the period under review, India continued to post sizeable public-sector deficits. India's public finances deteriorated partly as a result of lower revenue and the impact of the stimulus package in the wake of the global financial crisis; the consolidated fiscal deficit reached 9.5% of GDP in 2009/10. Although the consolidated deficit declined to some 7.3% of GDP, this reduction largely reflects the effect of one-off items, though revenue collection in general also increased. The focus of fiscal policy has been shifted back to achieving consolidation and tax rationalization. A new tax Code has been drafted to simplify the tax regime and increase reliance on direct rather than indirect taxes.

3. Strong domestic demand and rising oil prices have resulted in a widening of the trade deficit, leading to a current account deficit throughout the reviewed period. The deficit has been financed through large capital inflows, both foreign direct and portfolio investment, attracted by the expanding domestic demand and the good prospects of the economy. Capital inflows have been somewhat volatile and this volatility has been largely accommodated by letting the exchange rate adjust. Although the floating exchange rate regime has served India well in accommodating substantial capital inflows, policies need to be designed to attract more medium- and long-term capital, particularly given India's infrastructure and general investment needs. A step in this direction is the Government's recent decision to increase investor limits in the corporate bond and government bond markets.

(2) RECENT ECONOMIC DEVELOPMENTS

4. During the review period, the Indian economy continued to expand at a fast pace, despite the mild slowdown caused in 2008/09 by the global financial crisis. Annual real GDP growth averaged over 8.4% between 2006/07 and 2010/11, supported primarily by strong domestic demand. Growth was particularly strong in 2006/07 and 2007/08, exceeding 9% (Table I.1), driven mainly by private investment and, to a lesser extent, private consumption. In the wake of the global financial crisis, growth has been driven by government spending. Strong domestic demand led to a sharp increase in

imports, particularly in 2008/09, only partly offset by a rise in exports. Although both import and export levels declined slightly in 2009/10, they remained considerably above those of 2006/07 (see sections (5) and (6)). The Government estimates that GDP growth reached 8.6% in 2010/11.[1] GDP growth at 2004/05 market prices reached 10.1% at an annual rate in the April-December 2010 period.

Table I.1
Selected macroeconomic indicators, 2006-11

	2006/07	2007/08	2008/09	2009/10[a]	2010/11[a]
Real GDP at factor cost (Rs billion, 2004/05 prices)	35,660.1	38,989.6	41,625.1	44,937.4	..
Real GDP at factor cost (US$ billion, 2004/05 prices)	787.5	968.9	906.5	947.7	..
Real GDP at market prices (Rs billion, 2004/05 prices)	38,746.3	42,479.2	44,653.6	48,693.3	53,425.7
Real GDP at market prices (US$ billion, 2004/05 prices)	855.6	1,055.6	972.5	1,013.8	..
Current GDP at factor cost (Rs billion)	39,522.4	45,814.2	52,820.9	61,332.3	..
Current GDP at factor cost (US$ billion)	872.8	1,138.5	1,150.4	1,293.5	..
Current GDP at market price (Rs billion)	42,936.7	49,864.3	55,826.2	65,502.7	..
Current GDP at market price (US$ billion)	948.1	1,239.1	1,215.8	1,381.4	..
GDP per capita at current market price (Rs)	38,268.0	43,817.5	48,376.3	55,985.2	..
GDP per capita at current market price (US$)	845.1	1,088.9	1,053.6	1,180.7	..
Real GDP (at 2004/05 factor cost)	9.6	9.3	6.8	8.0	8.6
National accounts			(% change)		
Real GDP at market prices (2004/05 prices)	9.4	9.6	5.1	9.1	10.1
Consumption	7.5	9.8	8.3	8.7	7.7
Private consumption	8.2	9.8	6.8	7.3	8.3
Government consumption	3.8	9.7	16.7	16.4	4.7
Gross fixed capital formation	14.3	15.2	4.0	7.3	16.1
Exports of goods and non-factor services	24.5	26.6	15.0	5.8	..
Imports of goods and non-factor services	22.7	31.6	16.6	0.0	..
Unemployment rate (%)	7.3	..	..	..	..
Prices, interest rates and money			(%)		
Inflation (%age change)					
CPI - industrial workers	6.7	6.2	9.1	12.4	10.6[b]
WPI	6.5	4.8	8.0	3.6	9.0[c]
Deposit rate[d]	7.5-9.0	8.25-8.75	8.0-8.75	6.0-7.0	8.25-9.0
Prime lending rate[e]	12.25-12.5	12.25-12.75	11.5-12.5	11.0-12.0	8-25-9.50[f]
M3	21.7	21.4	19.3	16.8	15.9
Exchange rate					
Rs/US$ (financial year - annual average)	45.28	40.24	45.92	47.42	45.58
Real effective exchange rate (%age change)[g]	-1.6	8.2	-8.7	0.2	13.4
Nominal effective exchange rate (%age change)[g]	-3.9	7.6	-13.0	-3.4	5.7
			(% of GDP, unless otherwise indicated)		
Central Government balance					
Current (revenue) balance	-1.9	-1.1	-4.5	-5.2	-3.4
Current revenue (revenue receipts)	10.1	10.9	9.7	8.7	9.9
Tax revenue (net)	8.2	8.8	7.9	7.0	7.2
Current expenditure (revenue expenditure)	12.0	11.9	14.2	13.9	13.4
Capital receipts	3.5	3.4	6.2	6.9	5.5
Capital expenditure	1.6	2.4	1.6	1.7	2.1
Gross fiscal balance[h]	-3.3	-2.5	-6.0	-6.3	-5.1
Primary deficit	0.2	0.9	-2.6	-3.1	-2.0
Central Government total debt	59.1	56.9	56.6	53.7	49.9
Domestic debt	56.7	54.7	54.4	51.5	47.9
External debt	2.4	2.2	2.2	2.1	2.0

Table I.1 (cont'd)

[1] Ministry of Finance (2011a), Chapter 1: State of the Economy and Prospect.

	2006/07	2007/08	2008/09	2009/10[a]	2010/11[a]
Saving and investment					
Gross domestic savings	34.6	36.9	32.2	33.7	..
Public sector	3.6	5.0	0.5	2.1	..
Gross domestic investment	35.9	38.0	35.4	35.8	..
Public sector	8.3	8.9	9.5	9.2	..
External sector					
Current account balance	-1.0	-1.3	-2.3	-2.8	-3.1[i]
Net merchandise trade	-6.5	-7.4	-9.8	-8.6	-8.3[i]
Merchandise exports	13.6	13.4	15.4	13.2	13.9[i]
Merchandise imports	20.1	20.8	25.2	21.7	22.2[i]
Services balance	3.1	3.1	4.4	2.6	2.9[i]
Capital account	4.7	8.6	0.5	3.8	4.3[i]
Direct investment	0.8	1.3	1.6	1.4	0.6[i]
Balance of payments	3.8	7.4	-1.7	1.0	0.9[i]
Terms of trade, (1978/79=100)	76.7	79.0	81.2	91.2	..
Merchandise exports (%age change)[j]	25.1	14.6	28.4	0.5	27.0[i]
Growth rate based in US$	22.6	28.9	13.7	-3.6	33.3[i]
Merchandise imports (%age change)[j]	24.1	20.0	35.7	1.3	21.1[i]
Growth rate based in US$	21.4	35.1	19.8	-2.6	27.1[i]
Service exports (%age change)[j]	30.3	9.0	34.4	-7.1	34.5[i]
Growth rate based in US$	28.0	22.4	17.3	-9.6	41.2[i]
Service imports (%age change)[j]	30.7	3.4	15.9	18.3	44.6[i]
Growth rate based in US$	28.5	16.2	1.1	15.3	51.7[i]
Foreign exchange reserves[k] (US$ billion, end-period)	191.9	299.2	241.4	254.7	304.8[i]
In months of imports	12.5	14.4	9.8	11.1	..
Total external debt (US$ billion, as at end-March)	172.4	224.4	224.5	261.2	279.5[l]
Debt service ratio[m]	4.7	4.8	4.4	5.5	3.9[l]

.. Not available.

a Provisional.
b April 2010 to February 2011
c March 2010/March 2011.
d Refers to the deposit rates of five major public sector banks of maturity of one to three years, as at end-March.
e Benchmark prime lending rate of five major public sector banks (period average).
f Base rate
g Six-currency trade based weight (including the euro, Japanese yen, U.S. dollar, U.K. pound, Chinese renminbi, and H.K dollar).
h Revenue receipts plus capital receipts (not including borrowing and other liabilities) minus total expenditure.
i April to December 2010.
j Growth rates are based on national currency.
k Excluding gold, SDRs (Special Drawing Rights), and Reserve Tranche Position in IMF.
l As at end-December 2010.
m Including debt-servicing on non-civilian credits.

Sources: Ministry of Finance (2011), *Economic Survey 2010-11*. Viewed at: http://indiabudget.nic.in/; Reserve Bank of India (2010), *Handbook of Statistics of the Indian Economy*, 15 September. Viewed at: http://www.rbi.org.in/scripts/AnnualPublications.aspx?head=Handbook of Statistics on Indian Economy; Reserve Bank of India (2011), *Macroeconomic and Monetary Developments in 2010-11*, 2 May; and information provided by the Reserve Bank of India.

5. The IMF estimates India's GDP growth potential to be some 8.5% per year; the authorities consider the post-global-crisis growth potential to be of some 8%.[2] Achieving this in a context of a lesser reliance on public consumption and investment will imply boosting private investment, which, over the medium run will require a simplification of the business and regulatory environment, as well as facing the challenges of improving infrastructure to overcome the current shortcomings.

[2] Reserve Bank of India (2010a), p. 17.

6. Services continued to be the most dynamic sector during the period under review, expanding at an average annual rate of around or over 10%, thus exceeding GDP growth, and exhibiting resilience to the negative effects of the global crisis. Growth in services continued to be led by the financial sector, and the trade, hotel, transport, and communications subsectors. Manufacturing showed robust growth over 2006/07 and 2007/08, but was subsequently affected by the global economic crisis, which led to a decline in foreign demand, particularly in areas such as textiles and clothing. There was a resurgence of growth, however, in 2009/10, triggered mainly by stronger domestic demand, particularly for consumer durables, capital goods, and industrial inputs; the production of non-durable goods showed only a modest increase.[3] Growth in agriculture remained weak throughout most of the review period due to a prolonged drought, excessive reliance on monsoon-related crops, and low productivity.

7. The services sector is the largest contributor to GDP; its share of GDP increased from 53% in 2006/07 to 56% in 2009/10 (Table I.2), while the share of manufacturing declined somewhat, from 16.1% to 15.5% and the share of agriculture fell from 18.1% to 16.6%. The authorities have noted that, despite the decline in its relative share, agriculture continues to be the mainstay of the majority of the population, occupying some 52% of the total workforce (including non-organized labour); the sector is also critical for achieving the Government's objectives of food security and price stability.[4]

Table I.2
Basic economic and social indicators, 2006-11

	2006/07	2007/08	2008/09	2009/10	2010/11[a]
			Annual % change		
GDP by economic activity at constant 2004/05 prices					
Agriculture, forestry, and fishing	4.2	5.8	0.1	0.4	5.4
Mining and quarrying	7.5	3.7	1.3	6.9	6.2
Manufacturing	14.3	10.3	4.2	8.8	8.8
Electricity, gas, and water	9.3	8.3	4.9	6.4	5.1
Construction	10.3	10.0	5.5	6.7	8.0
Services	10.1	10.3	10.1	10.1	9.4
Trade, hotels, transport, and communication	11.6	11.0	7.5	9.7	11.0
Financing, insurance, real estate, and business services	14.0	11.9	12.5	9.2	10.6
Community, social, and personal services	2.9	6.9	12.7	11.8	5.7
			%		
Share of main sectors in current GDP at factor cost					
Agriculture, forestry, and fishing	18.3	18.3	17.6	17.8	..
Mining and quarrying	2.7	2.7	2.6	2.5	..
Manufacturing	16.1	16.0	15.5	14.8	..
Electricity, gas, and water	1.9	1.8	1.6	1.5	..
Construction	8.2	8.5	8.6	8.1	..
Services	53.0	53.1	54.6	56.0	..
Trade, hotels, transport, and communication	25.3	25.3	24.9	24.4	..
Financing, insurance, real estate, and business services	14.9	15.2	16.2	17.0	..
Community, social, and personal services	12.8	12.6	13.4	14.6	..

Table I.2 (cont'd)

[3] Reserve Bank of India (2010a), p. 23.

[4] Reserve Bank of India (2010a), p. 16. Most of the people employed in agriculture do not fall under the category of organized employment, which explains why the share of agriculture in total organized employment (shown in Table I.2) is so low.

	2006/07	2007/08	2008/09	2009/10	2010/11[a]
Share of sector in total employment[b]					
Agriculture, forestry, and fishery	5.3	5.4	..	..	..
Mining and quarrying	4.6	4.5	..	..	..
Manufacturing	21.7	22.2	..	..	..
Electricity, gas, and water	3.3	3.1	..	..	..
Construction	3.5	3.4	..	..	..
Services	61.7	61.4	..	..	..
Wholesale and retail trade	2.2	1.6	..	..	..
Transport, storage, and communication	10.2	10.1	..	..	..
Financing, insurance, real estate, etc.	8.3	9.0	..	..	..
Public administration and defence, and other services	41.0	40.7	..	..	..

.. Not available.

a Advance estimate.
b Organized sector employment only.

Source: Ministry of Finance (2011), *Economic Survey 2010-11*. Viewed at: http://indiabudget.nic.in/; Reserve Bank of India (2010), *Handbook of Statistics of the Indian Economy*, 15 September. Viewed at: http://www.rbi.org.in/scripts/AnnualPublications.aspx?head=Handbook of Statistics on Indian Economy; and Reserve Bank online information. Viewed at: http://www.rbi.org.in/home.aspx.

8. During the period under review, increasing commodity and oil prices and supply-side constraints, together with fast economic growth, in particular strong domestic demand, resulted in an acceleration of headline inflation as measured by the new wholesale price index (WPI) during most of the period under review (with the exception of FY 2008/09).[5] The WPI increased by 9% in the 12-month period ending in March 2011 (8.3% in the 12 months to February 2011).[6] The Government's headline inflation estimate for 2011 was increased from 7% to 8% in early 2011.[7] Core inflation (excluding food and energy) has proceeded at a similar pace than headline inflation, increasing also by 9% in the twelve months till March 2011. Although administered prices (fuels and fertilizers) were adjusted during the period under review and steps taken to deregulate fuel prices (see below), inflation figures may be underestimated due to the subsidization of some fuel prices, certain basic food prices, and electric power rates.

9. The Government has undertaken a number of measures to fight inflation, including monetary, fiscal, and administrative actions; the last two include measures that have an effect on trade. With respect to monetary measures, the RBI has tightened monetary policy by raising its policy rates several times since early 2010 (see below), and narrowing the liquidity adjustment facility (LAF) corridor to reduce rate volatility. Fiscal measures have included customs duty reductions, e.g. a reduction to zero of import duties on rice, wheat, pulses, onions and shallots, edible oils (crude), and ghee, and to 7.5% on refined and hydrogenated oils and vegetable oils; also imports of raw sugar at zero duty have been allowed under a licensing system.[8]

10. Trade-related administrative measures have also been used, such as export prohibitions (e.g. on non-basmati rice, onions, and edible oils (see Chapter IV(2)) and minimum export prices (onions and basmati rice). The authorities have indicated that these measures were taken in view of

[5] A new WPI series with a 2004-05 basis was released in September 2010. The new series has a commodity basket comprising 676 items with different weights and more price quotations than the previous one.
[6] This average is considerably higher than the ten-year average of headline WPI inflation from 2000-01 to 2009-10, which was of some 5.3%. See Ministry of Finance (2011a), Chapter 4: Prices and Monetary Management.
[7] Reserve Bank of India (2011b).
[8] Ministry of Finance (2011a), Chapter 4: Prices and Monetary Management.

the emerging scenario of scarcity and the consequent rise in prices of essential commodities. An Inter-Ministerial group was set up in early 2011 under the Ministry of Finance, to review the overall inflation situation, with particular reference to primary food articles. The group may recommend action on fiscal, monetary, production, marketing, distribution, and infrastructure matters to prevent price increases, but its recommendations are not binding.

11. India does not publish official unemployment figures. The latest available information points to an unemployment rate of 7.3% in 2006/07. Since then, the Government has conducted surveys to assess the conditions of the labour market; no complete employment figures are available. The authorities have indicated that this is due to the relatively large segment of non-organized (not formally employed) workers, and that only figures for organized employment are available. Total organized employment in 2008 was 275.5 million, of which 176.7 million were employed by the public sector and 98.8 million by the private sector.[9] The Ninth Quarterly Quick Employment Survey, conducted by the Labour Bureau, shows that, during 2010, organized employment increased by 870,000 persons; some 60% of this increase was in information technology and business process outsourcing. With respect to the sectoral distribution of employment, it is estimated that some 22% of organized labour is employed in the manufacturing sector. Agriculture accounts for just over 5% of total organized employment but this figure is misleading, as most agriculture labourers are not unionized or otherwise organized. It is estimated that over 50% of India's workforce is employed in the agricultural sector. Services accounts for over 60% of organized employment.

12. High economic growth has translated into rising per capita incomes. GDP per capita at current market prices reached US$1,180.7 in 2009/10, some 40% higher than in 2006/07. Growth has also improved social and poverty indicators, with infant mortality declining from 68 per 1,000 in the mid 1990s to 52 per 1,000 in 2008, and literacy levels reaching 66% of people over 15 in 2008, up from 49% in 1990.[10] Despite high growth, however, poverty alleviation remains a challenge. There are no recent statistics, but data from the Planning Commission show that 27.5% of the population lived under the poverty line in 2004/05, down from 36% in 1993/94.[11] However, a 2009 study by an expert group, found a 37.2% poverty ratio for 2004/05.[12] Although these levels are considerably below those of a decade ago, there is still a large number of poor, especially in the rural areas.

(3) FISCAL POLICY

13. India's public finances deteriorated in the wake of the global financial crisis. The 2009/10 consolidated fiscal deficit reached 9.5% of GDP, up from 8.5% in 2008/09, with the Central Government deficit at 6.4% of GDP, and state government deficits of 3.3% of GDP. After two years of increasing deficits, the consolidated deficit declined to some 7.3% of GDP in 2010/11, as both central and state government deficits fell, to 5.5% and 2.5% of GDP, respectively. This reduction in the deficit largely reflects the effect of one-off items (e.g. telecommunications licences), although an increase in general revenue also played a role. While progress has been made towards fiscal consolidation, achieving it remains a challenge for India, in particular considering its infrastructure needs and growth targets. Fiscal consolidation would also be an important step to prevent an excessive real exchange rate appreciation, which would lead to further deterioration of the current account of the balance of payments.

[9] Planning Commission of India (2011).

[10] World Bank (2011).

[11] The poverty level in India is defined on the basis of calorie intake of 2,100 kilocalories in urban areas and 2,400 kilocalories in rural areas.

[12] Planning Commission of India (2011).

14. For part of the period under review, fiscal policy has been conducted within the framework of the Fiscal Responsibility and Budget Management Act (FRBMA), notified in 2004, which calls for the Central Government to take measures to reduce the revenue (current) and overall fiscal deficits with a view to eventually eliminating them. Tax revenue growth was instrumental in allowing progress toward fiscal consolidation prior to the global financial crisis. Gross tax revenue rose as a proportion of GDP, from 9.2% in 2003/04 to a peak of 12% in 2007/08, before falling to 10.9% and 9.5% in 2008/09 and 2009/10, respectively. Tax revenue net of states' shares was only 7% of GDP in 2009/10, down from a pre-crisis level of 8.8%, partly on account of lower excise and customs duty collection (Table I.3). Tax revenue/GDP was expected to recover to 10.8% in 2010/11, but advance estimates point to a 10% ratio. This is of concern since tax revenue continues to be insufficient to finance India's infrastructural and developmental needs.

Table I.3
Central Government's tax revenue, 2006-11
(Rs billion and %)

	2006/07	2007/08	2008/09	2009/10	2010/11[a]
Total tax revenue, net of states' share (Rs billion)	3,511.8	4,395.5	4,433.2	4,651.0	5,340.94
(% of GDP)	8.2	8.8	7.9	7.0	7.2
			(% of total tax revenue)		
Direct taxes	48.6	52.6	55.2	60.5	56.7
Corporation taxes	30.5	32.5	32.5	39.2	37.7
Personal income taxes	18.1	20.0	20.0	21.2	18.9
Wealth taxes	0.1	0.1	0.1	0.1	0.1
Indirect taxes	51.4	47.4	44.8	39.5	43.3
Customs	18.2	17.6	16.5	13.3	16.7
Union excise duties	24.8	20.8	17.9	16.5	17.4
Service taxes	7.9	8.6	10.1	9.4	8.8

a Estimates.

Source: Reserve Bank of India (2010), *Handbook of Statistics of the Indian Economy*, 15 September. Viewed at: http://www.rbi.org.in/scripts/AnnualPublications.aspx?head=Handbook of Statistics on Indian Economy; and information provided by the Indian authorities.

15. India classifies its expenditure into revenue (current) and capital, and Plan and non-Plan (interest payments, subsidies, defence expenditure, payrolls, and pensions). The thrust of public expenditure management policies has been on containing non-Plan revenue expenditure and raising the levels of Plan expenditure, preferably capital expenditure. Defence expenditure and interest payments have been relatively stable during the period under review (at some 1.8%-2.2% of GDP and 3.1%-3.4%, respectively), and budgets have focused on streamlining expenditure on subsidies. However, due to the increase in subsidies to crude oil and fertilizers, and other subsidies to consumers during the global slowdown, their proportion of GDP rose from 1.3% in 2006/07 to 2.3% in 2008/09, before declining slightly to 2.2% in 2009/10, and to an estimated 2.1% of GDP in 2010/11. This recent improvement followed policy steps to deregulate the price of gasoline and increase, albeit modestly, the regulated prices of kerosene and LPG (liquefied petroleum gas) (Chapter III).

16. To counter the effects of the global financial crisis, India engaged in a policy of fiscal expansion, which was one of the largest among emerging economies, estimated at about 10% of GDP in both 2009 and 2010. As growth resumed at a faster pace than expected, the authorities, following the recommendations of the Thirteenth Finance Commission, changed policy course and returned to focusing on fiscal consolidation in the 2010/11 Budget, including through a partial withdrawal of the stimulus measures put in place during the crisis. The policy stance was shifted to addressing long-run sustainability concerns, while continuing to support growth in the short run. For example, the 2010/11 Budget recommended bringing expenditure down through a proper targeting of subsidies and

announced that new policies to reduce subsidies on fertilizers and petroleum products would be implemented.

17. The 2010/11 Budget reversed some of the measures adopted to face the crisis. The standard rate of excise duty (CENVAT), which had been lowered to 8% by two successive reductions, in December 2008 and February 2009, was raised to 10%. Excise duty on petrol and diesel was increased by Rs 1 per litre so as to restore the pre-June 2008 levels, while excise duty on cigarettes and other tobacco products, as well as of the *ad valorem* component of the excise duty on certain vehicles, was raised from 20% to 22%. Full or partial excise duty exemptions/concessions available on some items were withdrawn and duty imposed on them at the rates of 4% or 10%. The customs duties on crude petroleum and diesel were increased, and eight new services were brought under the service tax. On the other hand, the 2011/12 Budget seems to have placed more emphasis on growth; it contains provisions to lower customs duty rates, for example on imports of certain inputs and of agricultural machinery, to promote the development of agricultural and manufacturing production, and of exports.

18. The 2010/11 fiscal results were better than expected. While the Budget for 2010/11 had estimated the fiscal and revenue deficits at 5.5% and 4% of GDP, respectively, they were 5.1% and 3.4% of GDP, respectively. The lower deficits were partly due to higher-than-expected tax revenue due to economic growth and the termination of excise and customs duties reduction, but also to the substantial increase in non-tax revenues arising from telecom 3G/BWA (third generation/broadband wireless access) licence auctions, a one-time event (see Chapter IV(3)(iii)).

19. When India embarked on the path of economic reform in 1991/92, the ratios of direct and indirect taxes to gross tax revenue were 22.6% and 77.4%, respectively; in 2009/10 these ratios were of 60.5% and 39.5%, respectively (Table I.3). This was partly a result of the gradual reform of the tax structure to reduce customs and excise duties and rely more on direct taxes, particularly corporate income tax, and on service tax revenues. Union excise duties were the single largest revenue earner until 2006/07, when they were replaced by corporate income tax. The Government aims to improve direct tax collection through rationalization of the tax structure: to this end, the 2010/11 Budget reduced the surcharge on corporate income tax from 10% to 7.5%. The authorities are confident that tax rationalization will allow corporate and personal income tax collection to continue growing rapidly and help improve the prospects of revenue-led medium-term consolidation. However, indirect taxes, including taxes that fall solely or mainly on imports, continue to be an important source of revenue, and changes in their levels are a much used policy tool.

20. For several years the Government has been intent on introducing a goods and services tax (GST) and on consolidating the Income Tax Act 1961 and the Wealth Tax Act 1957 in a single law. In March 2011, a Constitutional Amendment Bill was introduced in Parliament for the implementation of the GST. The authorities indicated that, as at May 2011, progress has been made in creating the information technology infrastructure required for the implementation of the GST, including with respect to the creation of a GST network. They also indicated that work was under way on drafting model legislation for the implementation of the GST at the Central Government and State levels. With respect to the consolidation of the two tax acts, a Direct Taxes Code Bill was introduced in Parliament in August 2010, envisaged to be effective from 1 April 2012. The Direct Taxes Code Bill seeks to establish a more effective and equitable direct tax system and help increase the tax to GDP ratio. The proposed Code would do away with the current system of determining tax rates every year through an approved Finance Act, even if no tax changes take place, and replacing it by fixed Schedules (to the Code) containing the relevant tax rates. New legislation would only be

required when a change of rates is decided, thus enhancing the stability and predictability of the tax system.

21. The proposed Code also seeks to improve predictability with respect to the taxation of international transactions. It contains provisions to eliminate the differences in taxation on profits between foreign companies, currently taxed at 42.2% (inclusive of surcharge and cess) and domestic companies, taxed at 33.2% (inclusive of surcharge and cess). It is proposed to set both rates at 30%, and to levy a branch profit tax of 15% to replace the current dividend distribution tax of 16.6%. There are also provisions to enhance transfer-pricing stability in international transactions by introducing five-year advance pricing agreements.

22. The Code also modifies the current system of incentives, by phasing out profit-linked tax incentives, replacing them with investment-linked incentives. This is a very important step, since the persistence of the different incentives schemes has been costly for the Indian economy. It has resulted in forgone excise and customs duties revenue of Rs 4 trillion (US$88.9 billion), some 6.1% of GDP, in 2009/10. Revenue forgone due to corporate income tax exemptions was estimated at Rs 72.8 billion in 2009/10 (some US$1.61 billion), or 0.11% of GDP, while personal tax exemptions totalled Rs 45 billion (some US$995 billion, or 0.07% of GDP). Revenue forgone on account of various export promotion schemes was estimated at Rs 381 billion (US$8.5 billion, or 0.6% of GDP) in 2009/10.

23. The Government's debt-management policy objectives are to meet the Central Government's financing needs at the lowest possible long-term borrowing costs and to keep the total debt within sustainable limits, while reinforcing the development of a domestic bond market.[13] There are no explicit debt caps or limits. Reflecting the general fiscal consolidation policy thrust, the ratio of Central Government debt to GDP declined during the period under review, from 61.2% of GDP in 2005/06 to 53.7% in 2009/10, and is estimated at 49.9% in 2010/11. Some 92% of India's (Central Government) debt is domestic, most of it medium- to long-term, with a weighted average maturity period of ten years. Some 97% of the Central Government's debt is at fixed rates; the average interest rate is 7.8% per year.[14]

24. The net outstanding debt of state governments is estimated at 25% of GDP for 2009/10. The consolidated debt of the Government declined from 78.6% of GDP in 2004/05 to 71.4% in 2007/08, and 69.1% in 2009/10. Total debt was well below the 74% of GDP target recommended by the 12th Finance Commission.

25. FRBM Rules limited Central Government annual indebtedness to a maximum of 9% of GDP for 2004/05 to be reduced progressively by at least one percentage point of GDP in each subsequent financial year. Although there is no explicit public debt target, the Thirteenth Finance Commission recommended that action be taken to reduce the combined public debt to GDP ratio to 68% by 2014/15. A status paper with a roadmap for debt reduction was presented to Parliament in November 2010. The paper estimated that, at current GDP growth rates, the Central Government's debt as a proportion of GDP would decline to 43% in 2014/15, while the state governments' debt would fall more moderately, to 23.1% of GDP in the same fiscal year; the consolidated Government debt would decline from 73% of GDP in 2009/10 to 64.9% in 2014/15.

[13] Ministry of Finance (2011a), Chapter 3: Fiscal Developments and Public Finance.
[14] Ministry of Finance (2011a), Chapter 3: Fiscal Developments and Public Finance.

(4) MONETARY AND EXCHANGE RATE POLICY

26. The Reserve Bank of India (RBI) formulates, implements, and monitors monetary policy. The RBI's objective to maintain price and financial stability and ensure an adequate flow of credit.[15] However, the RBI does not resort to inflation targeting. The RBI's Monetary Policy Department (MPD) formulates monetary policy, while the Financial Markets Department (FMD) handles day-to-day liquidity management operations. The Technical Advisory Committee (TAC) on Monetary Policy, created in July 2005, provides advice on monetary policy formulation. The RBI also acts as the Central Government's banker and debt manager, and acts as banker for the states that require it do so.

27. The RBI implements monetary policy through the use of several direct and indirect instruments based on an assessment made that takes into account indicators such as interest rates, the inflation rate, money supply and credit levels, exchange rate fluctuations, trade and capital flows, output trends, and the fiscal position.[16] The RBI's monetary policy operational target is the weighted average overnight money rate. The main direct instrument used to conduct monetary policy is the cash reserve ratio (CRR), followed by the statutory liquidity ratio (SLR) and refinance facilities.[17] The RBI uses the liquidity adjustment facility (LAF), as its main indirect instrument which enables it to adjust short-term liquidity through repo and reverse repo auctions.[18] The RBI also makes use of open market operations, and the Market Stabilization Scheme (MSS) to sterilize foreign inflows. Under the MSS, the RBI auctions government securities and keeps the equivalent cash balance in a special account. Since mid 2010, the RBI has not made much use of the MSS, opting for letting the exchange rate adjust.

28. Until May 2011, the RBI fixed three policy interest rates: the repo and reverse repo rates, and the Bank rate, which is the rate at which the RBI will buy or rediscount bills of exchange or other commercial papers. The first two rates signalled the short-term monetary policy stance, while the Bank rate signalled the medium-term stance. As of 3 May 2011, the repo rate is the only independently varying policy rate; the RBI expects that a single independently varying policy rate will more accurately signal the monetary policy stance.[19] The reverse repo was pegged to the repo rate at a rate fixed at 100 basis points below it, and a new Marginal Standing Facility (MSF) rate was created. The MSF is to be at 100 points above the repo rate (8.25% as at May 2011), and will enter into effect once the MSF becomes operational.[20]

29. In response to the global financial crisis, the RBI adopted an accommodative monetary policy stance in September 2008 to boost confidence and prompt economic growth.[21] As economic growth

[15] Reserve Bank of India online information, "About us". Viewed at: http://www.rbi.org.in/scripts/AboutusDisplay.aspx.

[16] Reserve Bank of India (2010b).

[17] The CRR is the share of net demand and time liabilities (NDTL) that banks must maintain as cash balance with the RBI; the SLR is the share of NDTL that banks must maintain in safe and liquid assets such as government securities, cash, and gold.

[18] The repo rate is the rate at which the RBI lends money to banks under the LAF; the reverse repo rate is the return earned by banks on funds deposited with the RBI.

[19] Reserve Bank of India (2011c).

[20] The new Marginal Standing Facility (MSF) will allow scheduled commercial banks to borrow overnight up to 1% of their respective NDTL.

[21] The measures the RBI took as a response to the global financial crisis, included: reductions in interest rates; loosened restrictions on access to foreign currency; the creation of a rupee-dollar swap facility to manage short-term funding requirements; the establishment of a refinancing window and special-purpose

accelerated in 2009/10 and headline inflation increased, the RBI partly shifted policy stance, restoring the statutory liquidity ratio (SLR) of scheduled commercial banks to its pre-crisis level. During 2010/11, the RBI continued to gradually abandon the accommodative policy stance and refocused monetary policy on containing inflation and inflationary expectations.[22] The RBI raised its policy rates seven times until April 2011, with the repo rate cumulatively rising by 200 basis points (bps) to 6.75% and the reverse repo rate by 250 bps to 5.75%. The CRR was kept at 6%, at which it stood in May 2011. In May 2011, following the change in policy stance to fix only one rate, the repo rate was increased to 7.25%, while the reverse repo was adjusted automatically to 6.25%.

30. The persistent liquidity pressure led the RBI to provide additional liquidity support to scheduled commercial banks in November 2010.[23] Subsequently, in December 2010, the RBI reduced the SLR of scheduled commercial banks from 25% to 24%. As at April 2011, growth remained strong and inflation was still significantly above the comfort level of the RBI, with risks on the upside, both from domestic demand and higher global commodity prices. One of the RBI's major challenges continues to be to supply the liquidity required while containing inflation and anchoring inflationary expectations.

31. India has had a managed float since 1993, with the exchange rate determined in the interbank market. The degree of intervention of the RBI to stabilize the market has varied over time; the RBI does not have a fixed or pre-announced target or band, and has intervened in the market when deemed necessary in accordance with its general monetary policy stance. The exchange rate policy in recent years has approached more a pure float, with the RBI intervening very little in the market. Maintaining a floating exchange rate helps India absorb external shocks and large inflows of capital.

32. After appreciating sharply in FY 2007/08 as a result of large capital inflows, the nominal effective exchange rate (NEER) depreciated in the aftermath of the global financial crisis. During the crisis and in its aftermath, the RBI focused less on the exchange rate, allowing for wider flotation and higher volatility. Since 2010, the nominal effective exchange rate has been appreciating.[24] The real effective exchange rate (REER) depreciated in 2008/09, but started appreciating in 2009/10; this appreciation has been modest even though inflation in India has been considerably higher than in countries whose currencies comprise its REER basket.[25]

33. Further currency appreciation is likely in the absence of fiscal tightening, particularly given the increasingly floating nature of the exchange rate regime. Estimating a real appreciation of the rupee of some 6% (as at December 2010) from its ten-year historical average, the IMF considers that further moderate REER appreciation would not have a significant negative impact on growth.[26] Moderate appreciation could be beneficial, particularly as it would make imports cheaper and help rein-in inflation, and it could lead to some self-correction, as it would reduce the attraction for

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vehicle for non-banking financial companies; and the expansion of funding sources for financial institutions to keep credit flowing to small and export businesses and for housing (Ministry of Finance, 2011a).

[22] Reserve Bank of India (2010e).

[23] The RBI has fixed a liquidity comfort level of +/- 1% of net demand and term liabilities. When liquidity departs too much from this range, the RBI intervenes through open-market operations or the MSS. The liquidity pressure observed in 2010 stemmed from a large build-up of Government cash balances, accompanied by a strong demand for credit.

[24] The NEER and REER baskets comprise: U.S. dollar, euro, yen, pound sterling, HK$, and the renminbi.

[25] Initially the rupee appreciated against the U.S. dollar, however this did not offset its depreciation against other currencies in its NEER basket resulting in the NEER depreciating.

[26] IMF (2011).

additional inflows. However, over the medium run, further appreciation would result in a worsening of the current account deficit, requiring further inflows of capital and or debt to finance it (see below).

(5) BALANCE OF PAYMENTS

34. India posts a structural trade deficit, partly explained by its large population and development needs. During the period under review, strong domestic demand and rising oil and food prices resulted in a widening of the trade deficit, leading to a current account deficit throughout the reviewed period. The trade deficit peaked at US$119.5 billion in 2008/09 (some 10% of GDP) (Table I.4), before declining somewhat in 2009/10. Partial data for 2010/11 shows an increase in the deficit, linked to higher growth rates and hence increased absorption, which translated into a substantial increase in imports, which more than offset the expansion in exports.

Table I.4
Balance of payments, 2006-11
(US$ million)

	2006/07	2007/08	2008/09	2009/10	2010/11[a]
Current account	-9,565	-15,737	-27,915	-38,383	-38,940
Goods and services balance	-32,313	-52,615	-65,604	-82,648	-82,648
Goods balance	-61,782	-91,467	-119,520	-118,374	-102,124
Exports f.o.b.	128,888	166,162	189,001	182,235	173,004
Imports c.i.f.	190,670	257,629	308,521	300,609	275,128
Services balance	29,469	38,852	53,916	35,726	34,246
Receipts	73,780	90,342	105,963	95,759	95,920
Transportation	7,974	10,014	11,310	11,177	10,133
Travel	9,123	11,349	10,894	11,859	10,757
Insurance	1,195	1,639	1,422	1,603	1,359
Software[b]	31,300	40,300	46,300	49,705	41,812
Business	14,544	16,772	18,603	11,368	17,846
Finance	3,106	3,217	4,428	3,736	4,900
Communication	2,262	2,408	2,298	1,229	1,166
Government n.e.s.	253	331	389	440	369
Other	4,023	4,313	10,319	4,642	7,578
Payments	44,311	51,490	52,047	60,033	61,674
Transportation	8,068	11,514	12,820	11,934	10,642
Travel	6,684	9,258	9,425	9,342	7,990
Insurance	642	1,044	1,130	1,286	1,099
Software[b]	2,267	3,358	2,564	1,469	1,869
Business	15,866	16,553	15,317	18,049	20,913
Finance	2,991	3,133	2,958	4,643	5,270
Communication	796	860	1,087	1,355	811
Government n.e.s.	403	376	793	526	543
Other	6,594	5,394	5,952	11,429	12,573
Income balance	-7,331	-5,068	-7,110	-8,040	-10.645
Credit	9,308	14,272	14,309	13,022	6,925
Debit	16,639	19,339	21,418	21,062	17,570
Current transfers	30,079	41,945	44,798	52,305	39,583
Credit	31,470	44,261	47,547	54,623	41,830
Debit	1,391	2,316	2,749	2,318	2,247
Capital account	46,171	107,901	7,835	51,824	49,959
Direct investment	7,693	15,893	19,816	18,771	7,606
Foreign direct investment in India	22,739	34,728	37,672	33,124	18,033
India's direct investment abroad	-15,046	-18,835	-17,855	-14,353	-10,427
Portfolio investment	7,060	27,433	-14,031	32,396	30,095
Loans, net	24,490	40,652	8,318	13,259	22,006
External assistance	1,775	2,114	2,441	2,893	4,190
Commercial borrowings[c]	22,715	38,538	5,877	10,366	17,816

Table I.4 (cont'd)

	2006/07	2007/08	2008/09	2009/10	2010/11[a]
Banking, net	1,913	11,759	-3,246	2,084	5,741
Rupee debt service	-162	-122	-100	-97	-17
Other capital, net	4,209	10,968	-3,990	-13,016	-12,699
Errors and omissions	968	1,316	1,067	-1,573	-2,773
Reserve assets (a minus sign denotes an increase)	-36,606	-92,164	20,080	-13,441	-11,019

a April to December 2010.
b Software services include computer services and information technology enabled services (ITES)/business process outsourcing (BPO).
c Includes short-term credit.

Source: Reserve Bank of India online information, "RBI Bulletin". Viewed at: http://rbi.org.in/scripts/BS_ViewBulletin.aspx.

35. While posting a structural trade deficit, India has a sizeable surplus in the services balance. Until the global financial crisis this surplus increased substantially, on account mainly of higher exports; in FY 2009/10, in the aftermath of the crisis, the surplus dropped by a third, partly due to lower exports but also to an increase in imports, in particular of financial and business services.

36. India's increasing current account deficit is a reflection of the extent by which gross domestic investment needs in India exceed gross domestic saving. During the review period, public investment was consistently greater than public sector savings, partly due to the high growth rates, but also reflecting the deterioration of the fiscal accounts and the resulting increase in the public deficit.

37. The financing of the current account deficit has not been a problem: although unevenly spread across the period, there have been large capital inflows, both as foreign direct investment (FDI) and as portfolio investment, attracted by the expanding domestic demand and the good prospects of the economy.[27] Foreign institutional investor (FII) investment, external commercial borrowing (ECBs), and trade credit account for most capital flows, with FII flows being the largest.[28] Foreign convertible currency bonds (FCCBs), which can be converted into equity at maturity, constituted a significant part of the ECBs raised in 2007/08 and 2009/10.[29]

38. Despite their general upward trend, capital inflows have been highly volatile during the period under review, due to the heavy reliance on portfolio capital and to the global financial crisis: FIIs have accounted for some 47% of flows, compared to just 9% represented by FDI inflows. Volatility has been largely accommodated by exchange rate fluctuations, without the need for massive

[27] Net capital inflows (excluding errors and omissions) totalled US$106.6 billion, or 8.7% of GDP in 2007/08; they plummeted to 0.5% of GDP during 2008/09, but rose to 4.1% during 2009/10. During the first three quarters of 2010/11 (April-December 2010), net capital flows were US$52.7 billion, almost 40% higher than during the same period of the previous year.

[28] Foreign institutional investors (FIIs), non-resident Indians (NRIs), and persons of Indian origin (PIOs) are allowed to invest in the primary and secondary capital markets in India through the portfolio investment scheme (PIS). Under this scheme, FIIs/NRIs can acquire shares/debentures of Indian companies through the stock exchanges in India. The ceiling for overall investment for FIIs is 24%t of the paid-up capital of the Indian company and 10% for NRIs/PIOs. The limit is 20% of the paid-up capital in the case of public-sector banks. The ceiling of 24% for FII investment can be raised up to the sectoral cap/statutory ceiling, and the ceiling of 10% for NRIs/PIOs to 24%, subject to the approval of the general body of the company. The ceiling for FIIs is independent of the ceiling of 10/24% for NRIs/PIOs. Repatriation by any single NRI/PIO must not exceed 5% of the paid up equity capital of the company.

[29] FCCBs are issued outside of India and give the investor the option to convert the bond into equity at a fixed conversion price or as per a pre-determined pricing formula.

open market interventions on the part of the RBI. The policy approach towards capital inflows has been to aim at the broader objective of financial and macroeconomic stability and let the exchange rate adjust. To this end, the authorities seek to encourage non-debt-creating and long-term capital inflows and to discourage short-term debt flows, except for trade transactions. The authorities expect to achieve this through the use of multiple instruments, including quantitative limits, price-based measures, and administrative measures, particularly to limit corporate foreign currency borrowing.[30] In particular, the Government has undertaken measures to attract capital that may be converted into equity, for example, through the use FCCBs. Also, private investor limits in the corporate bond market have been increased to US$40 million per investor, and to US$10 million per investor in the case of government bonds. Moreover, foreign investors may now invest in corporate bonds issued by non-listed companies.

39. As a result of strong capital inflows, and despite the rising current account deficit, foreign exchange reserves continued to show robust growth overall through the period, increasing by almost US$50 billion between 2006/07 and 2010/11. India's foreign exchange reserves were at US$309.7 billion in late-April 2011, equivalent to some 9.9 months of imports. Reflecting the mostly short-term nature of capital inflows, India's external liabilities have been increasing. The debt/service ratio was at 5.5% of exports at the end of 2009/10, up from 4.7% in 2006/07, while the ratio of external debt to foreign exchange reserves increased from 89.1% of GDP in 2008/09 to 99.9% at end-December 2010, and the ratio of short-term debt to reserves increased from 17.2% to 21.0%. Although pressures for repayment of FCCBs could start building up in the near future, the authorities consider that the issue is not to limit capital flows but to be able to manage the capital account to respond to the needs of the real economy while maintaining financial stability.[31]

(6) DEVELOPMENTS IN TRADE

(i) Composition of trade in goods

40. Merchandise trade as a percentage of GDP continued to increase during the review period, to 40.3% of GDP in 2009/10 up from 30.1% in 2005/06. This was despite the negative effects on trade of the global economic crisis. Imports continued to grow faster than exports, leading to a widening of the trade deficit.

41. Exports increased from US$126.4 billion in 2005/06 to US$178.8 billion in 2009/10, growing at an average annual rate of 15.4% during the period. However, in 2009/10, they decreased by 3.5% over 2008/09, reflecting the effects of the global economic crisis. Over the review period, the share of manufactures in India's exports remained stable while the share of primary products decreased slightly from 33.9% to 33%. Fuel products and machinery and transport equipment are the main components of Indian exports, followed by chemicals (Table AI.1 and Chart I.1). Food products, clothing, and textiles remain among the main exported commodities. Diamonds and, in particular, jewellery products have emerged as significant exports.

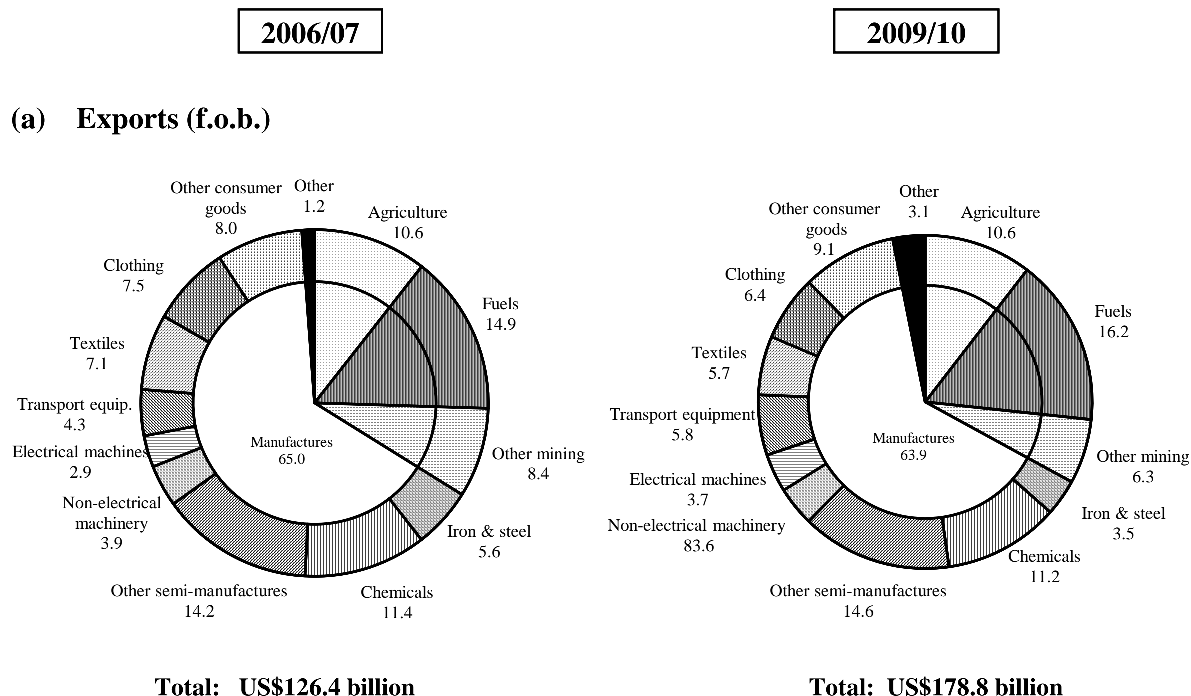
[30] Reserve Bank of India (2011d).
[31] Reserve Bank of India (2011d).

Chart I.1
Product composition of merchandise trade, 2006/07 and 2009/10

Per cent

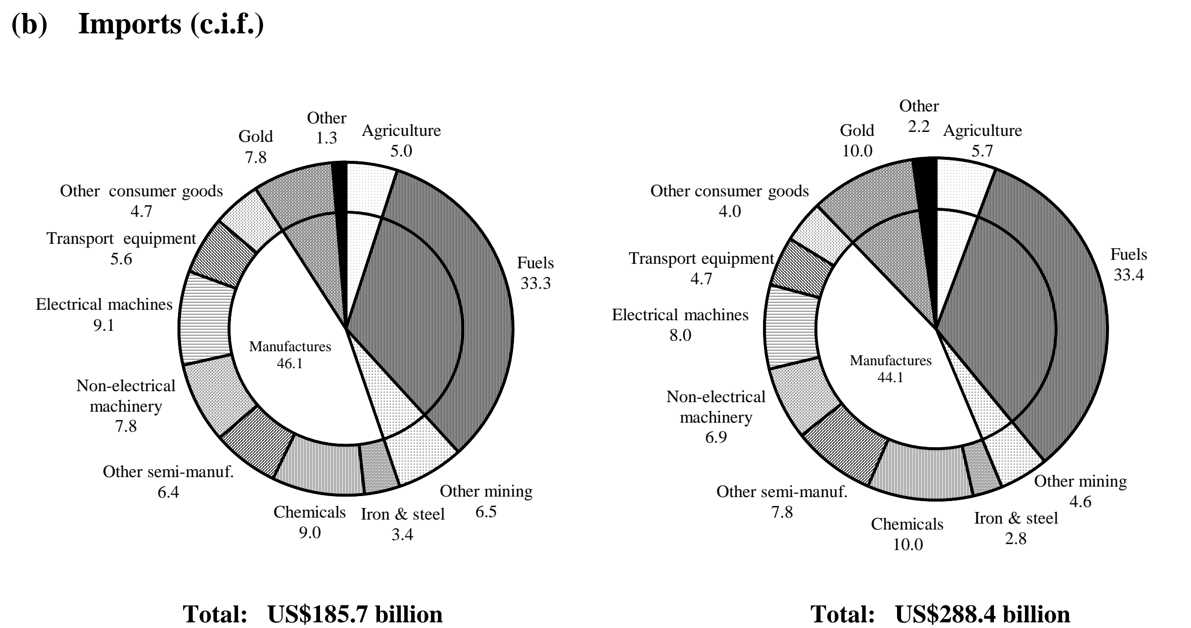
2006/07 **2009/10**

(a) Exports (f.o.b.)



Total: US$126.4 billion **Total: US$178.8 billion**

(b) Imports (c.i.f.)



Total: US$185.7 billion **Total: US$288.4 billion**

***Source*: WTO calculations, based on Department of Commerce online information, "Export Import Data Bank". Viewed at: http://commerce.nic.in/eidb/default.asp [24/02/2011].**

42. In 2009/10, imports totalled US$288.4 billion, up from US$185.7 billion in 2006/07, expanding at an annual average rate of 18.9% during the period. However, there was a decline in imports in 2009/10 over 2008/09 (-5.1%) as domestic demand slowed down under the effects of the global crisis. Over the review period, crude oil represented around one quarter of India's total imports, followed by machinery and transport equipment, chemicals, and gold (Table AI.2). In 2008, the share of primary products in India's total imports exceeded the share of manufactures.

43. India is intent in promoting export growth. In February 2011, the Ministry of Commerce and Industry released a "Strategy for doubling exports in the next three years", aimed at increasing merchandise exports from an estimated US$225 billion in 2010/11 to US$450 billion in 2013/14. To achieve this, the Government intends to intensify initiatives to diversify products and markets, particularly diversifying towards emerging economies. The base of the strategy is to promote aggressively export growth of high value products that have a strong domestic manufacturing base, such as engineering, including machinery and transport equipment, and chemicals.[32]

(ii) Direction of trade in goods

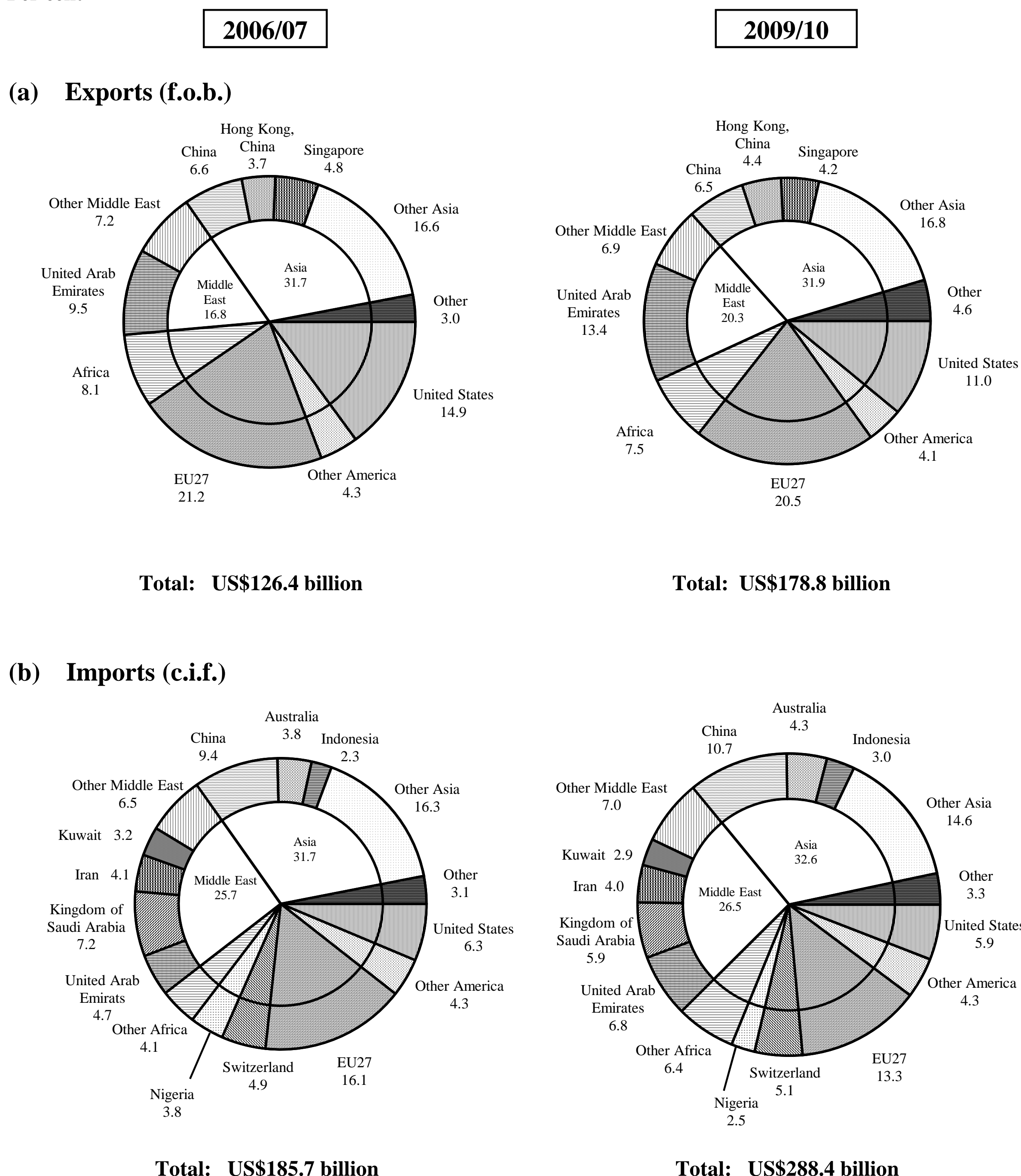
44. Over the review period, India's main export markets were the EU 27 (20.5% of total exports in 2009/10), followed by the United Arab Emirates (13.4%), the United States (11.0%), and China (6.5%) (Table AI.3 and Chart I.2). India's main sources of imports were the EU 27, China, and the United Arab Emirates (Table AI.4). During the period under review, exports continued to shift away in relative terms from Europe and the United States (22.5% and 16.9%, respectively, of total exports in 2005/06), while the share of the U.A.E. and Asia continued to increase. The same trend is witnessed with respect to the origin of imports; although the EU 27 (13.3% of the total) and the United States (5.9%) are still major exporters to India, the shares of Asia (32.6%) and the Middle East (26.5%) have been increasing and they are now the main origins of imports (Chart I.2 and Table AI.5). The diversification reflects the changing composition of India's trade.

(iii) Trade in services

45. India is a net exporter of services. The services trade surplus as a percentage of GDP increased from US$29.5 billion or 3.1% in 2006/07 to US$54 billion or 4.7% in 2008/09 (Table I.4) as software and IT exports, as well as transportation, travel and business services grew considerably. After peaking in 2008/09, however, exports of services declined, as they were strongly affected by the global financial crisis, while imports continued to increase. This led to a substantial reduction in the surplus, to US$35.7 billion, or 2.8% of GDP in 2009/10; the surplus for 2010/11 is also estimated to be significantly lower than in 2008/09. Most affected by the global crisis were business services and communications, while exports of software services continued to grow.

[32] Department of Commerce (2011).

Chart I.2
Direction of merchandise trade, 2006/07 and 2009/10



***Source*: WTO calculations, based on Department of Commerce online information, "Export Import Data Bank". Viewed at: http://commerce.nic.in/eidb/default.asp [24/02/2011].**

(7) DEVELOPMENTS IN FOREIGN DIRECT INVESTMENT

46. India has benefited from large inflows of capital during the period under review, both in the form of portfolio investment and as foreign direct investment (FDI). Annual FDI inflows grew from US$22.86 billion in 2006/07 to US$37.76 billion in 2009/10.

47. FDI inflows have been strong in telecommunications (reflecting partly large auctions of licences) and in other services. Inflows have also been robust in housing and real estate, and construction, as well as power-related activities and the automobile sector (Table I.5). Increased FDI inflows during the period reflect to a large extent the increase in FDI limits in various sectors (Chapter II(4)(ii)), but also the attractiveness of India's large domestic market and solid economic growth.

Table I.5
Foreign direct investment inflows/outflows, by economic activity, 2006-11[a]
(US$ million)

	2006/07	2007/08	2008/09	2009/10	2010/11[b]
Total inflows, net	22,826	34,835	37,838	37,763	25,949
Total inflows, based only on equity capital components	12,492	24,575	27,330	25,834	18,355
Services, other than telecommunications	4,698	6,614	6,150	4,324	3,274
Computer software and hardware	2,618	1,425	1,724	919	766
Telecommunications	478	1,261	2,558	2,554	1,410
Housing and real estate	467	2,233	2,801	2,939	1,109
Construction	985	1,743	2,028	2,862	1,072
Automobile industry	276	675	1,152	1,208	1,320
Power	157	974	999	1,437	1,237
Metallurgical industries	173	1,177	961	407	1,044
Petroleum and natural gas	89	1,405	350	271	562
Chemicals (other than fertilizers)	205	229	749	362	384
Other	2,346	6,842	7,858	8,551	6,177
Total outflows, net	10,447	18,442	16,325	12,270	14,246

a Financial years.
b Data until February 2011.

Source: RBI monthly data (February 2011); and Ministry of Finance (2011), *Economic Survey 2010-11*. Viewed at: http://indiabudget.nic.in/. Data based only on equity capital components are taken from the Department of Industrial Policy and Promotion online information, "FDI in India: Statistics". Viewed at: http://www.dipp.nic.in/fdi_statistics/india_fdi_index.htm; and information provided by the Indian authorities.

48. Mauritius remains the largest source of FDI, accounting for approximately 40.2% of inward FDI flows in 2009/10 (Table I.6). Part of these large flows may result from the advantages of the tax treaty between Mauritius and India, which may make it attractive for investors to route their investment through Mauritius to take advantage of the preferential provisions, which include exemption from the capital gains tax. Other major sources during the period under review were Singapore, the United States, Cyprus, and Japan.

Table I.6
Foreign direct investment inflows/outflows, by origin, 2006-11[a]
(US$ million)

	2006/07	2007/08	2008/09	2009/10	2010/11[b]
Total inflows, net	22,826	34,835	37,838	37,763	25,949
Total inflows, based only on equity capital components	12,492	24,575	27,330	25,834	18,355
Mauritius	6,363	11,096	11,229	10,376	5,746
Singapore	578	3,073	3,454	2,379	1,449
United States	856	1,089	1,802	1,943	1,055

Table I.6 (cont'd)

	2006/07	2007/08	2008/09	2009/10	2010/11[b]
United Kingdom	1,878	1,177	864	657	475
Netherlands	644	695	883	899	1,016
Japan	85	815	405	1,183	1,192
Cyprus	58	834	1,287	1,627	633
Germany	120	514	629	626	111
France	117	145	467	303	685
United Arab Emirates	260	258	257	629	321
Other	1,533	4,879	6,053	5,212	5,672
Total outflows, net	10,447	18,442	16,325	12,270	14,246

a Financial years.
b Data until February 2011.

Source: RBI monthly data (February 2011); and Ministry of Finance (2011), *Economic Survey 2010-11*. Viewed at: http://indiabudget.nic.in/. Data based only on equity capital components are taken from the Department of Industrial Policy and Promotion online information, "FDI in India: Statistics". Viewed at: http://www.dipp.nic.in/fdi_statistics/india_fdi_index.htm; and information provided by the Indian authorities.

49. India's total FDI outflows increased from US$10,447 million in 2006/07 to a peak of US$18,442 million in 2007/08. Outflows began to rise again in 2010/11.

II. TRADE POLICY REGIME: FRAMEWORK AND OBJECTIVES

(1) OVERVIEW

1. India has a parliamentary system of Government with a bicameral Parliament and three independent branches: the Executive, the Legislature, and the Judiciary. India has a federal structure with elected governments in the states. The division of legislative powers between Parliament and state legislatures are distributed as per the Constitution (Seventh Schedule). Parliament has exclusive power to legislate on issues related to international trade and agreements, and on some taxes. Each law may contain clauses authorizing the Central Government to implement individual articles at different times. This process can take several years and may leave gaps in the legal system regarding implementation.

2. Trade policy is formulated and implemented mainly by the Ministry of Commerce and Industry, along with other concerned ministries and agencies including the Ministry of Finance, the Ministry of Agriculture, and the Reserve Bank of India. India considers trade policy as an instrument to attain its overall economic policy objectives of growth, industrialization, development, and self-sufficiency. However, India also uses trade policy to attain short-term goals such as containing inflation. The use of trade policy to attain short-term, non-trade-related objectives may end up detracting from the stability sought, as constant fine-tuning of policies is required to attain these short-term goals.

3. India is an original Member of the WTO and provides at least MFN treatment to all Members and other trading partners. India is a strong advocate of the multilateral trading system and has historically been party to few regional agreements. However, despite its reservations, regionalism has increasingly become an element of India's overall trade policy objective of enhanced market access for Indian exports. Evidence of this are the seven preferential agreements signed by India during the period under review, as well as the launching of negotiations towards other agreements.

4. India has continued to gradually open its economy to foreign direct investment (FDI). Most sectors are currently at least partially open to FDI, subject to a cap and specific conditions. However, FDI is prohibited in a number of sectors/activities, such as retail trading, some real estate activities, manufacture of tobacco and tobacco substitute, some agriculture activities, and activities reserved for the public sector (i.e. atomic energy and railways). Since 1 April 2010, foreign direct investment (FDI) has been regulated by the "Consolidated FDI Policy" issued by the Department of Industrial Policy and Promotion (DIPP). This consolidation is expected to clarify India's FDI policy and provide for a better understanding and predictability of the foreign investment rules among foreign investors and sectoral regulators.

(2) TRADE POLICY FORMULATION AND IMPLEMENTATION

(i) Institutional and legal framework

5. The Constitution of India, which entered into force on 26 January 1950 provides for a parliamentary system of Government with a bicameral Parliament and an independent Executive, Legislature, and Judiciary. India has a federal structure with elected governments in the states. The constitutional head of the Union is the President.[1] The Parliament consists of the President, the Council of States (Rajya Sabha or the Upper House), and the House of the People (Lok Sabha or the Lower House).

[1] India is a union of 28 states and 7 union territories. The union territories are centrally administered.

6. The President is elected for five years by the members of an electoral college comprising members of both houses of Parliament and of the state legislative assemblies. The President appoints the Prime Minister; the other Ministers are appointed by the President with the advice of the Prime Minister. Article 74 of the Constitution provides for a Council of Ministers, headed by the Prime Minister, to aid and advise the President. The President exercises his/her functions in accordance with the advice of the Council of Ministers. Thus, executive power is, in practice, vested in the Council of Ministers. The Council of Ministers is responsible to the House of the People.

7. Every State has a legislative assembly. The Governor of each State is appointed by the President. The Governor is the head of the State and the executive power of the State is vested in him. The division of legislative powers between Parliament and state legislatures are distributed as per the Constitution (Seventh Schedule). Parliament has exclusive power to legislate on issues related to international trade and agreements, and on some taxes.[2] The states are responsible for other taxes (e.g. agricultural income tax)[3], while Parliament and the states have concurrent powers over economic and social planning; commercial and industrial monopolies, combines, and trusts; electricity; and price controls (Table AII.1).[4]

8. Bills, with the exception of money bills, may originate in either house of Parliament, but must be passed by both houses with a simple majority. Once a bill is passed by one house it is transmitted to the other for assent. If rejected, and if agreement cannot be reached within six months, the President may summon both houses to meet to deliberate and vote on the bill. At the joint sitting, if passed by the majority of members of both houses present and voting, the bill is deemed to be passed. A money bill must be introduced and passed by the House of the People to be transmitted to the Council of States for recommendations.[5] The Council of States has 14 days to return the bill to the House of the People with its recommendations; if this delay is not respected, the bill is deemed to have been passed by both houses. The House of the People may accept or reject all or some of the recommendations of the Council of States. If any of the recommendations are accepted, the money bill is deemed to have been passed by both houses; however, if they are not the bill is passed in its original form (i.e. without the recommendations).

9. A bill must be signed by the President to become law. Once a bill has been passed by both houses, it is presented to the President for assent. The President may amend the bill and return it to either house (except for money bills) for their consideration. However, if the bill is again approved by both houses, with or without the suggested amendments, and resent to the President, the President cannot withhold assent. Once an Act is assented by the President, it is published in the *Gazette of India* for general information. An Act that does not explicitly stipulate a particular date of entry into force, enters into force on the day it receives the assent of the President. Where a provision states that an Act should enter into force on the date stipulated by the Central Government (i.e. the Executive), it will enter into force only when the Central Government indicates it by notification in the *Gazette of India*. Some Acts provide that different sections of the Act should enter into effect at different times.[6] In this case, the Central Government (i.e. the Ministry administratively in charge of the Act) would

[2] Seventh Schedule of the Constitution, List I.

[3] Seventh Schedule of the Constitution, List II.

[4] Seventh Schedule of the Constitution, List III.

[5] Money bills deal with, *inter alia*, the imposition, abolition, remission, alteration or regulation of any tax; the regulation of credit or the provision credit guarantee by the Government of India; the custody of the Consolidated Fund or the Contingency Fund of India, the payment of funds into or the withdrawal from any such Funds; the appropriation of funds out of the Consolidated Fund of India; and the receipt of funds on account of the Consolidated Fund of India or the public account of India or the custody or issue of such money or the audit of the accounts of the Union or of a State (the Constitution).

[6] For more information, see PRS Legislative Research (2010).

notify these provisions on different dates.[7] The "notification" of an Act by sections seems to render the legal system complex, as parts of an Act are enforced while others are not. It is often not clear which parts of an Act have been notified and which have not. In addition, even though there appear to be specific time frames to notify an Act and its rules[8], the process of "notifying" could take several years, which means there may be gaps in the application of the law, rendering the system opaque (Table II.1).

Table II.1
Enforcement of legislation: the case of the Competition Act 2002

Step	Date	*Gazette of India* No.
Competition Act 2002 is published for general information	14 January 2003	12
Sections 3, 4, 10, 13, 15, 16, 18, 19, 20, 21, 25, 26, 27, 28, 31, 32, 33, 34, 35, 36, 38, 39, 41, 42, 43, 45, 46, 47, 48, 54, 55, and 56 (53B, 53N, 53O, 53P, 53Q, 53R, 53T, and 53U) enter into force	15 May 2009	771 and 772
Sections 5, 6, 20, 29, 30, and 31 will enter into force on 1 June 2011	4 March 2011	479
Sections 43A and 44 are under process for notification	n.a.	n.a.

n.a. Not applicable.

Source: WTO Secretariat; and information provided by the Indian authorities.

10. The President has the power to promulgate ordinances when both houses of Parliament are not in session, and the President deems that it is necessary to take immediate action.[9] Ordinances have the same force and effect as Acts of Parliament. However, ordinances must be put before both houses of Parliament for approval once they resume work. If they are not approved, they cease to operate within six weeks of the reassembly of Parliament, or before if both houses disapprove it. The President may withdraw an ordinance at any time. In addition to ordinances, India has other legal and regulatory instruments that have a bearing on the trade and investment environment (Table II.2).

Table II.2
Hierarchy of legal and regulatory instruments, 2011

	Passed/issued by
Constitution of India	Supreme law
Acts of Parliament	Parliament
Ordinances and regulations under Article 240 of the Constitution	Promulgated by the President
Statutory rules, orders, and notifications	Concerned ministries/departments of the Central Government
Statutory regulations	Statutory authorities
Bye-laws	Local bodies
Circulars	Concerned ministries/departments of the Central Government

Note: The same hierarchy is applicable to State laws.

Source: WTO Secretariat; and information provided by the Indian authorities.

11. India's legal system is based on the common law system. The Supreme Court is India's highest judicial body, comprising a Chief Justice and 30 other judges, all appointed by the President. The Supreme Court is primarily the last resort and highest appellate court, taking up appeals against judgments of the High Courts of the states and Union Territories. At the state level, the judicial administration is headed by a High Court. Each State is divided into judicial districts presided over by a district and sessions judge, who is the highest judicial authority in a district. Below this judge, there are subordinate courts of civil and criminal jurisdiction.

[7] It is a characteristic of India's legal system that, in some Acts, section 1(3) indicates if the Act is to enter into force as a whole, at one time, or if it could enter into force by sections.
[8] Ministry of Parliamentary Affairs (2004).
[9] Article 123 of the Constitution.

(ii) Trade policy formulation, implementation, and objectives

12. Trade policy is formulated and implemented mainly by the Ministry of Commerce and Industry, along with other ministries and agencies including the Ministry of Finance, the Ministry of Agriculture, and the Reserve Bank of India (Table II.3).

Table II.3
Main institutions involved in trade policy formulation and implementation, 2011

Institutions	Trade-related functions
Ministry of Commerce and Industry	
Department of Commerce	Regulates, develops, and promotes India's international trade and commerce; responsible for multilateral and bilateral commercial relations and negotiations
Department of Industrial Policy and Promotion	Formulates industrial policy, and monitors industrial production and growth; issues industrial licences; in charge of trade remedy actions (anti-dumping and countervailing); foreign direct investment (FDI) policy and promotion, and FDI approval and facilitation; formulates policies related to intellectual property rights (IPRs) in the fields of patents, trade marks, industrial designs, and geographical indications; and promotes IPRs protection
Directorate General of Foreign Trade	Advises the Government in formulating and issuing the Foreign Trade Policy, the Handbook of Procedures, and their amendments; issues import and export licences
Tariff Commission	Makes recommendations on tariff-related issues taking into account the interests of manufacturers, traders, consumers, and India's international commitments
Ministry of Finance	
Department of Economic Affairs	Prepares and presents the Central Budget and the budgets for the state governments to the Parliament
Foreign Investment Promotion Board	Approves FDI investment proposals
Department of Expenditure	Oversees public financial management system in the Central Government and matters connected with state finances
Department of Revenue	In charge of matters relating to the levy and collection of direct and indirect taxes and levies; enforces the Foreign Exchange Management Act, Customs Act 1962, and related matters, and the Customs Tariff Act 1975; levies taxes on sales in the course of inter-state trade or commerce
Central Board of Excise and Customs	Formulates policy concerning the levy and collection of customs duty, central excise duty, and service tax; the prevention of smuggling; and the administration of matters relating to customs, central excise, service tax, and narcotics
Reserve Bank of India	Supervises the financial system; issues currency; manages foreign exchange reserves
Ministry of Consumer Affairs, Food, and Public Distribution	
Department of Consumer Affairs	Monitors prices, availability of essential commodities, and consumer movement in India; controls some statutory bodies (e.g. Bureau of Indian Standards, and Weights and Measures Unit)
Bureau of Indian Standards	Develops and formulates Indian standards and provides certification of products, processes, and management system
Department of Food and Public Distribution	Formulates and implements national policies on procurement, movement, storage, and distribution of food grains; formulates policies concerning the sugar subsector, and imports and exports of rice, wheat, and edible oil
Ministry of Chemicals and Fertilizers	
Department of Fertilizers	Plans and monitors the production, imports, and distribution of fertilizers; manages the financial assistance for indigenous and imported fertilizers for agricultural use
Department of Pharmaceuticals	Fixes/revises prices of scheduled drugs; monitors the price of drugs and pharmaceuticals as per the Drug Price Control Order 1995
Ministry of Steel	Formulates policies regarding the production, pricing, distribution, import, and export of iron and steel, ferro alloys, and refractories
Ministry of Textiles	Develops export promotion strategies and trade regulation

Table II.3 (cont'd)

Institutions	Trade-related functions
Ministry of Agriculture	
Department of Agriculture and Cooperation	
Trade Division	Coordinates export and import of agricultural commodities
Plant Protection Division	Plant protection and quarantine, and pest management
Department of Animal Husbandry, Dairying, and Fisheries	Develops sanitary requirements for imports of animals and animal products, including dairy, poultry, meat, and fishery products; protects livestock health
Ministry of Petroleum and Natural Gas	Responsible for the exploration, production, refining, distribution and marketing, import, and export of oil and natural gas

Source: Government of India Web Directory online information. Viewed at: http://goidirectory.nic.in/index.php; and information provided by the Indian authorities.

13. The mandate of the Department of Commerce at the Ministry of Commerce and Industry is to formulate India's international trade and commercial policy and implement it. The Director General of Foreign Trade advises the Government in the formulation of India's Foreign Trade Policy (FTP) after consulting with various trade bodies, such as the Federation of Indian Export Organisations, the Federation of Indian Chambers of Commerce and Industry, the Confederation of Indian Industries, and various export promotion councils. The FTP is issued every five years but reviewed periodically to take into account domestic and international events. The FTP is updated through the issue of notifications by the Director General of Foreign Trade, an office attached to the Ministry of Commerce and Industry, which is in charge of implementing it. The Tariff Commission, also within the Ministry, issues recommendations on the appropriate tariff levels.[10] However, the tariff and other duties are under the purview of the Central Board of Excise and Customs (CBEC) at the Ministry of Finance.

14. India considers trade policy as an instrument to attain its overall economic policy objectives of growth, industrialization, development, and self-sufficiency. In its 2004-09 Foreign Trade Policy (FTP), India highlighted the need to expand trade, setting two objectives: (i) to double India's share of global merchandise trade within five years; and (ii) to use trade expansion as a policy to promote economic growth and employment generation.[11] In the context and aftermath of the global economic and financial crisis, India has sought to arrest and reverse the declining trend of exports, and to provide additional support especially to sectors hit badly by the global recession, as asserted in the 2009-14 FTP. India's short-term objective, in accordance with the latest FTP, is to achieve annual export growth of 15%; the long-term objective is to accelerate the export growth rate to 25% per annum and double India's share in global trade by 2020. In order to meet these objectives, India implements a mix of policies including tax incentives, export promotion (Chapter III(3)(vii), (viii), and (ix)), and credit facilitation (Chapter IV(3)(ii)). The Government is attempting to improve the infrastructure to enhance exports, bringing down transaction costs, and providing full refunds of all indirect taxes and levies. In the latest Budget, the authorities have further expressed the need for supporting wider export market and product diversification.[12]

15. Although India aims to provide a stable trade policy environment to reach its long-term goals, it also uses trade policy to attain short-term goals such as containing inflation. This use of trade policy for short-term non-trade-related objectives may detract from the stability sought, as it requires constant fine-tuning of policies to attain these short-term goals (Table II.4). Trade policy is also used as an element of industrial policy, for example to protect the local industry through its applied tariff and the use of contingency measures (Chapter III(2)(iv) and (viii)). Trade policy seems to be lacking

[10] Tariff Commission online information. Viewed at: http://tc.nic.in/.
[11] Department of Commerce (2010a).
[12] Ministry of Finance (2010c).

an overall thrust and is being conducted mostly on a sector or product basis. This has resulted sometimes in actions with an anti-export bias (such as setting minimum export prices or applying export taxes), in contrast with the asserted general goal of seeking export expansion.

Table II.4
Changes in export policy: the case of cotton and onions, August 2009-March 2011

Product	Export policy	Date
Cotton (not carded or combed), cotton waste (including yarn waste and garneted stock), and cotton (carded or combed)	Free, subject to registration with the Textile Commissioner prior to shipment and clearance of consignments by Customs	23.08.2009
	Restricted (export licence)	21.05.2010
	Free, subject to registration with the Textile Commissioner prior to shipment and clearance of consignments by Customs	17.08.2010[a]
	Free, subject to registration with the Directorate General of Foreign Trade (DGFT) prior to shipment and clearance of consignments by Customs	16.12.2010
Cotton yarn	Free, subject to registration with the Textile Commissioner prior to shipment and clearance of consignments by Customs	09.04.2010
	Restricted (export licence)[b]	22.12.2010
	Free, subject to registration with the DGFT prior to shipment and clearance of consignments by Customs	31.03.2011
Onions (all varieties), including Bangalore rose onions and Krishnapuram onions fresh or chilled, frozen, provisionally prepared or dried but excluding onions cut, sliced or broken in powder form	State trading, subject to a minimum export price fixed by the National Agricultural Cooperative Marketing Federation of India	23.08.2009
	Prohibited	22.12.2010
Onions (all varieties except Bangalore Rose onions and Krishnapuram onions) excluding onions cut, sliced or broken in powder form	Prohibited	10.02.2011
	State trading, subject to a minimum export price (US$600/tonne) notified by the DGFT[c]	18.02.2011
	State trading, subject to a minimum export price (US$450/tonne) notified by the DGFT[c]	01.03.2011
	State trading, subject to a minimum export price (US$350/tonne) notified by the DGFT[c]	08.03.2011
	State trading, subject to a minimum export price (US$275/tonne) notified by the DGFT[c]	16.03.2011
	State trading, subject to a minimum export price (US$225/tonne) notified by the DGFT[c]	23.03.2011
	State trading, subject to a minimum export price (US$170/tonne) notified by the DGFT[c]	31.03.2011
Bangalore Rose onions and Krishnapuram onions excluding cut, sliced or broken in powder form	Restricted (export licence), subject to a minimum export price (US$1,400/tonne) notified by the DGFT[c]	10.02.2011
	State trading, subject to a minimum export price (US$1,400/tonne) notified by the DGFT[c]	18.02.2011
	State trading, subject to a minimum export price (US$600/tonne) notified by the DGFT[c]	23.03.2011
Onions (all varieties) cut, sliced or broken in powder form	Free	18.02.2011

a To enter into force on 1 October 2010.
b However, exporters who obtained a registration certificate from the Textile Commissioner up to 1 December 2010 (inclusive), are allowed to export cotton yarn within the quantity limit stipulated in the certificate and within the certificate validity. In addition, manufacturers who manufacture and export cotton yarn out of the imported raw cotton are exempt from the restriction.
c On the basis of decisions taken by an inter-ministerial committee of the Department of Commerce.

Source: Department of Commerce (2010), "Schedule 2: Export Policy", *Foreign Trade Policy 2009-14*, incorporating Annual Supplement, 23 August. Viewed at: http://dgft.gov.in; Directorate General of Foreign Trade online information, "Notifications". Viewed at: http://dgft.gov.in; and information provided by the Indian authorities.

(3) TRADE AGREEMENTS AND ARRANGEMENTS

(i) World Trade Organization

16. India is a founding Member of the WTO and provides MFN treatment to all Members and other trading partners. India accepted the Fourth and Fifth Protocols and is a Member of the Information Technology Agreement. India became an observer to the WTO Government Procurement Agreement on 10 February 2010.

17. India submitted a large number of notifications during the period under review, mainly anti-dumping, technical barriers to trade, and SPS measures, but notifications are lagging behind in certain areas, for example, agriculture and quantitative restrictions (Table AII.2).[13]

18. During January 2007–February 2011, India was involved in five cases under the WTO DSU: India was the respondent in three cases and the complainant in two. India has been involved as a third party in 14 cases brought to the DSB (Table II.5).

Table II.5
WTO dispute settlement cases involving India, 2007-11

Subject	Respondent/ complainant	Status (May 2011)	WTO document series
India as respondent			
Measures affecting imports and sale of wines and spirits from the EU	India/ EU	Authority for panel lapsed 17 July 2008	WT/DS352
Additional and extra-additional duties on imports from the United States	India/ United States	Panel and Appellate Body reports adopted 17 November 2008. No further action required	WT/DS360
Certain taxes and other measures on imported wines and spirits	India/ EU	Consultations 22 September 2008	WT/DS380
India as complainant			
Expiry reviews of anti-dumping and countervailing duties imposed on imports of PET from India	EU/ India	Consultations 4 December 2008	WT/DS385
Seizure of generic drugs in transit	EU (Netherlands)/ India	Consultations 11 May 2010	WT/DS408
India as a third party			
Measures affecting the protection and enforcement of intellectual property rights	China/ United States	Implementation by respondent notified 19 March 2010	WT/DS362
Indicative prices and restrictions on ports of entry	Colombia/ Panama	Implementation by respondent notified 18 February 2010	WT/DS366
Customs and fiscal measures on cigarettes from the Philippines	Thailand/ Philippines	Panel report under appeal 22 February 2011	WT/DS371
Tariff treatment of certain information technology products	EU/ United States	Panel report adopted, with recommendation to bring measure into conformity	WT/DS375
	EU/ Japan	21 September 2010	WT/DS376
	EU/ Chinese Taipei		WT/DS377
Definitive anti-dumping and countervailing duties on certain products from China	United States/ China	Appellate Body and Panel reports adopted 25 March 2011	WT/DS379
Certain country-of-origin labelling requirements	United States/ Canada	Panel composed 10 May 2010	WT/DS384
	United States/ Mexico		WT/DS386

Table II.5 (cont'd)

[13] WTO Central Registry of Notifications. Viewed at: http://docsonline/GEN_CRNsearch.asp.

Subject	Respondent/ complainant	Status (May 2011)	WTO document series
Measures affecting imports of bovine meat and meat products from Canada	Korea/ Canada	Panel composed 13 November 2009	WT/DS391
Measures related to exports of various raw materials	China/ United States	Panel composed 29 March 2010	WT/DS394
	China/ EU		WT/DS395
Taxes on distilled spirits	Philippines/ EU	Panel composed 5 July 2010	WT/DS396
	Philippines/ United States		WT/DS403
Definitive anti-dumping measures on certain iron or steel fasteners from China	EU/ China	Panel report under appeal 25 March 2011	WT/DS397
Measures related to the exportation of various raw materials	China/ Mexico	Panel composed 29 March 2010	WT/DS398
Anti-dumping measures on certain shrimp from Viet Nam	United States/ Viet Nam	Panel composed 26 July 2010	WT/DS404
Countervailing and anti-dumping duties on grain oriented flat-rolled electrical steel from the United States	China/ United States	Panel composed 13 May 2011	WT/DS414

Source: WTO Secretariat.

19. India has participated actively in the Doha Development Agenda (DDA) negotiations. India considers that the purpose of these negotiations is to come to a balanced outcome in line with the development mandate and that the development dimension should be the defining feature of all outcomes in the Round. India has submitted proposals individually and with other developing countries regarding, *inter alia*, agriculture, non-agriculture market access (NAMA), services, trade facilitation, and IPRs.[14]

(ii) Regional trade agreements

20. During the period under review, India signed seven preferential agreements and started negotiations with the EU (28 June 2007), SACU (5 October 2007), EFTA (6 October 2008)[15], the Gulf Cooperation Council (GCC) (under negotiation since 2006), and New Zealand.[16] Signing regional trade agreements is an element of India's overall trade policy objective of enhanced market access for Indian exports. However, despite this generally positive view of regional agreements, India has some reservations regarding regionalism because of its complexity and possible trade diversion.[17]

21. India is a signatory to the Asia Pacific Trade Agreement (APTA) and the South Asian Free-Trade Agreement (SAFTA). Since its last Review, in 2007, India has signed an agreement with the Association of Southeast Asian Nations (ASEAN), which entered into force in 2010, and an agreement with MERCOSUR, which was signed in 2004 but entered into force in June 2009 (Table AII.3). Prior to signing an agreement with ASEAN, India had bilateral agreements with Thailand and Singapore, both of which are members of ASEAN. The bilateral agreements signed since 2007 have also been with countries belonging to a regional agreement to which India is a party. For instance, India renewed a bilateral agreement with Nepal, a member of SAFTA (which entered

[14] Ministry of Finance (2011a); and WTO documents TN/C/M/30, 7 May 2010, and TN/MA/S/21/Rev.5, 26 November 2010.

[15] Early Announcements of Negotiations.

[16] For a full list of other agreements under negotiations, see Department of Commerce online information, "Trade: International Trade: Other Agreements/Negotiations". Viewed at: http://commerce.nic.in/trade/international_ta.asp.

[17] Ministry of Finance (2011a).

into force in 2009), and signed new agreements with the Republic of Korea, a member of APTA (which entered into force on 1 January 2010), and with Malaysia (to enter into force by 1 July 2011), a member of ASEAN (Table AII.3). The authorities noted that tariff concessions under bilateral agreements with countries that also belong to regional agreements to which India is a party, are generally wider and deeper than those under the regional agreements and that the trader can choose which preference to use. In regards to rules of origin, the authorities mentioned that product specific rules of origin are not necessarily the same in the bilateral and regional agreements but that the origin criterion for products not covered by specific rules have, by and large, been harmonized. India signed an agreement with Japan in February in 2011.

22. In 2004, the members of the Bay of Bengal Initiative on Multi-Sectoral Technical and Economic Cooperation (BIMSTEC) signed a Framework Agreement to form a free-trade area by 2012.[18] The agreement provided for the negotiations to be concluded by end 2005 for goods and by end 2007 for services and investment; however, these deadlines have not been met and negotiations are still under way. Negotiations on trade in goods are to be finalized by 2011, the timeline for concluding the negotiations on services and investment has been extended and no deadlines have been defined.[19]

(4) INVESTMENT REGIME

(i) Business environment

(a) Regulatory framework

23. The Companies Act 1956 regulates the incorporation and the functioning of domestic and foreign companies. Other laws that have a bearing on the business environment are: the Indian Partnership Act 1932; the Arbitration and Reconciliation Act 1996; the Competition Act 2002; the Foreign Exchange Management Act 1999; and various tax and intellectual property laws and regulations (Chapter III).

24. A foreign company may operate in India either as an Indian company or as a foreign company. However, incorporation facilitates a company's access to credit and to the Indian financial market, as well as entering into contracts in its own name, and acquiring and disposing of immovable property. Foreign companies may set up operations through any of the forms of business establishment used in India[20], subject to the approval of the Reserve Bank of India and other dispositions of the Consolidated FDI Policy (section (ii) below). Wholly owned subsidiaries may be set up in sectors where 100% FDI is permitted under the Consolidated FDI Policy. Foreign investors may form joint ventures to invest in sectors where 100% FDI is not permitted.

25. A foreign branch office represents the parent company in India; it may export/import, coordinate with local buyers and sellers, provide technical support for products sold in India, develop software and engage in the airline/shipping business. A branch office is not allowed to manufacture in India but it may subcontract with an Indian manufacturer. The role of a liaison office is to collect market information, and provide information about the company and its products to prospective Indian customers. A project office may be set up by foreign companies planning to execute specific projects in India.

[18] The members are Bangladesh, Bhutan, India, Myanmar, Nepal, Sri Lanka, and Thailand.
[19] Information provided by the authorities.
[20] A company may be incorporated in India as a private limited company, a public limited company, a partnership, a joint venture, a sole proprietorship, a trust, a foreign branch or a limited liability partnership.

26. At least 12 procedures are required to set up a business in India (Table II.6). These apply in most of India but may vary due to differences in rules at the state level. The World Bank estimates that it takes 29 days at a cost of some 56.54% of GNI per capita to start a business in India. In 2010, India ranked 165 out of 183 economies for ease of starting a business, up from 168 in 2009.[21]

Table II.6
Setting up a business, 2011

	Procedure	Time to complete (days)[a]	Cost (Rs)
1.	Obtain director identification number (online)	1	100[b]
2.	Obtain digital signature certificate (online)	3	400-2,650[c]
3.	Reserve the company name with the Registrar of Companies (online)	1-2	500[b]
4.	Pay stamp duties (online), file all incorporation forms and documents (online), and obtain the certificate of incorporation	1-2	18,789[d]
5.	Make a seal	1	350
6.	Visit an authorized franchise or agent appointed by the National Securities Depositary Services Ltd. or the Unit Trust of India Investors Services Ltd., to obtain a permanent account number	7	99
7.	Obtain a tax account number for income taxes deducted at source from the Assessing Office in the Mumbai Income Tax Department	7	60
8.	Register with the Office of Inspector under the provisions of the Mumbai Shops and Establishment Act 1948	2	8,000
9.	Register for VAT (online)	10	525
10.	Register for profession tax	2	Free
11.	Register with the Employees' Provident Fund Organization	12	Free
12.	Register for medical insurance	9	Free

a There might be a time overlap.
b Government fee.
c Fees vary from one agency to another.
d Government fee based on the authorized capital.

Source: International Bank for Reconstruction and Development and World Bank (2011), *Doing Business 2011: India: Making a Difference for Entrepreneurs*. Viewed at: http://www.doingbusiness.org/~/media/fpdkm/doing%20business/documents/profiles/country/db11/IND.pdf; and information provided by the Indian authorities.

(b) Industrial licensing and zoning

27. Industrial licences are regulated under the Industries (Development and Regulation) Act 1951 and are still required for specific industries. Prior to 2008, most domestic or foreign industries required an industrial licence to operate in India including those under "locational" restrictions (see below). As of 2008, the scope of industrial licensing was reduced and now industrial licences are compulsory for: (i) five specific industries (Table II.7); (ii) "non-micro and small enterprises (MSEs)" manufacturing items reserved for MSEs (see below); and (iii) industries manufacturing items reserved for the public sector (i.e. railway transport and atomic energy).[22]

28. Industrial licences are issued by the Secretariat of Industrial Assistance (SIA) under the Department of Industrial Policy and Promotion, upon recommendation by the Licensing Committee. A licence is issued within 4-6 weeks from the date of application, upon payment of a fee of Rs 2,500.[23] Fees do not vary according to industry. Industries, other than micro and small enterprises, established in a free-trade zones are exempt from the licensing obligation.[24]

[21] International Bank for Reconstruction and Development and World Bank (2011).
[22] IBEF (2008), page 6.
[23] IBEF (2008), page 6.
[24] Department of Industrial Policy and Promotion (2010).

Table II.7
Industries for which industrial licensing is compulsory, 2011

Distillation and brewing of alcoholic drinks
Cigars and cigarettes of tobacco, and manufactured tobacco substitutes
Electronic aerospace and defence equipment (all types)
Industrial explosives, including detonating fuses, safety fuses, gun powder, nitrocellulose, and matches
Specified hazardous chemicals (hydrocyanic acid and derivatives; phosgene and derivatives; and isocyanates and diisocyanates of hydrocarbon, n.e.s.

Source: Department of Industrial Policy and Promotion (2010), *Annual Report 2009-10.* Viewed at: http://dipp.nic.in/anrepo_e/AnnualReport_Eng_2009-10.pdf.

29. Industries exempt from industrial licensing must register with SIA and file an industrial entrepreneur's memorandum (IEM). Fees for filing an IEM are Rs 1,000 for up to ten items to be manufactured, and Rs 250 for up to ten additional items. All industries, whether or not licensed, must submit monthly production reports for statistical purposes.[25]

30. Prior to 2008, all industries were subject to an industrial licence (based on "location") if they were established within 25 km of the "standard urban limits" in 23 cities, with over 1 million inhabitants (as per the 1991 census). Exemptions were granted if industries were considered to be non-polluting or were planning to locate in specific areas designated as "industrial areas", prior to 25 July 1991. The locational restriction was removed in August 2008. At present, entrepreneurs are free to select the location for setting up industries.[26] Despite the elimination of the "locational" restriction, the establishment of an industry remains subject to zoning, to land use regulations at the state level, and to environmental regulations at the central level.[27] Prior environmental clearance is required for all domestic or foreign companies planning a project in an area listed in the Schedule to the 2006 Environmental Impact Assessment (EIA) Notification.[28]

(c) Micro, small, and medium enterprises

31. The Micro, Small, and Medium Enterprises Development (MSMED) Act entered into force in 2006. Prior to the enactment of this Act there was no definition for medium-sized enterprises, while micro and small enterprises (MSEs), which were known as small-scale industries, were defined according to the amount invested in fixed assets (including plant and machinery).[29] Under the MSMED Act 2006, enterprises are classified as micro, small, and medium enterprises based on the amount invested in the plant and machinery (for manufacturing units), and equipment (for service providers).[30]

32. Registration for micro, small, and medium enterprises (MSMEs) is voluntary; most MSMEs (some 94%) are not registered, and a large number of them operate in the informal sector.[31] However,

[25] IBEF (2008).
[26] Government of Gujarat's Industries Commissionerate, "Industrial Licensing Policy". Viewed at: http://www.ic.gujarat.gov.in/Ind_guj/industrial_licensing_policy.html; and Department of Industrial Policy and Promotion (2010).
[27] Department of Industrial Policy and Promotion (2010).
[28] The environmental impact assessment of developmental projects is undertaken according to the provisions of the Environmental Impact Assessment (EIA) Notification 2006 (Ministry of Environment and Forests online information, "Rules and Regulations: Environment Protection: Environmental Clearance". Viewed at: http://www.moef.nic.in/legis/env_clr.htm).
[29] For details, see Development Commissioner (2009).
[30] For details, see Micro, Small, and Medium Enterprises Development Act 2006, Chapter III. Viewed at: http://msme.gov.in/msme_actsrules.htm.
[31] Government of India (2010).

a registration certificate is seen as a proof of the company being a small-scale unit and enables registered MSMEs to benefit from central and state incentives and facilities and government procurement preferences (Chapter III). The registration certificate is granted on a permanent basis, even if an MSMEs is already in operation; registration is product- and location-specific. A provisional registration certificate may be given to MSMEs to be established, to facilitate access to credit, and approval and clearance procedures (e.g. land approval and environmental clearance). MSMEs may be deregistered if they: exceed the levels of investment stipulated in the MSMED Act 2006; manufacture items that require an industrial licence; or do not satisfy the condition of being owned, controlled or being a subsidiary of any other industrial undertaking.[32]

33. Small enterprises as defined under the MSMED Act 2006, require a carry-on-business (COB) licence if they exceed the prescribed limit of investment in plant and machinery and continue to manufacture reserved items. If the production capacity for which the COB licence has been granted is exceeded, small enterprises must obtain an industrial licence and they lose their small-scale status.[33] Reserved products may also be manufactured by non-MSEs subject to an industrial licence and to an export obligation of at least 50% of their annual production within three years.[34] Industries manufacturing items reserved for micro and small enterprises when established in a free-trade zone, are exempt from the licensing obligation.[35]

34. Prior to the enactment of the MSMED Act in 2006, the amount of domestic and foreign equity participation in MSEs was capped at 24%.[36] The foreign equity ceiling was removed in February 2009.[37] However, prior approval from the Foreign Investment Promotion Board is still required if foreign equity in these industries exceeds 24% (Table AII.4).

(ii) Foreign investment regime

35. Since 1 April 2010, foreign direct investment (FDI) has been regulated by the Consolidated FDI Policy issued by the Department of Industrial Policy and Promotion (DIPP).[38] The first Consolidated FDI Policy was issued in 1 April 2010 to reflect the current regulatory framework by consolidating all prior regulations on FDI contained in the Foreign Exchange Management Act (FEMA) 1999, the Foreign Exchange Management (Transfer or Issue of Security by a Person Resident Outside India) Regulations 2000, and the Reserve Bank of India circulars and press notes. This consolidation is expected to clarify India's FDI policy and provide for a better understanding and predictability of the foreign investment rules among foreign investors and sectoral regulators. Changes to the FDI policy are proposed by any ministry, discussed in inter-ministerial meetings, approved by Cabinet, and released through press notes by the DIPP.[39] These changes are reflected in

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[32] Development Commissioner online information, "SSI Registration". Viewed at: http://www.dcmsme.gov.in/howtosetup/grgxx01x.htm; and Business Portal of India online information, "Micro, Small, and Medium Enterprises: Registration of Small-Scale Industries". Viewed at: http://business.gov.in/Industry_services/regs_ssi.php.

[33] IBEF (2008); and UHY (2008).

[34] COB licences, as opposed to the licences granted to large enterprises undertaking activities reserved for the MSM enterprises, are not subject to an export obligation.

[35] Department of Industrial Policy and Promotion, Press Note No. 6, 4 September 2009; and Department of Industrial Policy and Promotion (2010).

[36] Department of Industrial Policy and Promotion, Press Note No. 6, 4 September 2009.

[37] Department of Industrial Policy and Promotion, Press Note No. 6, 4 September 2009.

[38] Department of Industrial Policy and Promotion, Circular No. 1 of 2011 (Consolidated FDI Policy (effective from 1 April 2011)), 31 March 2011.

[39] OECD (2009b).

the Consolidated FDI Policy issued every six months.[40] Sectors not listed in the Policy are 100% open to FDI under the automatic route subject to applicable laws, rules, and security conditions.[41]

36. The three main institutions that handle FDI-related issues in India are the Foreign Investment Promotion Board (FIPB), the Foreign Investment Implementation Authority (FIIA), and the Secretariat for Industrial Assistance (SIA). The FIPB, under the Ministry of Finance, chaired by the Secretary of Economic Affairs and consisting of senior secretaries[42], is in charge of examining and approving foreign investment proposals in sectors were investment is not allowed through the automatic route. Investment above a specific threshold requires additional approval from the Cabinet Committee on Economic Affairs (see below).[43]

37. The SIA, under the DIPP, acts as the Secretariat of the FIIA.[44] The Secretariat is the single window for investors. It processes all applications that require Government approval, assists entrepreneurs and investors in setting up projects (including liaison with other organizations and the state level), and monitors their implementation.[45]

38. FDI is allowed in Indian companies (including micro and small enterprises), partnership firms, venture capital funds, and in limited liability partnerships (LLPs) firms.[46] FDI in LLPs has been allowed since May 2011, with FIPB approval, in sectors where 100% FDI is allowed through the automatic route and where FDI is not linked to any performance conditions.[47] FDI may be freely repatriated.[48]

39. Most sectors are at least partially open to FDI, subject to a cap and specific conditions (Table AII.4). However, the number of sectors/activities in which FDI is prohibited increased during the review period (Table II.8).[49] There are two entry routes for FDI in India. In sectors where FDI is allowed up to 100%, FDI enters under the automatic route, subject to sectoral regulations and other conditions (Table AII.4). In this instance, no approval is required from the Reserve Bank of India (RBI) or the Government; however, the investment must be notified to the RBI's regional office

[40] Department of Industrial Policy and Promotion, Circular No. 1 of 2011 (Consolidated FDI Policy (effective from 1 April 2011)), 31 March 2011; and India Brand Equity Foundation online information, "Foreign Direct Investment". Viewed at: http://www.ibef.org/artdispview.aspx?in=23&art_id=27538&cat_id=412&page=2.

[41] Department of Industrial Policy and Promotion, Circular No. 1 of 2011 (Consolidated FDI Policy (effective from 1 April 2011)), Paragraph 5.2, 31 March 2011.

[42] The FIPB is chaired by the Secretary of the Department of Economic Affairs. It also comprises the secretaries of three departments (Industrial Policy and Promotion, Commerce, and Economic Relations) and by the Secretary of the Ministry of Overseas Indian Affairs.

[43] The Cabinet Committee on Economic Affairs (CCEA) is headed by the Prime Minister and constituted by the Ministers of: Defence; Agriculture; Consumer Affairs, Food, and Public Distribution; Railways; Chemicals and Fertilizers; Finance; Road Transport and Highways; Commerce and Industry; Power; Rural Development; and Communications and IT; and the Deputy Chairman of the Planning Commission as a special invitee (Andhra News online information, "Cabinet Committee on Economic Affairs constituted". Viewed at: http://www.andhranews.net/india/2004/jun/EconomicAffairs.asp).

[44] National Council of Applied Economic Research (2009).

[45] Department of Industrial Policy and Promotion online information, "What is SIA?" Viewed at: http://siadipp.nic.in/sia/default.htm.

[46] Department of Industrial Policy and Promotion, Circular No. 1 of 2011 (Consolidated FDI Policy (effective from 1 April 2011)), 31 March 2011.

[47] Information provided by the authorities.

[48] OECD (2009b).

[49] At the time of the last Review of India, investment was prohibited in: retail trading (except single brand product retailing); atomic energy; lottery business; and gambling and betting (WTO, 2007).

within 30 days.[50] In sectors where FDI is capped, prior approval from the FIPB is required. FIPB recommendations must be cleared by the Ministry of Finance for FDI proposals below or equivalent to Rs 12 billion, and by the Cabinet Committee of Economic Affairs for FDI proposals of Rs 12 billion or more.[51] Over April 2007-December 2009, the FIPB approved 949 FDI proposals with total investment of Rs 404 billion.[52]

Table II.8
Sectors where FDI is prohibited, 2011

Sectors
Retail trading (except single brand product retailing)[a]
Lottery business[a, b]
Gambling and betting activities (e.g. casinos)[a, b]
Real estate business (except development of townships, housing, built-up infrastructure, and construction-development projects) or construction of farm houses
Agricultural activities (except floriculture, horticulture, development of seeds, animal husbandry, fish farming, aqua culture, cultivation of vegetables and mushrooms under controlled conditions, and services related to agro and allied); and plantation activities (except tea plantation)
Business of chit fund
Nidhi company
Trading in transferable development rights
Manufacture of cigars, cheroots, cigarillos and cigarettes, of tobacco or of tobacco substitute
Activities reserved for the public sector, i.e. atomic energy[a] and railways

a FDI was prohibited in 2007.
b Foreign technology collaboration (e.g. licensing for franchise, trade mark, brand name, and management contract) is also prohibited.

Source: Department of Industrial Policy and Promotion, Circular No. 1 of 2011 (Consolidated FDI Policy (effective from 1 April 2011)), 31 March 2011; RBI Circular No. 13/2010-11, 1 July 2010; and WTO (2007), *Trade Policy Review: India*, Geneva.

40. The Indian economy seems to be more open to FDI as a result of the recent policy changes. However, even where FDI is allowed up to 100% and under the automatic route, specific conditions or permits apply, which could in some cases be more restrictive than an explicit investment cap.

41. Despite its generally open policy thrust, India restricts investment from companies or nationals of certain countries. Pakistani citizens or entities incorporated in Pakistan, may not invest in India. In addition, Bangladeshi citizens or entities incorporated in Bangladesh are allowed to invest, subject to governmental approval.[53] Non-resident Indians living in Nepal and Bhutan, and Nepali and Bhutan citizens are allowed to invest on a repatriation basis, on condition that the investment amount is paid by way of inward remittances in free foreign exchange through normal banking channels.[54]

[50] National Council of Applied Economic Research (2009).

[51] Until March 2010, the threshold was Rs 6 billion. See Department of Industrial Policy and Promotion, Press Note No. 1 of 2010, 25 March 2010; and Department of Industrial Policy and Promotion, Circular No. 1 of 2011 (Consolidated FDI Policy (effective from 1 April 2011)), 31 March 2011. For further details on procedures for investment under automatic or governmental routes, see Reserve Bank of India online information, "Foreign Investments in India (Updated up to 13 October 2010)". Viewed at: http://www.rbi.org.in/scripts/faqview.aspx?id=26.

[52] Foreign Investment Promotion Board (2010).

[53] Reserve Bank of India, Master Circular No. 13/2010-11, 1 July 2011.

[54] Department of Industrial Policy and Promotion, Circular No. 1 of 2011 (Consolidated FDI Policy (effective from 1 April 2011)), 31 March 2011.

42. India has signed 79 bilateral investment promotion and protection agreements (BIPA), of which 70 have entered into force (31 October 2010).[55] It is negotiating 20 bilateral investment protection agreements.[56]

43. Governments at the central and state level offer a number of incentives to domestic and foreign investors, with a view to stimulating growth and development. The incentives are in line with the Government's broad development plan, and are thus revised regularly to accommodate new areas of emphasis (Chapter III(4)(i)).[57]

[55] Since January 2007, BIPAs have been signed with 18 countries, of which 11 have come into force.
[56] OECD (2009b).
[57] OECD (2009b).

III. TRADE POLICIES AND PRACTICES BY MEASURE

(1) INTRODUCTION

1. During the period under review, India continued to streamline customs procedures and implement trade facilitation measures. An electronic system for customs clearance has been introduced, and a risk management system is also in place to selectively screen high and medium risk cargo for customs examination. Despite these measures, India's import regime remains complex, especially its licensing and permit system, and its tariff structure, which has multiple exemptions that vary according to product, user, or specific export promotion programme.

2. India's tariff is announced in the annual Budget but individual tariff rates may be changed during the year. In addition to the standard tariff rate, importers are required to pay an additional duty ("countervailing duty") and a special additional duty instead of local taxes. To determine the "effective" applied tariff rate (i.e. basic duties and other customs duty) on a particular product, separate customs and excise tax schedules must be consulted, which adds to the complexity of the tariff. India's tariff comprises mainly *ad valorem* rates (some 94% of tariff lines), levied on the c.i.f. value of imports; and some alternate or specific duties (6.1% of all tariff lines). During the period under review, the average tariff rate declined: the simple average applied MFN tariff was 12% in 2010/11, down from 15.1% in 2006/07. This is reflected in a decrease in both agricultural and industrial average tariffs due to India's shift towards lower tariffs.

3. Import restrictions may be imposed on grounds of, *inter alia*, health, safety, moral, and security reasons, and for self-sufficiency and balance-of-payments reasons. India links the use of import restrictions and licensing, and other non-tariff measures (NTMs) to domestic policies; for example, NTMs are relaxed when imports are necessary to alleviate inflation or shortages. State trading is also used as a policy tool, to ensure, *inter alia*, a "fair" return to farmers, food security, the supply of fertilizer to farmers, and the functioning of domestic support price systems. India is one of the most active users of anti-dumping measures among WTO Members. Since its last Review in 2007, India has also imposed several safeguard measures. As a result of an amendment of the legislation as of 2010, safeguard measures may also take the form of quantitative restrictions.

4. As in the case of imports, export prohibitions and restrictions are mainly in place to ensure domestic supply of specific goods and thus may be removed and applied as the circumstances require. In order to reduce the anti-export bias inherent in India's import and indirect tax regime, a number of duty remission and exemption schemes are in place to facilitate exports. Tax holidays are also available to investors through the export-processing zones and export-oriented units.

5. India grants direct and indirect assistance to various sectors. Most central government subsidies are destined for agriculture. Other key subsidies include those for diesel and fertilizers. The states provide additional subsidies, especially for basic services such as education and health, and electricity and water. Price controls apply to some commodities and are used as a means to provide subsidies to farmers and a population under the poverty line, and to ensure a "reasonable price" for quality drugs.

6. Since its last Review, India has made several amendments to its main competition policy legislation and the Competition Commission of India (CCI) created under the Competition Act 2002 started operations in 2009. In addition, some aspects of the law affecting mergers and acquisitions recently entered into force. India became an observer to the WTO Agreement on Government Procurement in February 2010. Its procurement system continues to be decentralized, comprising a multiplicity of entities at different levels of Government (including numerous central public-sector

enterprises), and no common legislation governing procurement. Public procurement is considered as an important instrument of government policy and is used to obtain certain socio-economic objectives. As a result, the Central Government has set reservations and price preferences as part of the procurement system. However, competition from foreign suppliers is ordinarily allowed.

7. India has made improvements in IPR enforcement through increased border protection, and its IP offices continued to pursue promising modernization efforts.

(2) MEASURES DIRECTLY AFFECTING IMPORTS

(i) Customs procedures

(a) Registration and documentation

8. Since its last Trade Policy Review in 2007, India has continued the process of changing to paperless, electronic customs clearance. Importers (Indians and foreign nationals), with a few exceptions, must register with the Directorate General of Foreign Trade (DGFT) and obtain an importer-exporter code (IEC) number to be able to import commercially (Table AIII.1).[1] Since 2007, registration has been online, through application and provision of supporting documents (e.g. bank certificate and income tax permanent number).[2]

9. India has six regimes for entry of imports: (a) imports for home consumption; (b) warehousing; (c) transhipment; (d) transit; (e) re-importation; and (f) imports for special economic zones (SEZs). For home consumption, importers may clear goods after payment of the duties and charges, or for warehousing without immediate payment of duties. Imports cleared for warehousing require a bill of entry, filed with all supporting documents as required for goods for home consumption. The duty payable is determined by Customs. Duties are not paid at the time of warehousing but at the time of the ex-bond clearance, for which an ex-bond bill of entry is filed. The final duty rate is determined when an import declaration is presented for warehoused goods to be imported into the domestic tariff area (DTA). Warehoused goods may be moved from one warehouse to another without payment of taxes (included inter-state taxes). Inter-state tax would be payable only if the movement from one warehouse to another entailed an inter-state sale: in this case, the transaction would be subject to sales tax, entry tax (charged by some states[3]), and octroi if goods are sold to a warehouse located in the State of Maharashtra. In general, transhipment of containers at Indian ports is allowed without any examination by Customs. Transhipped good require a transhipment bill of lading.[4] Transit of goods through India is allowed without payment of duty and without examination by Customs, except if customs officials are informed of the possibility of illegal trade. Goods exported from India may be re-imported within three years but there must be no change in the classification of the goods. Re-imported goods are subject to duties, except goods exported for repairs abroad[5], for exhibitions, or as samples, which may be re-imported duty free. Special economic zones (SEZs) are deemed foreign territory for trade operations. Imports into SEZs enter

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[1] Foreign Trade (Development and Regulation) Act 1992, as amended by the Foreign Trade (Development and Regulation) Amendment Act 2010.

[2] An application in ANF (Aayaat Niryaat Form) 2A is required to register. See Directorate General of Foreign Trade (DGFT) online information. Viewed at: http:dgft.gov.in.

[3] Entry tax on goods is levied in several states, including Jammu and Kashmir, Himachal Pradesh, Rajasthan, Uttar Pradesh, Uttaranchal, Haryana, Punjab, Andhra Pradesh, Karnataka, Tamil Nadu, Kerala, Bihar, Assam, Orissa, Arunachal Pradesh, Chhattisgarh, West Bengal, Maharashtra, Goa, Madhya Pradesh, and Gujarat.

[4] Customs Act 1962, Chapter VIII (Goods in Transit).

[5] In this case, duties are levied on the cost of repair and insurance and freight (Jain, 2007).

without payment of taxes, duties or cess. They are not subject to customs examination at the port; any required examination will take place at the zone.

10. To clear goods for home consumption, importers must file a bill of entry, which may be processed manually or through the electronic data interchange (EDI) system. Supporting documents (e.g. invoice, packing list, and bill of lading/airway bill) must be filed along with the bill of entry if it is processed manually. Import licences from the DGFT, and sanitary and phytosanitary certificates from the Ministry of Agriculture must be obtained prior to importation and submitted along with the customs declaration. Additional documentation may also be required (e.g. a country of origin certificate) for goods imported under a preferential trade agreement or under an export incentive scheme and qualifying for duty reductions (section (iv)(e) and (3)(vii)(c)).[6] The bill of entry may be filed prior to the arrival of the goods to allow for faster clearance, but no earlier than 30 days before the arrival date of the vessel or aircraft carrying the goods.[7]

11. Importers that use the EDI system to clear imports are required to file a bill of entry in electronic format containing all the relevant information; the supporting documents must be submitted when imports undergo physical examination. EDI facilities are available at 92 customs offices.[8] About 97.5% of all import documents are processed electronically; about 0.67 million registered IEC holders use EDI facilities.[9]

12. In 2005, India introduced a risk management system (RMS) as a measure of trade facilitation to selectively screen only high and medium risk cargo for customs examination. The RMS consolidated the "green channel" clearance facility and other fast-track facilities to clear goods. The RMS for processing imports is operational at 48 customs offices; some 85% of India's imports are processed via this system. In addition, importers with a good track record and complying with qualifying criteria, are entitled to be accredited for special clearance procedures under the Accredited Client's Programme (ACP).[10] As at early 2011, 250 ACP importers are allowed to self-assess their consignments with no need for examination, in line with India's commitments to simplify and harmonize Customs' procedures under the revised Kyoto Convention.[11]

13. Under the RMS, importers file an electronic bill of entry and the system indicates which import certificates, permits, or licences are required. The RMS reviews the documents and provides one of four possible instructions for both ACP (if cargo is considered risky) and non-ACP importers: (a) imports may be discharged without further assessment (i.e. of their classification, rate of duty or valuation) or examination; (b) imports may be cleared with no further assessment but subject to

[6] WTO (2007).

[7] Department of Valuation online information, "Procedure for Clearance of Imported and Export Goods". Viewed at: http://www.dov.gov.in/newsite3/clearance_procedure.asp.

[8] There are some 300 customs posts in India. According to the authorities, posts that are not automated are mainly remote land stations where trade is almost nil.

[9] Information provided by the authorities.

[10] Qualifying criteria include, *inter alia*: (i) the value of imports must be at least Rs 100 million or customs duties paid must be at least Rs 10 million, in a financial year; (ii) at least 25 bills of entry must have been submitted in a financial year; (iii) there must be no case of tax violation during the last three financial years; (iv) there must be no duty demand pending on account of non-fulfilment of export obligations; and (iv) the importer must have a reliable system of record keeping and internal controls (Customs Circular No. 42/2005, 24 November 2005. For Customs Notifications, Circulars, and Instructions, see Central Board of Excise and Customs online information. Viewed at: http://cbec.gov.in/cae1-english.htm).

[11] Customs Circulars Nos. 42/2005 and 43/2005, 24 November 2005; and Chaturvedi (2009).

examination; (c) the release of imports requires further assessment but no examination; or (d) imports must be assessed and examined.[12]

14. Certificates of registration and import permits (e.g. certificates of origin, sanitary and phytosanitary certificates, and end-use certificates) issued by different agencies, are required to import specific goods, in certain instances, depending on their end-use.[13] These certificates must be submitted at the time of filing the bill of entry. Under the Insecticides Act 1968, products that are included in the Schedule to the Act, that have not been registered in India as insecticides, must be imported on the basis of import permit or end-use (no-objection) certificate for products used for non-insecticidal purpose (section (x)). For instance, imports of boric acid for insecticidal use must be registered with the Central Insecticides Board and Registration Committee (CIB & RC)[14], as well as an import permit issued by the CIB & RC.[15] However, in the case of imports of non-insecticidal boric acid the administrative ministry concerned (e.g. Ministry of Agriculture) also has to issue an end-use (no-objection) certificate prior to the importation, to regulate its use.[16] Without the no-objection certificate, which is issued only to end-users and not to importers in general, imports are not allowed.[17] If these requirements are not fulfilled, imports are confiscated and the importer may be fined and/or imprisoned; these measures are aimed at protecting public health.[18]

15. For imports under duty exemptions and free-trade zones schemes (section (3)(vii)), importers are required to "execute" a bond with Customs. The bond is equal to the amount of payable duty on the imported goods. If importers fail to fulfil the bond conditions, usually related to the fulfilment of post-importation conditions, they must pay the duty levied on these imports along with interest rates at the applicable rate.[19]

16. Customs clearance has been more efficient since 2007: on average, import procedures are completed in 20 days (41 days in 2007), including 8 days for document preparation and 4 days for customs clearance and technical inspections. The cost per container is US$960, including preparing documents (US$390) and clearing customs (US$120).[20] The implementation of the EDI system in 1994[21], and the RMS in 2005 at India's major customs offices, has helped to render border procedures more efficient. EDI facilities have been extended to 92 locations and all major customs ports. The number of documents processed through the EDI increased from 3.2 million in 2008/09 to 8 million in 2010/11 (as at December 2010).[22]

[12] Customs Circular No. 43/2005, 24 November 2005.

[13] This is the case for imports of chemicals regulated by the Insecticides Act 1968.

[14] As at May 2011, 229 were insecticides registered under the Insecticides Act 1968, Section 9(3) (information provided by the authorities).

[15] Customs Circular No. 61/2004, 28 October 2004.

[16] WTO document G/LIC/Q/IND/12, 8 October 2008; Customs Circular No. 61/2004, 28 October 2004; and DGFT Circular No. 16(RE-07)/2004-2009, 22 October 2007 (for DGFT Circulars, Notifications, and Public Notices, see Directorate General of Foreign Trade online information. Viewed at: http://dgft.gov.in). A no-objection certificate is equivalent to an end-use certificate; they are used to monitor the trade of certain highly-regulated products used in manufacturing.

[17] Information provided by the authorities.

[18] Customs Instruction No. 528/9/2004, 6 October 2006.

[19] Department of Valuation online information, "Procedure for Clearance of Imported and Export Goods". Viewed at: http://www.dov.gov.in/newsite3/clearance_procedure.asp.

[20] World Bank/IFC Doing Business online information. Viewed at: http://www.doingbusiness.org.

[21] Comptroller and Auditor General of India (2002), Chapter 2: Indian Customs: Electronic Data Interchange System.

[22] Information provided by the authorities.

17. If an importer is not satisfied with the assessment (i.e. the classification, rate of duty or valuation) by the customs officer, the importer may appeal against the "assessment order" (i.e. a decision made in writing by an officer). No data is collected on the number of appeals against "assessment orders".

(b) Preshipment inspection

18. Preshipment inspection for imports of certain goods has been mandatory since 2004. Goods subject to preshipment inspection include unshredded metallic waste and scrap (since 2004), and shredded metallic waste and scrap (since 2009) (Table III.1).[23] Imports of unshredded metallic waste and scrap are permitted through 26 designated ports. Inspections ensure that consignments are free of arms, explosives, and radioactive-contaminated materials.[24] Preshipment inspection certificates are issued by accredited certifying agencies located inside and outside India.[25]

Table III.1
Metallic waste and scrap subject to preshipment inspection, 2011

ITC code	Description
7204.10.00	Waste and scrap of cast iron
7204.21.90	Other
7204.29.20	Of high speed steel
7204.29.90	Other
7204.30.00	Waste and scrap of tinned iron or steel
7204.41.00	Turnings, shavings, chips, milling waste, saw dust, fillings, trimmings and stampings, whether or not in bundles
7204.49.00	Other
7204.50.00	Remelting scrap ingots
7404.00.10	Copper scrap
7404.00.22	Brass scrap
7503.00.10	Nickel scrap
7602.00.10	Aluminium scrap
7902.00.10	Zinc scrap
8002.00.10	Tin scrap
8104.20.10	Magnesium scrap

Source: Department of Commerce (2010), *Handbook of Procedures 2009-2014*, Vol. I, incorporating Annual Supplement, 23 August. Viewed at: http://dgft.gov. in.

19. Imports of certain types of second-hand and defective steel products, as well as textiles and clothing articles are subject to preshipment inspection on safety and health grounds.

(ii) Customs valuation and clearance

20. The Customs Act 1962 (Section 14), the Customs Valuation (Determination of Price of Imported Goods) Rules 1988, its amendments, and the Finance Act 2007 regulate customs valuation in India. The latest amendments to customs valuation legislation entered into force on 10 October 2007.[26] Under Customs Notification No. 93/2007, Section 14 of the Customs Act was substituted by Section 95 of the Finance Act 2007. The amended section stipulates that the

[23] DGFT Public Notices Nos. 16/2004-09, 15 October 2004; and 163(RE-2008)/2004-2009, 23 March 2009.

[24] Department of Commerce (2010b). Checking for excess radiation levels has been mandatory since 2009 (DGFT Public Notice No. 17/2009-2014, 13 November 2009).

[25] WTO (2007).

[26] Customs Circular No. 38/2007, 9 October 2007; and Customs Notifications Nos. 93/2007 and 94/2007, 13 September 2007.

determination of value of imports should be based on the transaction value, i.e. "the price actually paid or payable for the goods when sold for export to India", including any amount paid or payable for costs and services (e.g. commissions and brokerage, royalties and licence fees, transport and insurance costs, and handling charges). The calculation is based on the exchange rate in force when the bill of entry is presented to Customs. For goods sold on "high-seas" sale contracts, the price paid by the last buyer constitutes the transaction value.[27] The transaction value method may be rejected if "reasonable doubt" arises on the accuracy of the declared value.[28] There are six circumstances under which a customs officer may raise reasonable doubt.[29] Raising reasonable doubt does not lead to an upfront rejection of the import value presented, which, if justified by the importer, is accepted. If the transaction value is not used, the value is determined according to other methods, in sequential order: transaction value of identical goods; transaction value of similar goods; deductive value; computed value; and residual method.[30] The Rules 2007 also clarify that royalties and licence fees must be included in the transaction value, if not included in the price actually paid or payable (Rule 10(1)); and the transport cost includes the ship demurrage charges on charted vessels, and lighterage or barge charges (Rule 10(2)).

21. A landing charge (for loading, unloading, and handling) of 1% of the c.i.f. value is added to the c.i.f. value, to calculate the transaction value (earlier known as "assessable value").[31]

22. The Central Board of Excise and Customs is authorized, by notification in the *Gazette of India*, to fix "tariff values" (reference prices) for any type of imported (exported) good.[32] At present, India uses "tariff values" to calculate customs duty applicable on imports of, *inter alia*, palm oil and palmolein oil (crude and RBD), as well as crude soybean oil, poppy seeds, and brass scrap.[33] According to the authorities, "tariff values" are revised every two weeks and are adjusted to align with international market prices; however, "tariff values" for edible oil remain unchanged since 2006 (Table III.2).

23. Importers may file an appeal against customs decisions on valuation matters to the Appeals Commissioner or the Customs, Excise, and Service Tax Appellate Tribunal (Customs Act 1962, Sections 128-129).[34] No data are collected on the number of appeals.

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[27] "High-seas" sale is a sale carried out while goods are still at sea or after dispatch from the port/airport of origin and before arrival at the port/airport of destination. See also Customs Circular No. 11/2010, 3 June 2010.

[28] Customs Valuation (Determination of Value of Imported Goods) Rules 2007, Section 12.

[29] These circumstances are: (a) a significantly higher value at which identical or similar imports at (or about) the same time, in comparable quantities and comparable commercial transaction, were assessed; (b) the sale value involves an abnormal discount/reduction from the ordinary competitive price; (c) the sale involves special discounts limited to exclusive agents; (d) there are mistakes in the declaration of goods, e.g. description, quality, quantity, country of origin, and year of manufacture or production; (e) the import declaration is incomplete, e.g. lack of brand, grade, and any other specification that could have a bearing on assessing the value of the goods; and (f) fraudulent manipulation of documents.

[30] For details, see Customs Valuation (Determination of Value of Imported Goods) Rules 2007, Sections 4-9. The amended Rules introduced a proviso under Sections 4, 5, and 9.

[31] Updates on Indian Taxation and Corporate Laws online information, "Value for Imports". Viewed at: http://www.dateyvs.com/custom02; and Central Excise Madurai online information, "Central Excise: A guide to Assesses". Viewed at: http://www.centralexcisemadurai.tn.nic.in/what_central.html.

[32] Customs Act 1962, Section 14(2).

[33] "Tariff values" (i.e. reference price) were introduced in 2001 through Customs (non-tariff) Notification No. 36/2001, 3 August 2001, and last amended through Customs (non-tariff) Notification No. 37/2011, 31 May 2011.

[34] WTO document G/VAL/W/173, 29 October 2008.

Table III.2
Tariff values (reference prices), 2006-11

HS code	Description	Tariff value (US$/tonne)					
		2006	2007	2008	2009	2010	2011[a]
1511.10.00	Palm oil (crude)	447	447	447	447	447	447
1511.90.10	Palm oil (RBD)	476	476	476	476	476	476
1511.90.90	Palm oil (others)	462	462	462	462	462	462
1511.10.00	Palmolein (crude)	481	481	481	481	481	481
1511.90.20	Palmolein (RBD)	484	484	484	484	484	484
1511.90.90	Palmolein (others)	483	483	483	483	483	483
1507.10.00	Soyabean oil (crude)	580	580	580	580	580	580
7404.00.22	Brass scrap (all grades)	4,524	4,205	3,252	3,476	4,320	4,360
1207.91.00	Poppy seeds	n.a.	5,398	4,238	3,144	3,445	2,520

n.a. Not applicable.

a Up to 31 May 2011.

Note: "Tariff values" for poppy seeds were introduced through Customs (non-tariff) Notification No. 116/2007, 3 December 2007. Reference prices are for end year.

Source: Customs (non-tariff) Notifications Nos. 130/2006, 1 December 2006; 122/2007, 17 December 2007; 141/2008, 31 December 2008; 188/2009, 31 December 2009; 03/2010, 31 December 2010; and 37/2011, 31 May 2011.

24. India maintains, in the WTO, the special and differential treatment provisions invoked under the Tokyo Round Agreement.[35] Hence, India continues to maintain a reservation concerning the reversal of the sequential order of Articles 5 and 6, and a reservation to apply Article 5.2 whether or not the importer so requests.[36] In 2009, India decided to lift the reservation on minimum values entered under paragraph 3 of the Protocol to the Agreement on Implementation of Article VII of the GATT 1994, and in paragraph 2 of the WTO Agreement.[37] The authorities indicated that India did not apply minimum values despite the reservation maintained until 2009.

25. The transaction value is generally used to assess the additional duty on imports.[38] However, it is not used to assess the additional duty on imports of packaged goods, which, if produced domestically, would be subject to a maximum retail price (MRP).[39] In this case, to assess the additional duty, the value of the goods is determined using the MRP declared on the package minus an "abatement" for the like domestic goods.[40] The "abatement" takes into account taxes payable on goods and freight, which are included in the MRP. In March 2011, 143 items were subject to a MRP-based excise duty payment and the "abatement" ranged from 20% to 40% of the retail price.[41]

[35] WTO document WT/L/38, 15 February 1995.

[36] WTO document G/VAL/W/162/Rev.1, 15 October 2009.

[37] WTO document G/VAL/M/48, 23 December 2009.

[38] Customs Tariff Database online information, "Special CVD in Lieu of Sales Tax under Section 3(5) of CTA 1975". Viewed at: http://custadaindia.com/CUSTADA-Online/document/document/Special%20CVD%20in%20Lieu.htm.

[39] The basic duty on goods subject to an MRP is levied on the transaction value.

[40] The excise duty on domestic goods is levied on their value; which should be the retail sale price declared on the goods less an amount of abatement, if any, from the retail sale price, as allowed by the Central Government by notification in the *Gazette of India* (Central Excise Act 1944, Chapter II, Section 4A (Valuation of excisable goods with reference to retail sale price).

[41] "Retail sale price" means, except for medicaments (other than those used exclusively in Ayurvedic, Unani, Siddha, homeopathic or bio-chemic systems), the maximum price at which the excisable goods in packaged form may be sold to the ultimate consumer, when the price is the sole consideration for such sale. It includes all taxes (local or otherwise), freight and transport charges, commissions to dealers, and all charges towards advertisement, delivery, packing, forwarding, etc. For medicaments, "retail sale price" means the retail

If more than one retail sale price is declared for the imported good, the highest price is used to assess the duty. MRP-based valuation is not applicable to products sold in bulk to industries, and to packages containing more than 25 kg or litres (excluding cement and fertilizer sold in bags of up to 50 kg.

(iii) Rules of origin

26. India does not apply non-preferential rules of origin.[42] Preferential rules of origin are applied under regional and bilateral trade agreements (Table III.3); these have not changed since the last Review of India. Maximum foreign-content requirements range from 30% to 70%; other criteria to determine origin are sufficient transformation and change in tariff classification. There are also product-specific rules of origin under the SAFTA (180 products), and agreements with Korea, Rep. of (1,780 products)[43], and Singapore (380 products).[44]

Table III.3
Rules of origin under preferential trade agreements, 2011

Agreements	Maximum foreign-content requirements	Minimum cumulative local-content requirements
Regional		
Asia-Pacific Trade Agreement (APTA)	55% of the f.o.b. value (LDCs: 65%)	60% of the f.o.b. value (LDCs: 50%)
Global System of Trade Preferences (GSTP)	50% of the f.o.b. value (LDCs: 60%)	60% of the f.o.b. value (LDCs: 50%)
South Asian Free-Trade Areas (SAFTA)[a]	60% of the f.o.b. value (LDCs: 70%; Sri Lanka: 65%) and change in tariff classification	50% of the f.o.b. value, 20% of the f.o.b. value[b] and change in tariff classification
South Asia Preferential Trade Arrangement (SAPTA)	60% of the f.o.b. value (LDCs: 70%)	50% of the f.o.b. value (LDCs: 40%)
Bilateral		
Afghanistan	50% of the f.o.b. value and change in tariff classification	40% of the f.o.b. value and 30% of the f.o.b. value[b]
ASEAN[a]	65% of the f.o.b. value and change in tariff classification	65% of the f.o.b. value and change in tariff classification
Bhutan	n.a.	n.a.
Chile	60% of the f.o.b. value[c] and change in tariff classification	60% of the f.o.b. value and change in tariff classification
Korea, Rep. of[a]	65% of the f.o.b. value and change in tariff classification	65% of the f.o.b. value and change in tariff classification
MERCOSUR	40% of the f.o.b. value[c]	40% of the f.o.b. value
Nepal	70% of the f.o.b. value and change in four-digit tariff classification	n.a.
Singapore[a]	60% of the f.o.b. value and change in tariff classification	60% of the f.o.b. value and change in tariff classification
Sri Lanka	65% of the f.o.b. value and change in tariff classification	35% of the f.o.b. value and 25% of the f.o.b. value[c]
Thailand[d]	60% of the f.o.b. value and change in tariff classification	40% of the f.o.b. value and change in the tariff classification

Table III.3 (cont'd)

price displayed by the manufacturer under provisions of the Drugs (Prices Control) Order 1995 (Central Excise (non-tariff) Notification No. 49/2008, 24 December 2008, as amended by Central Excise (non-tariff) Notifications Nos. 18/2009, 7 July 2009; 9/2010, 27 February 2010; and 11/2011, 24 March 2011. For Central Excise Notifications, Circulars, and Instructions, see Central Board of Excise and Customs online information. Viewed at: http://www.cbec.gov.in/cae1-english.htm).

[42] WTO document G/RO/N/1, 9 May 1995.

[43] Information provided by the authorities.

[44] Department of Commerce online information, "International Trade: Trade Agreements". Viewed at: http://commerce.nic.in/trade/international_ta.asp?id=2&trade=i.

Agreements	Maximum foreign-content requirements	Minimum cumulative local-content requirements
Other preferential areas		
Mauritius, Seychelles, and Tonga	50% of ex-work price of five specific items[e] and 75% ex-work prices for others	50% of ex-work price of five specific items[e] and 75% ex-work prices for others
Least-developed countries	70% of the f.o.b. value and change in tariff classification for not wholly produced or obtained category	70% of the f.o.b. value and change in tariff classification for not wholly produced or obtained category

n.a. Not applicable.

a Product-specific rules of origin apply.
b Domestic value content in the exporting country.
c Foreign contents should not exceed 15% of the f.o.b. value for sets, as defined in General Rule 3 of the Harmonized System.
d Not notified to the WTO.
e Manual sewing and knitting machines (and parts thereof) or those which require less than one quarter of one brake-horsepower for their operation; cycles (other than motor cycles) and parts and accessories thereof, excluding rubber tyres and tubes; motor cars including taxi cabs and articles (other than rubber tyres and tubes) to be used as parts and accessories thereof; motor omni-buses, chassis of motor omni-buses, motor vans and motor lorries, and parts of mechanically propelled vehicles and accessories excluding rubber tyres and tubes; and motor cycles and motor scooters and articles (other than rubber tyres and tubes) adapted for use as parts and accessories thereof.

Note: Rules of origin are not covered under the India-Bhutan preferential trade agreement.

Source: Department of Commerce online information, "International Trade: Trade Agreements". Viewed at: http://www.commerce.nic.in/trade/international_ta.asp?id=2&trade=I; Customs General Exemption Nos. 70 and 71. Viewed at: http://www.cbec.gov.in/customs/cst-809/cs-gen66-90.pdf; and information provided by the Indian authorities; and information provided by the authorities.

(iv) Tariffs

(a) Applied tariff structure

27. Under the Customs Tariff Act 1975, the MFN tariff is based on the standard rate, which is a statutory duty; however, the "effective" tariff may be lower because of general- or industrial-use-based exemptions. India's tariff is announced in the annual Budget at the end of February each year; however, additional changes to individual tariff rates may be made during the year by the Ministry of Finance's Central Board of Excise and Customs, through notifications published in the *Gazette of India*; this adds to the complexity of the tariff. During 2007-10, the Government issued some 230 tariff-rate amendment notifications.[45] In addition to the standard rate, importers are required to pay an additional duty ("countervailing duty") and a special additional duty instead of local taxes (section (v)). To determine the applied tariff (and other customs duty) rate applicable to a particular product, separate customs and excise tax schedules must be consulted. These schedules should, in addition, be cross-checked with any applicable customs or excise notification that may have raised or reduced the rate on the product.

28. The 2010/11 applied tariff (HS2007 nomenclature) has 11,328 tariff lines at the eight-digit level, comprising rates ranging from zero to 150%. Some 94% of tariff lines are *ad valorem*; duty is levied on the c.i.f. value of imports. Alternate or specific duties apply to 6.1% of all tariff lines, unchanged since 2006/07 (Table III.4). The simple average applied MFN tariff was 12% in 2010/11, down from 15.1% in 2006/07.[46] Both agricultural and industrial average tariffs declined reflecting India's shift towards lower tariffs. India provides a number of exemptions on imported inputs for certain sectors or importers, depending on the industrial use of the import. As a result of these

[45] During 2007-10, the Indian Government issued 554 tariff rate amendment notifications. These included 225 notifications related to changes in tariff rates; and others related to imposition of anti-dumping and safeguard duties, or to give effect to commitments under international agreements (information provided by the authorities).

[46] Calculations exclude specific rates and include the *ad valorem* part of the alternate rates.

exemptions, the effective applied tariff is considerably lower than the simple average standard rate. However, because a large majority of the exemptions relate to industrial use, they cannot be included in the general tariff analysis. To the extent that a tariff exemption is clearly related to a particular tariff line, the Secretariat has tried to incorporate it in the tariff analysis.

Table III.4
Tariff structure, 2006/07 and 2010/11
(%)

		MFN effective applied rates		Final bound rate[a]
		2006/07	2010/11	
1.	Bound tariff lines (% of all tariff lines)	75.2	75.6	75.6
2.	Simple average rate	15.1	12.0	46.4
	Agricultural products (HS01-24)	38.2	35.1	119.1
	Industrial products (HS25-97)	11.8	8.6	33.7
	WTO agricultural products	36.2	33.2	118.3
	WTO non-agricultural products	12.0	8.9	32.0
	Textiles	12.2	9.6	26.9
	Clothing	12.5	10.0	37.1
3.	Duty free tariff lines (% of all tariff lines)	2.7	3.2	1.9
4.	Domestic tariff "peaks" (% of all tariff lines)[b]	2.5	2.2	6.5
5.	International tariff "peaks" (% of all tariff lines)[c]	12.5	11.9	87.7
6.	Overall standard deviation of tariff rates	15.0	14.2	40.8
7.	Coefficient of variation of tariff rates	1.0	1.2	0.9
8.	Non-*ad valorem* tariffs (% of all tariff lines)	6.1	6.1	8.0
9	Nuisance applied rates (% of all tariff lines)[d]	0.5	0.7	0.0

a Based on 2010/11 tariff schedule. Implementation of final bound rates was completed in 2005. Calculations are based on 8,567 bound tariff lines, of which 8,503 are fully bound and 64 partially bound.
b Domestic tariff peaks are defined as those exceeding three times the overall simple average applied rate.
c International tariff peaks are defined as those exceeding 15%.
d Nuisance rates are those greater than zero, but less than or equal to 2%.

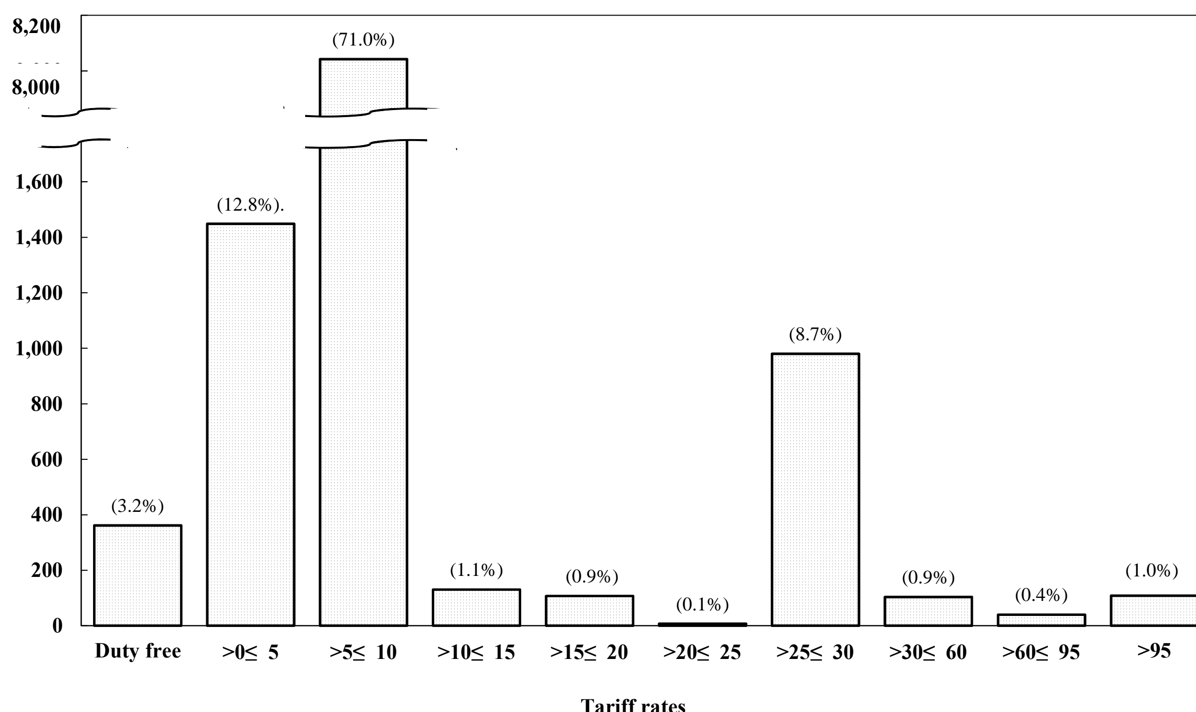
Note: The 2006/07 tariff is based on HS02 nomenclature, consisting of 11,695 tariff lines; the 2010/11 tariff is based on HS07 nomenclature consisting of 11,328 tariff lines. Calculations exclude specific rates and include the *ad valorem* part of alternate rates. MFN applied rates include exemptions, applicable at the full eight-digit tariff line.

Source: WTO Secretariat calculations, based on data provided by the Indian authorities.

29. Non-*ad valorem* rates apply to 690 tariff lines: five are specific rates (i.e. almonds, shelled and in shell (two HS lines), and platinum (three HS lines)), while 685 (6.1% of all tariff lines) are alternate rates (textiles and clothing). The simple average applied MFN tariff in 2010/11 was 13.4% including AVEs (12% without AVEs). The inclusion of AVEs affects only industrial average tariffs, which increase from 8.6% to 10.3% (10.6% under WTO non-agriculture). Mainly affected are textile and clothing, with average protection of 16.2% and 25.7%, respectively, and of 9.6% and 10% if AVEs are not included in the tariff analysis. This confirms that protection may increase considerably by the use of specific rates: some goods have protection of around 600% (e.g. shawls, scarves (exceeding 60 cm) and the like of silk (HS 6214.10.20 (598.32%)), women's or girls' suits of silk (HS 6104.19.20 (620%)), and scarves of silk measuring 60 cm or less (HS 6214.10.10 (656.41%)).

30. In 2010/11, tariffs range from zero to 150%. The majority of lines (71% or 8,042) carry a rate greater than 5% but less than 10%, while 12.8% of total lines have a tariff rate greater than zero but less than 5% (Chart III.1). This is a major change from 2006/07, when 65% of all lines were within the 10-15% range, and 10.4% of lines at 25-30%. The number of duty-free lines has increased slightly. Although average rates have declined, some products continue to bear very high rates, notably some beverages, spirits, and coffee and tea. Dispersion remains high: the standard deviation shows only a slight decrease, from 15 at the time of the last Review of India to 14.2.

Chart III.1
Distribution of MFN applied tariff rates, 2010/11



Note: **Calculations include the *ad valorem* part of alternate rates. Figures in parentheses denote the share of total lines.**

Source: **WTO Secretariat calculations, based on data provided by the Indian authorities.**

31. Average tariff protection declined from 15.1% to 12% in 2010/11. Since 2007, the simple average tariff for agricultural goods (WTO definition) has declined from 36.2% to 33.2%, but remains substantially higher than for manufactured goods (Table III.5). Beverages and spirits bear the highest protection, followed by coffee and tea, dairy products, and sugar and confectionary. Non-agricultural products face an average tariff of 8.9%, down from 12% in 2007. The decrease in the average rate reflects a decrease from a peak rate of 12.5% in 2006/07 to rates of 10% and 7.5%. However, fisheries and transport equipment still bear above average tariff protection of 29.5% and 21.5%, respectively.

32. India's tariffs are higher for agriculture goods and processed goods than for semi-manufactures. This responds in part to the strategy of protecting agriculture and promoting the development of manufacturing activities, which require imports of intermediate goods. It may also reflect India's policy of granting import duty concessions for intermediate goods under different export and investment promotion schemes (section (3)(vii)(c)).

Table III.5
Summary analysis of the tariff, 2006/07 and 2010/11

	2006/07 effective applied rates (MFN)			2010/11 effective applied rates (MFN)			Bound tariff
	No. of lines	Average (%)	Range (%)	No. of lines	Average (%)	Range (%)	Range (%)
Total	**11,695**	**15.1**	**0-150**	**11,328**	**12.0**	**0-150**	**0-300**
HS 01-24	1,466	38.2	0-150	1,433	35.1	0-150	10-300
HS 05-97	10,229	11.8	0-100	9,895	8.6	0-70	0-150
By WTO definition							
Agricultural products	1,492	36.2	0-150	1,431	33.2	0-150	10-300
Animals and products thereof	108	30.7	5-100	106	30.8	5-100	35-150
Dairy products	32	35.3	30-60	32	34.4	30-60	40-150
Fruit, vegetables, and plants	376	28.3	0-100	355	27.6	0-100	10-150
Coffee and tea	75	74.7	17.5-100	75	74.7	17.5-100	17.5-150
Cereals and preparations	138	32.8	0-90	137	30.4	0-90	35-150
Oils seeds, fats, oil, and their products	204	42.7	0-100	196	18.5	0-100	15-300
Sugars and confectionary	38	33.4	10-60	38	33.4	10-60	45-150
Beverages, spirits, and tobacco	122	73.1	10-150	123	78.7	7.5-150	35-150
Cotton	11	13.2	0-30	11	5.5	0-30	100-150
Other agricultural products, n.e.s.	388	24.9	0-70	358	25.1	0-70	10-150
Non-agricultural products (incl. petroleum)	10,203	12.0	0-70	9,897	8.9	0-70	0-150
Non-agricultural products (excl. petroleum)	10,185	12.0	0-70	9,879	8.9	0-70	0-150
Fish and fishery products	164	29.5	5-30	176	29.5	5-30	35-150
Minerals and metals	1,955	9.1	0-10	1,912	7.1	0-10	0-40
Chemicals and photographic supplies	2,511	12.1	0-10	2,471	8.1	0-10	0-150
Wood, pulp, paper, and furniture	530	11.5	0-10	495	9.2	0-10	25-40
Textiles	1,579	12.2	5-10	1,555	9.6	5-10	10-40
Clothing	419	12.5	10-10	397	10.0	10-10	35-40
Leather, rubber, footwear, travel goods	338	12.5	0-70	322	10.2	0-70[a]	3-40
Non-electric machinery	1,099	11.3	0-10	1,094	7.1	0-10	0-40
Electric machinery	560	9.8	0-10	537	6.7	0-10	0-10
Transport equipment	246	32.8	0-60	244	21.5	0-60	3-40
Non-agricultural products, n.e.s.	784	10.8	0-10	676	8.6	0-10	0-40
Petroleum	18	9.7	0-10	18	8.2	0-10	n.a.
By sector[b]							
Agriculture, forestry and fisheries	659	29.5	0-100	621	28.8	0-100	10-150
Mining	229	5.7	2-12.5	232	5.1	0-10	5-40
Manufacturing	10,806	14.4	0-150	10,474	11.1	0-150	0-300
Manufacturing excl. food processing	9,934	12.0	0-100	9,605	8.8	0-60	0-150
By stage of processing							
First stage of processing	1,300	23.6	0-100	1,261	22.5	0-100	5-150
Semi-processed products	4,465	11.7	0-100	4,339	8.6	0-60	0-150
Fully processed products	5,930	15.8	0-150	5,728	12.2	0-150	0-300

n.a. Not applicable.

a Tariff lines with applied rates at 70% are unbound.
b ISIC Rev.2 classification. Electricity, gas, and water is excluded (1 tariff line).

Note: Calculations exclude specific rates and include the *ad valorem* part of alternate rates.

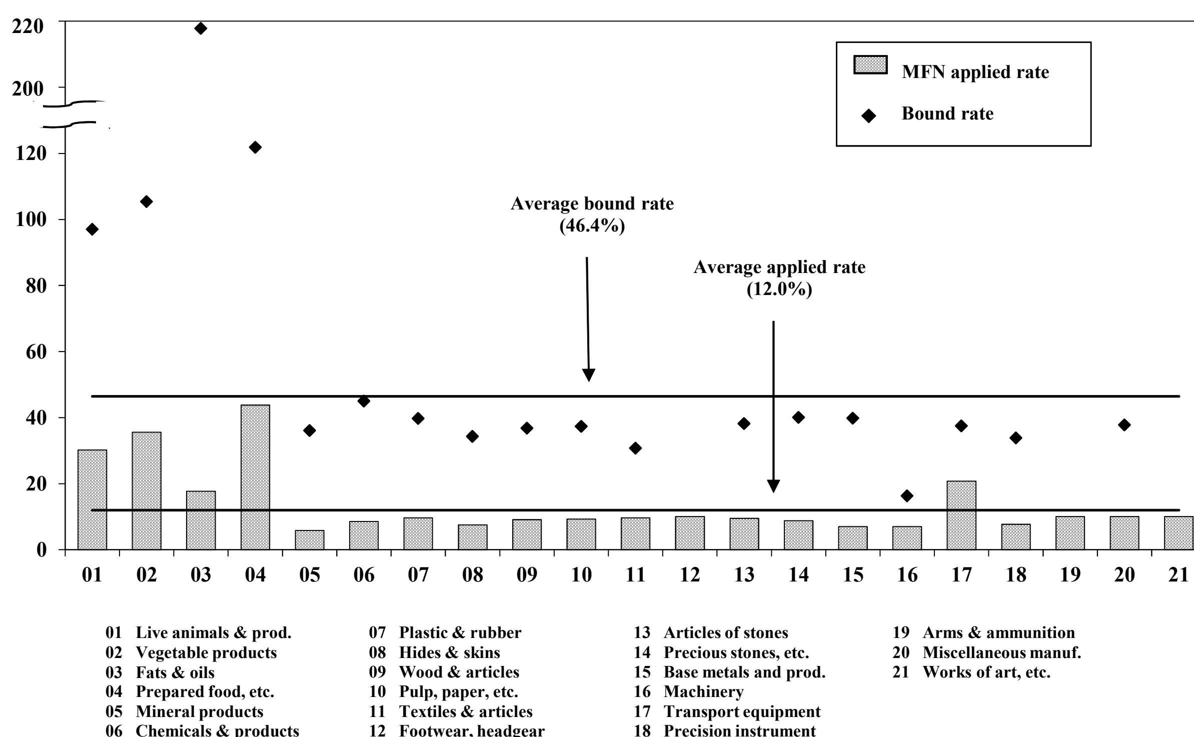
Source: WTO Secretariat calculations, based on data provided by the Indian authorities.

(b) Bound tariff

33. The implementation of India's Uruguay Round tariff commitments was completed in 2005. Some 75% of India's tariff is bound, 100% for agricultural (WTO definition), and 71.6% for non-agricultural products. Bound rates are mainly *ad-valorem* (90.2%); non-*ad valorem* bound rates apply mainly to textile and clothing. India did not bind any tariff lines in HS sections 12 (footwear

and headgear), 19 (arms and ammunitions), and 21 (works of art); partial bindings are mainly in HS section 11 (textiles and clothing) (Chart III.2). Bindings range from zero to 40% for non-agricultural products, with some exceptions such as fish products (150%); and range from 10% to 300%, for agricultural products, with most bound at 100% and 150%. Some edible oils are bound at 300%. The average bound tariff is 118.3% for agricultural products (WTO definition) and 32% for non-agricultural products. Bound rates exceed applied rates; the average bound tariff is 46.4%, compared with an average MFN tariff of 12%.

Chart III.2
Average applied MFN and bound tariff rates, by HS section, 2010/11



Note: Calculations exclude specific rates and include the *ad valorem* part of alternate rates. Only section 2 is fully bound; sections 12, 19, and 21 are fully unbound. All other sections include bound, partially bound, and unbound lines.

Source: WTO Secretariat calculations, based on data provided by the Indian authorities.

34. The gap between applied and bound tariff rates provides the authorities with scope to raise applied tariffs. These gaps allow the Government to modify tariff rates in response to domestic and international market conditions. If domestic agricultural prices rise, tariff rates are lowered to create downward pressure on domestic prices and minimize the impact on consumers; when prices fall, the rates are often increased to protect farmers by raising the overall cost of imports.

35. Under Article XXVIII:5 of the GATT 1994, India reserved the right to modify its Schedule XII during the three-year period commencing 1 January 2009.[47]

[47] WTO document G/MA/208, 6 October 2008.

(c) Tariff-rate quotas

36. Tariff-rate quotas are maintained on five lines at the HS six-digit level (19 tariff lines at the HS eight-digit level according to the authorities): milk and milk powder; maize (corn); rape, colza, and mustard oil; and crude sunflower seed and safflower oil.[48] More recently (22 December 2010), due to a shortage of natural rubber, natural rubber (five tariff lines at the HS eight-digit level) was put under a tariff quota regime for the remainder of the financial year 2010/11.[49] A tariff quota was also put in place for butter and other animal fats.

37. Tariff quotas are allocated by the Directorate General of Foreign Trade (DGFT), upon request by designated agencies: the National Agricultural Cooperative Marketing Federation of India Ltd.; the State Trading Corporation of India Ltd.; PEC Ltd.; and the National Dairy Development Board. The authorities noted that the fill ratio of these quotas is low, apparently because of lack of demand (Table III.6).

Table III.6
Products subject to tariff-rate quotas, 2006-11
(Tonnes)

Description	HS No.	In/out of quota rate (%)[a]	In/out of quota rate (%)[b]	Tariff-rate quota (in-quota total imports)				
				2006/07	2007/08	2008/09	2009/10	2010/11
Skimmed milk powder/whole milk powder	0402.10 0402.21	15[c]/60	0[c, d]/60	10,000 (0.0)	10,000 (0.0)	10,000 (0.0)	10,000 (3,000)	30,000 (..)
Maize (corn), other than seed quality	1005.90	15/60	0/50	500,000 (1,436)	500,000 (1,021)	500,000 (6,087)	500,000 (16,972)	500.000 (..)
Crude sunflower seed oil and safflower seed oil	1512.11	50/300	0	150,000 (95,883)	n.a.[e]	n.a.[e]	n.a.[e]	n.a.[e]
Rape, colza or mustard oil	1514.19 1514.99	45/75	7.5[f]	150,000 (0.0)	150,000 (0.0)	150,000 (0.0)	150,000 (0.0)	150,000 (..)
Butter and other fats[d]	0405.10 0405.90.10 0405.90.20	n.a.	0/30	n.a.	n.a.	n.a.	n.a.	15,000 (..)
Butter and other fats[d]	0405.20 0405.90.90	n.a.	0/40	n.a.	n.a.	n.a.	n.a.	..

.. Not available.
n.a. Not applicable.

a Based on WTO document W/LET/440, 4 April 2003.
b Based on the Indian tariff 2010/11.
c Applicable to cumulative imports of goods under tariff lines 0402.10 and 0402.21.
d Customs Notification No. 33/2010, 12 March 2010.
e Given that the applied tariff rate is 0%, the tariff quota has not applied since 2007.
f The 2010/11 tariff does not show an out-of-quota rate for rape, colza or mustard oil but just an applied rate of 7.5%, depending upon the product (information provided by the authorities).

Source: WTO documents W/LET/440, 4 April 2003; G/MA/TAR/RS/66, 1 May 2000; and G/AG/N/IND/5, 7 March 2011; Central Board of Excise and Customs online information, "Customs: Notifications". Viewed at: http://cbec.gov.in/cae1-english.htm; and information provided by the Indian authorities (Indian tariff 2010/11).

38. Under the free-trade agreement with Sri Lanka, India maintains tariff-rate quotas on clothing and tea imports (Chapter II). No data were available on the extent to which these preferential tariff-rate quotas have been filled in recent years.

[48] WTO document G/MA/TAR/RS/66, 1 May 2000.
[49] Customs Notification No. 128/2010, 22 December 2010.

(d) Tariff concessions

39. Under Section 25(1) of the Customs Act 1962, the Central Government is empowered to exempt any goods from customs duties on grounds of public interest. Tariff concessions are announced in the annual Budget and throughout the year through notifications by the Ministry of Finance.[50] These concessions are both product-specific and based on end-use. During the review period, revenue forgone as a result of customs duty concessions increased from 29% to 39% of total revenue, amounting to some US$168 billion during 2006-07/2009-10.[51]

40. Goods imported under processing-for-export regimes (e.g. special economic zones (SEZs) and export-oriented units (EOUs)) are eligible for tariff concessions (section (3)(vii)(a)). Other programmes to promote exports and investment also provide for tariff concessions (section (3)(vii)(c)).

(e) Preferential tariffs

41. Preferential rates are granted for certain articles under GSTP, regional (SAFTA, APTA, MERCOSUR, and ASEAN), and bilateral agreements (Singapore, Korea, Rep. of, Chile, and Sri Lanka). Under the GSTP, India has granted tariff concessions to 12 countries on a limited number of products.[52] Only preferences under the SAFTA II (at 2.3%) and under the Sri Lanka FTA (at 2.3%) are significantly lower than the simple average applied MFN of 12% (Table III.7). In other instances, preferences are not substantial (Korea, Rep. of) or the number of tariff lines subject to preferences is minimal (e.g. MERCOSUR and Chile).

Table III.7
Summary analysis of the preferential tariff, 2010/11

		Total		WTO agriculture		WTO non-agriculture		Textiles		Clothing	
	Preferential lines[a] (% of all tariff lines)	Avg. (%)	Duty-free rates (%)	Avg. (%)	Duty-free rates (%)	Avg. (%)	Duty-free rates (%)	Avg. (%)	Duty-free rates (%)	Avg. (%)	Duty-free rates (%)
MFN		12.0	3.2	33.2	5.6	8.9	2.8	9.6	0.0	10.0	0.0
Regional agreements											
SAFTA I[b]	69.3	8.9	3.2	22.5	5.6	6.9	2.8	7.4	0.0	10.0	0.0
SAFTA II[c]	87.6	2.3	89.2	15	66.7	0.5	92.4	0.04	98.7	6.5	34.8
ASEAN[d]	79.1	8.8	3.5	28.8	5.6	5.9	3.2	6.4	0.0	6.7	0.0
APTA[e]	10.3[f]	11.5	4.3	33.1	5.6	8.4	4.1	9.6	0.0	10.0	0.0
MERCOSUR[g]	3.4	11.9	3.2	33.2	5.6	8.9	2.7	9.5	0.0	10.0	0.0
Bilateral agreement (FTA)											
Sri Lanka[h]	91.6	2.3	79.1	6.4	91.9	1.7	77.3	7.1	4.4	5.0	0.0
Korea, Rep. of[i]	50.8	11.0	4.8	30.5	5.6	8.2	4.7	9.0	0.5	9.4	0.0
Singapore[j]	43.0	8.8	22.5	31.0	12.4	5.7	23.9	7.9	13.7	8.7	0.0

Table III.7 (cont'd)

[50] Ministry of Finance (2007a), (2008), (2009), and (2010c).
[51] Ministry of Finance (2007a), (2008), (2009), and (2010c).
[52] Customs Notification No. 236/89, 1 September 1989.

	Preferential lines[a] (% of all tariff lines)	Total		WTO agriculture		WTO non-agriculture		Textiles		Clothing	
		Avg. (%)	Duty-free rates (%)	Avg. (%)	Duty-free rates (%)	Avg. (%)	Duty-free rates (%)	Avg. (%)	Duty-free rates (%)	Avg. (%)	Duty-free rates (%)
Thailand[k]	5.6	11.8	5.4	33.1	6.1	8.7	5.3	9.6	0.0	10.0	0.0
Chile[l]	1.3	11.9	3.2	33.1	5.6	8.9	2.8	9.6	0.0	10.0	0.0
LDCs[m]	90.4	6.6	3.2	25.0	5.6	4.0	2.8	4.0	0.0	6.1	0.0

a The 2010/11 MFN tariff consists of 11,328 tariff lines, of which 359 are duty free. The number of preferential lines includes only lines on which the rates, at fully applied eight-digit level, are lower than the corresponding MFN applied rate.
b Preferential rates for Pakistan and Sri Lanka (Customs Notifications Nos. 133/2010 and 134/2010).
c Preferential rates apply to SAFTA LDC members: Bangladesh, Bhutan, the Maldives, and Nepal (Customs Notifications Nos. 126/2007, 36/2010, and 133/2010). For Bangladesh, duty-free in-quota rates apply to textiles (Customs Notification No. 51/2008).
d ASEAN: preferential rates applicable to Malaysia, Singapore, and Thailand (Customs Notification No. 135/2010).
e Asia-Pacific Trade Agreement: preferential rates apply to Bangladesh, China, Korea (Rep. of), and Sri Lanka (Customs Notifications Nos. 89/2006 and 134/2006).
f For Bangladesh, the percentage of preferential lines equals 10.9%.
g MERCOSUR: preferential rates apply to Argentina, Brazil, Paraguay, and Uruguay (Customs notification No. 57/2009).
h Customs notifications Nos. 43/2003, 57/2005, 128/2006, 3/2007, 52/2008, 126/2002, 75/2007, and 2/2007. Duty-free in-quota rates apply to clothing products (Customs Notification No. 52/2008). In-quota rates are applied to tea (Customs Notification No. 60/2000) and to desiccated coconut (Customs Notification No. 2/2007).
i Customs Notifications Nos. 151/2009 and 137/2010.
j Customs Notifications Nos. 73/2005, 74/2005, 75/2055, 69/2009, and 131/2010.
k Customs Notifications Nos. 85/2004 and 86/2006.
l Customs Notification No. 101/2007.
m Customs Notifications Nos. 96/2008 and 95/2010. Preferential rates apply to 21 African and 5 Asian countries.

Source: WTO Secretariat, based on data provided by the Indian authorities and Central Board of Excise and Customs online information, "Customs: Notifications". Viewed at: http://www.cbec.gov.in/customs/cs-act/notifications/cs-notfns-idx.htm.

(v) Other charges affecting imports

42. India applies a number of duties and charges on imports, other than tariffs. These include: the additional customs duty, the special additional duty, the education cess and the secondary, higher education cess. Some charges and cesses are also applied on specific products (see below).

43. The additional customs duty (AD) is aimed at removing or reducing what the Government considers a pro-import bias resulting from the application of central excise duties to domestically manufactured goods, in accordance with India's trade legislation.[53] To this end, the AD rate should be equivalent to the central excise duty, also referred to as Central Value Added Tax (CENVAT), on domestically produced goods of the same tariff classification.[54] The general AD rate was 10% in 2010. However, some goods may have lower rates of 4% and 0% and specific or compound rates.[55] The rate and its exceptions are defined in each Budget or through subordinate legislation (notifications). The 4% special additional customs duty (SAD) continues to be imposed on imports, with few exceptions (14.8% of all tariff lines)[56], to partially compensate for the sales tax, state value-added tax, local tax or any other charges leviable on a like article on its sale, purchase or

[53] Customs Tariff Act 1975, Section 3(1).

[54] The excise and tariff nomenclatures are harmonized at HS eight-digit level.

[55] This is the case of the additional duty on petroleum products (Central Excise Notifications Nos. 4/2006, 1 March 2006; 4/2008, 1 March 2008; and 14/2009, 7 July 2009).

[56] Some 12 lines in HS 71 (articles of jewellery) have SAD duty of 1%.

transportation in India.[57] However, as the SAD is an across-the-board tax applied at a flat rate on most goods, it may not always be equivalent to local sales taxes on similar domestically produced goods, which may be higher or lower. The SAD paid on imports subsequently sold within India and for which the importer has paid state-level value-added taxes, may be refunded.[58] The application of the AD and SAD was the subject of a dispute in the WTO in 2007.[59]

44. Since 2004, an education cess has been charged on imports at the rate of 2% on all aggregate customs duties (excluding safeguard, countervailing or anti-dumping duties if applicable).[60] The secondary and higher education cess of 1%, which entered into force through the Finance Bill of 2007, is also levied on all imports. This cess is calculated on the aggregate value of all excise duties (including the additional and the special duties or any other duty or excise), but excluding the education cess and safeguard, countervailing or an anti-dumping duty if applicable.

45. Calculation of all charges applied imports including landing charges, the effective customs duty, the additional customs duty, the special additional customs duty, and the education cess show an average protection of 25.6% compared to 12% (Table III.8). The authorities noted that some of these charges are "in lieu" of domestic taxes.

Table III.8
Summary analysis of India's imports charges, 2010/11

	No. of lines	Effective applied rates (MFN)		Total duty rate, incl. extra charges[a]	
		Average (%)	Range (%)	Average (%)	Range (%)
Total	**11,328**	**12.0**	**0-150**	**25.6**	**0-527.4**
HS 01-24	1,433	35.1	0-150	42.6	0-527.4
HS 05-97	9,895	8.6	0-70	23.1	0-107.1
By WTO definition					
Agricultural products	1,431	33.2	0-150	41.8	0-527.4
Animals and products thereof	106	30.8	5-100	36.4	9.4-111.1
Dairy products	32	34.4	30-60	39.7	30.9-68.3
Fruit, vegetables, and plants	355	27.6	0-100	33.9	0-111.1
Coffee and tea	75	74.7	26.9-100	87.8	36.1-111.1
Cereals and preparations	137	30.4	0-90	39.1	0-192.6
Oils seeds, fats, oil, and their products	196	18.5	0-100	23.0	0-103
Sugars and confectionary	38	33.4	10-60	51.8	10.3-85.9
Beverages, spirits, and tobacco	123	78.7	7.5-150	98.0	23.9-527.4
Cotton	11	5.5	0-30	7.3	0-36.1
Other agricultural products, n.e.s.	358	25.1	0-70	33.5	0-79
Non-agricultural products (incl. petroleum)	9,897	8.9	0-70	23.2	0-107.1
Non-agricultural products (excl. petroleum)	9,879	8.9	0-70	23.3	0-107.1
Fish and fishery products	176	29.5	5-30	34.1	5.2-36.1
Minerals and metals	1,912	7.1	0-10	21.0	0-31.7
Chemicals and photographic supplies	2,471	8.1	0-10	23.6	0-26.8
Wood, pulp, paper, and furniture	495	9.2	0-10	21.1	0-26.8
Textiles	1,555	9.6	5-10	23.5	9.4-26.8
Clothing	397	10.0	10-10	22.0	15-26.8
Leather, rubber, footwear, travel goods	322	10.2	0-70	25.2	0-79
Non-electric machinery	1,094	7.1	0-10	22.4	0-26.8

Table III.8 (cont'd)

[57] Customs Tariff Act 1975, Section 3(5).

[58] Customs Notification No. 102/2007, 14 September, 2007.

[59] WTO document series WTO/DS360 (India: additional and extra-additional duties on imports from the United States).

[60] Department of Revenue, D.O.F. No. 334/3/2004-TRU, 8 July 2004; and Finance Act 2004, Section 93. For example, if the import duty for a certain product is 10%, the education cess on that product would be 2% of 10%, that is 0.02%.

	No. of lines	Effective applied rates (MFN)		Total duty rate, incl. extra charges[a]	
		Average (%)	Range (%)	Average (%)	Range (%)
Electric machinery	537	6.7	0-10	22.7	0-26.8
Transport equipment	244	21.5	0-60	40.4	0-107.1
Non-agricultural products, n.e.s.	676	8.6	0-10	22.1	0-26.8
Petroleum	18	8.2	0-10	9.0	5-10.3
By sector[b]					
Agriculture, forestry and fisheries	621	28.8	0-100	36.4	0-111.1
Mining	232	5.1	0-10	9.1	0-25.6
Manufacturing	10,474	11.1	0-150	25.3	0-527.4
Manufacturing excluding food processing	9,605	8.8	0-60	23.6	0-107.1

a Calculation for averages with extra charges include landing charges, effective custom duty, additional duty, special additional duty, and education cess.
b ISIC Rev.2 classification. Electricity, gas, and water is excluded (1 tariff line).

Note: Calculations exclude specific rates and include the *ad valorem* part of alternate rates.

Source: WTO Secretariat calculations, based on data provided by the Indian authorities.

46. Additional cesses are levied on imports and domestic products for the development of specific industries and are not part of the fiscal revenue (Table AIII.2). The authorities noted that these cesses are charged as part of the excise duty, thus in the case of imports they are part of the additional duty (AD). The stated objective of the authorities is to eliminate the cesses once the Goods and Services Tax is implemented.

47. Some imports are also subject to specific duties. For instance, imports of high-speed diesel oil and petrol (i.e. motor spirits) are subject to a fuel cess (previously the additional excise duty or road cess) at a rate of Rs 2 per litre[61], to finance the Central Road Fund. (Chapter IV(3)(iv)).[62] According to the authorities, this cess is charged as part of the additional duty (AD).

48. The national calamity contingent duty (NCCD) is levied on pan masala (HS 2106.90.20); some cigarettes and tobacco products (HS 24.02 and 24.03); petroleum oils (HS 2709.00.00); telephones for cellular network or for other wireless networks; and vehicles and motor cycles (HS 8703, 8704, 8706, and 8711).[63] The NCCD is both specific and *ad valorem*, ranges from 1% to 45%, and is also levied on similar domestic products.[64]

49. The 2010/11 Budget introduced the "clean energy cess" (Rs 50/tonne) to be levied on coal, lignite, and peat produced in India and imported.[65] This cess is to finance the establishment of a National Clean Energy Fund to fund research and innovative projects in clean energy technologies. It is levied on raw coal (HS 2701), raw lignite (HS 2702), and raw peat (HS 2703) at a rate of Rs 50/tonne in addition to any other cess or duties levied on these goods.

50. The State of Maharashtra levies an entry tax (octroi) on entry of domestic and imported goods to the jurisdiction. The tax is regulated by the Maharashtra Tax on the Entry of Goods into Local

[61] Finance Act 1999.
[62] The special additional customs duty on motor spirit is leviable in accordance with the Finance Act 2002.
[63] Finance Act 2003, Section 134; and NCCD Incidence (7th Schedule of Finance Act 2001, as amended by the 13th Schedule of Finance Bill 2003 and 8th Schedule of Finance Bill 2008).
[64] NCCD Incidence (7th Schedule of Finance Act 2001, as amended by the 13th Schedule of Finance Bill 2003 and 8th Schedule of Finance Bill 2008).
[65] Central Excise Circular No. 01/2010, 24 June 2010.

Areas Act 2002, and applies currently to various petroleum products, tiles, and air conditioners. Rates range from 10% to 34% according to product. For petroleum products, the rate is mixed (a specific component (Rs 1/litre) is added to the *ad valorem* rate). Entry taxes are applied in several states.[66]

(vi) Import prohibitions, restrictions, and licensing

51. Import restrictions may be imposed under Section 3 of the Foreign Trade (Development and Regulation) Act 1992 and through notifications, under Section 11 of the Customs Act 1962, declaring the importation or exportation of any good as prohibited or restricted. Import restrictions may be imposed for security, self-sufficiency, balance-of-payments, health, and moral reasons.

52. In practice, India links the use of import restrictions and licensing, and other non-tariff measures (NTMs) to domestic policies, for example, by relaxing NTMs when imports are required to alleviate inflation or shortages. The use of NTMs raises the cost of exporting to India and, in some cases, may be equivalent to an import prohibition.

(a) Import prohibitions

53. Import prohibitions are generally for health and safety reasons and include a range of products from meat and offal of most wild animals, to animal fats, and ivory and ivory powder. During the period under review, certain mobile handsets and mobile phones have been included in the list of prohibited goods (Table III.9). For sanitary reasons, India has continued to ban imports of certain avian livestock and livestock products[67]; and has prohibited imports of milk and milk products from China since 2008.[68] In addition, imports of rough diamonds from Côte d'Ivoire, as well as some products from the Democratic People's Republic of Korea, Iran, and Iraq are prohibited under UN resolutions, as well as imports of rough diamonds (HS 7102.10, 7102.21 or 7102.31) from the Bolivarian Republic of Venezuela under the Kimberly Process Certification Scheme.[69] Imports of beef and products containing beef in any form remain prohibited.[70]

Table III.9
Import prohibitions, 2011

HS No.	Description	Status since 2007
0208.90.10	Other meat and edible meat offal of wild animals, excluding rabbits or hares, primates, whales and dolphins, and reptiles	Unchanged
0209.00.00	Pig fat, free or lean meat, and poultry fat, not rendered or otherwise extracted	Unchanged
0410.00.10	Edible products of wild animal origin	Unchanged
0504.00.31, 0504.00.41 0504.00.51	Gusts, bladders, and stomachs of wild animals	Unchanged

Table III.9 (cont'd)

[66] Entry tax on goods is levied in several states, including Jammu and Kashmir, Himachal Pradesh, Rajasthan, Uttar Pradesh, Uttaranchal, Haryana, Punjab, Andhra Pradesh, Karnataka, Tamil Nadu, Kerala, Bihar, Assam, Orissa, Arunachal Pradesh, Chhattisgarh, West Bengal, Maharashtra, Goa, Madhya Pradesh, and Gujarat.

[67] Department of Commerce (2010a), Schedule 1: Import Policy.

[68] DGFT Notifications Nos. 46(RE-2008)/2004-2009, 24 September 2008; 67(RE-2008)/2004-2009, 1 December 2008; 111(RE-2008)/2004-2009, 16 June 2009; 22/2009-2014, 23 December 2009; and 49/2009-2014, 24 June 2010; and No. 16 (RE-2010)/2009-2014, 3 January 2011.

[69] Department of Commerce (2010b).

[70] Under the current Import Policy Schedule (Foreign Trade Policy 2009-14), imports of beef and products containing beef in any form are listed as prohibited (under the General Notes Regarding Import Policy). However, meat of bovine animals (fresh, frozen or chilled) are also listed as restricted (i.e. subject to licences) under the Import Policy Schedule.

HS No.	Description	Status since 2007
0505.10.10, 0505.90.21 0505.90.31, 0505.90.91	Feathers, powder, waste, and other parts of feathers, and skins and other parts of wild birds	Unchanged
0511.99.99	Natural sponges	Unchanged
0506.10.11, 0506.10.21 0506.10.31, 0506.10.41 0506.90.11, 0506.90.91	Bones and horn-cores (crushed and non-crushed), bone grist, ossein, and bone meal of wild animals	Unchanged
0507.10.10, 0507.10.20	Ivory, and ivory powder and waste	Unchanged
0510.00.91	Wild animal products used in pharmaceutical products, excluding bezoar, ox gallstone, and placenta	Unchanged
0511.91.10, 0511.91.20 0511.91.30, 0511.99.21 0511.99.92	Fish nails and tail, and other fish waste; sinews and tendons of wild animals; and frozen semen (other than bovine embryo) of wild animals	Unchanged
1501.00.00	Pig fats (including lard) and poultry fat, other than that of Headings Nos. 0209 or 1503	Unchanged
1502.00.10, 1502.00.20 1502.00.30, 1502.00. 90	Fats of bovine animals, sheep, or goats, other than those of Heading No. 1503, including mutton tallow and fasts (unrendered, rendered or solvent extraction)	Unchanged
1503.00.00	Lard stearin, lard oil, oleostearin, oleo-oil, and tallow oil not emulsified or mixed or otherwise prepared	Unchanged
1504.10.99, 1504.20.30, 1504.20.90, 1504.30.00	Fats and oils of fish or marine mammals, excluding cold and squid liver oils; fish lipid oil; sperm oil; and other fats and oils of fish or marine mammals	Unchanged
1506.00.10, 1506.00.90	Neat-foot oil and fats from bone or waste, and other animal fats and oils	Unchanged
1516.10.00	Animal fat	Unchanged
1517.10.10, 1517.90.30	Margarine (excluding liquid margarine) and imitation of lard of animal origin	Unchanged
1518.00.40	Other vegetable oil and fats, excluding castor oil dehydrated and line seed oil	Unchanged
1522.00.10, 1522.00.20 1522.00.90	Degras[a] and soap stocks	Unchanged
3507.10.11, 3507.10.19 3507.10.91, 3507.10.99	Animal rennet	Unchanged
4302.19.20	Tiger-cat skins	Unchanged
4303.10.10, 4303.90.10	Articles of apparel and clothing accessories of wild animals covered under the Wild Life Protection Act 1972	Unchanged
8517	Mobile handsets without international mobile equipment identity (IMEI) number or with all zeroes IMEI, and CDMA[b] mobile phones without electrical serial number (ESN)/mobile equipment identifier (MEID) or with all zeroes ESN/MEID	Added
9601.10.00	Worked ivory and articles of ivory	Unchanged

a Residues resulting from the treatment of fatty substances or animal or vegetable waxes.
b CDMA stands for code division multiple access.

Source: Department of Commerce (2010), Schedule 1: Import Policy, *Foreign Trade Policy 2009-2014*, incorporating Annual Supplement, 23 August. Viewed at: http://dgft.gov.in; and DGFT online information, "Notifications". Viewed at: http://dgft.gov.in.

(b) Import licensing[71]

54. India applies an import licensing system to administer the importation of restricted items. Import licences are administered according to the Foreign Trade (Development and Regulation) Act 1992 and Foreign Trade (Regulation) Rules 1993. Licensing requirements may be eliminated without legislative approval.

55. The Import Policy Schedule lists the items that are restricted and items that are restricted with a condition.[72] Restricted items require a specific import licence issued by the Directorate General of Foreign Trade (DGFT). Restricted items subject to conditions, require import permits (e.g. sanitary

[71] This section is based on the Foreign Trade (Development and Regulation) Act 1992; Foreign Trade (Regulation) Rules 1993; and WTO documents G/LIC/N/3/IND/9-11, 3 September 2007 to 27 July 2010.

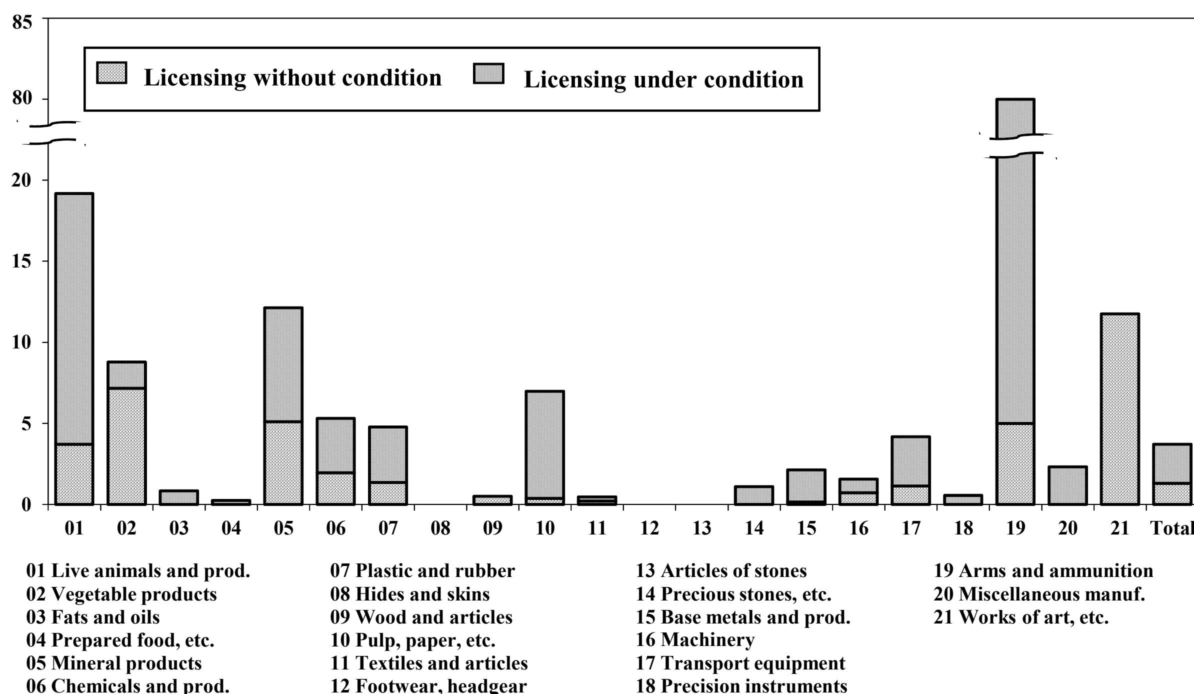
[72] The conditions are stipulated in Department of Commerce (2010a), Schedule 1: Import Policy, which is amended through DGFT notifications from time to time.

and phytosanitary permits), in addition to the specific import licence. It is not clear to the Secretariat which products require an automatic licence and which require a non-automatic licence.

56. Under India's current Import Policy Schedule (Foreign Trade Policy 2009-14), some 422 tariff lines at the HS eight-digit level are subject to import restrictions (up from some 415 tariff lines in 2007).[73] They represent around 3.7% of total tariff lines. Some 275 tariff lines are restricted while some 147 are restricted subject to conditions. Restrictions imposed in 2007 under HS sections 1, 2, 5, 19 (arms and ammunition), and 21 (works of art), remain unchanged (Chart III.3).

Chart III.3
Import licensing, by HS section, 2010/11

Per cent of HS section



Source: WTO Secretariat calculations, based on data provided by the Indian authorities.

57. All importers holding a valid code number (IEC) may apply for a licence. Applications for import licences are made to the DGFT or to the regional licensing authority of the DGFT. The licensing authority may refer the application to the EXIM Facilitation Committee, which consists of technical authorities, for assistance to approve a licence. The practice of routing licence applications through sponsoring authorities has been dispensed with. The requirements for filing applications for imports licences are published in the Handbook of Procedures.[74]

58. Licences are granted on an MFN basis. They are valid for 24 months and may be revalidated for six months by the licensing authority, on merit. Licences are issued with an "actual user condition"[75] and are in general non-transferable.[76]

[73] Including Chapter 89, 427 tariff lines at the HS eight-digit level are subject to import restrictions.
[74] Department of Commerce (2010b).
[75] This means that the imported material must be used by the importer and cannot be sold.

59. Licences are subject to a licence application fee, which varies according to the c.i.f. value of imports.[77] At the time of the last Review, fees were Rs 2 per shipment of a c.i.f. value of Rs 1,000, subject to a minimum fee of Rs 200 and a maximum of Rs 100,000. For electronically filed applications, the fee was Rs 1 per shipment for a c.i.f. value of Rs 1,000 with a minimum of Rs 200 and maximum of Rs 50,000.[78] Imports by the Central Government, state government or any department/office of the Government are exempt from the application fees, as are imports to be used by educational, charitable or missionary institutions, or for personal use (except vehicles). Fees are not refunded.[79]

60. The DGFT or an authorized officer may, in writing, refuse to grant, renew, or suspend a licence to import (or export) on specific grounds (Box III.1). Any of these decisions may be appealed. However, in accordance with Indian legislation, a licence should not be denied if denial is likely to adversely affect trade.[80]

Box III.1: Grounds to refuse to grant or to cancel a licence, 2011

Grounds to refuse to grant a licence:

- the applicant has contravened any law relating to customs or foreign exchange;
- the application for the licence does not substantially conform to any provision of the Foreign Trade (Regulation) Rules;
- the application or any document used to support it contains false, fraudulent or misleading statement;
- an action against the applicant is pending under the Foreign Trade (Development and Regulation) Act 1992 or rules and orders made there under;
- the applicant fails to pay any penalty imposed on him under the Act;
- the applicant has tampered with a licence;
- the applicant or any agent or employee of the applicant with his consent has been a party to a corrupt or fraudulent practice for the purposes of obtaining any other licence;
- the applicant is not eligible for a licence if the applicant does not comply with the registration and documentation stipulated in the Export and Import Policy;
- the applicant fails to produce documents called for by the Director General or the licensing authority;
- in the case of a licence for import, no foreign exchange is available to import;
- if it has been decided by the Central Government to import through state trading enterprises and distribution thereof through special or specialized agencies

Grounds to cancel a licence:

- the licence has been obtained by fraud, suppression of facts or misrepresentation; or
- the licensee has committed a breach of any of the conditions of the licence; or
- the licensee has tampered with the licence in any manner; or
- the licensee has contravened any law relating to customs or foreign exchange or the rules and regulations relating thereto.

Source: Foreign Trade (Development and Regulation) Act 1992; Foreign Trade (Regulation) Rules 1993; and WTO documents G/LIC/N/3/IND/9-11, 3 September 2007-27 July 2010.

[76] The Foreign Trade (Development and Regulation) Act 1992; and Foreign Trade (Regulation) Rules 1993.

[77] WTO document G/LIC/N/3/IND/11, 27 July 2010.

[78] WTO document WT/TPR/M/182/Add.1, 20 July 2007; and Department of Commerce (2010b), Appendix 21B.

[79] Foreign Trade (Regulation) Rules 1993.

[80] Foreign Trade (Development and Regulation) Act 1992.

61. The goods imported under a licence cannot be exported without the written permission of the DGFT.[81]

62. Imports of certain goods (24 tariff lines) are subject to import restrictions depending upon their import price (Table III.10). These imports are restricted (i.e. subject to a licence) when the c.i.f. price is lower than the minimum price. Minimum import prices are set taking into account domestic and international prices and quality.[82]

Table III.10
Items whose import is free, subject to minimum import price, 2010/11

HS code	Description	Minimum import price
0802.90.11 0802.90.12 0802.90.13 0802.90.19	Betel nuts: whole Betel nuts: split Betel nuts: ground Betel nuts: other than above	Rs 35/kg
4012.11.00 4012.12.00 4012.13.00 4012.19.10 4012.19.90	Retreaded tyres, of a kind used on motor cars, Retreaded tyres: of a kind used buses or lorries Retreaded tyres: of a kind used on aircraft Other tyres: for two wheelers Other tyres	US$175/unit for buses, lorries, bigger size vehicles, and light commercial vehicles US$25/unit for passenger vehicles
4012.20.10	Used pneumatic tyres: for buses, lorries, and earth moving equipment	US$175/unit
4012.20.20	Used pneumatic tyres: for passenger automobile vehicles	US$25/unit
6802.10.00 6802.21.10 6802.21.20 6802.21.90 6802.91.00 6802.92.00	Tiles, cubes, and similar articles Marble tiles Marble monumental stone Other monumental or building stone Marble, travertine, and alabaster Other calcareous stone	US$50/kg
6810.11.10 6810.11.90 6810.19.10 6810.19.90 6810.91.00 6810.99.10 6810.99.90	Cement bricks Other building blocks and bricks Cement tiles for mosaic Other articles of cement Articles of cement: prefabricated structural components for building or civil engineering Concrete boulder Other articles of cement	US$50/kg

Source: Department of Commerce (2010), Schedule 1: Import Policy, *Foreign Trade Policy 2009-2014*, incorporating Annual Supplement, 23 August. Viewed at: http://dgft.gov.in.

(c) Import quotas

63. India maintains import quotas for marble and similar stones (HS 2515.11.00, 2515.12.10, 2515.12.20, and 2515.12.90) and for sandalwood (HS 4403.99.22). Quotas are established annually and administered on an MFN basis. There is no maximum limit to be allocated per applicant. Applications are examined upon receipt and assessed according the criteria stated in the notifications and circulars issued by DGTP on a yearly basis.[83] India does not maintain bilateral quotas.

64. Since the removal of most quantitative restrictions on imports in 2001, a mechanism has been set up to monitor imports of items considered to be sensitive. There are currently some 415 sensitive items, compared with 300 in 2007. Monitored sensitive items include milk and milk products, fruits and vegetables, pulses, poultry, tea and coffee, spices, food grains, edible oils, cotton and silk, marble

[81] Foreign Trade (Development and Regulation) Act 1992; and Foreign Trade (Regulation) Rules 1993.

[82] Information provided by the authorities.

[83] DFGT Notification No. 36/2009-2014, 31 March 2010; and DGFT Circular No. 29/2009-2014, 31 March 2010.

and granite, automobiles, parts and accessories of motor vehicles, products produced by small-scale industries, and other products (bamboos, cocoa, copra, and sugar).[84]

65. As of 2010, India may impose quantitative restrictions by notification in the *Gazette of India*, on imports of goods that cause serious injury to domestic industry, as a result of a safeguard investigation (section (viii)).[85]

(d) Other import restrictions

66. Imports of certain items, including motor vehicles[86], and second-hand cars (less than three-year old)[87] must be imported through specified ports (Chennai, Kolkata, and Mumbai for new vehicles; and Mumbai for second-hand cars). Until 2008, imports from Sri Lanka that were subject to preferential tariffs (such as tea and garments) had to be imported through specific ports (Kochi and Kolkata for tea, and Chennai and Mumbai for garments).[88]

(vii) State trading[89]

67. State trading is used as a policy tool, to ensure, *inter alia*: a "fair" return to farmers as well as food security; the supply of fertilizer to farmers; and that the domestic support price system for kerosene and LPG are properly implemented through the importation by a single operator (section (4)(iv)).

68. India maintains state trading for certain agricultural goods (i.e. some cereals, copra, and coconut oil), urea, and petroleum oils (Table III.11). Seven state-trading companies (STEs) are authorized by the DGFT to trade in these goods. However, under the Foreign Trade Policy 2009-14, the DGFT may authorize other companies to import any goods subject to state trading, when STEs are not able to supply the market. The Indian Oil Corporation continues to have the monopoly on imports of natural gasoline liquid (HS 2710.11.20), other natural gasoline liquid (HS 2710.11.90), and light diesel oil (HS 2710.19.40); other STEs and private companies may market other hydrocarbons (Table III.11).

69. The exclusive right to import (or export) is granted to a state enterprise under the provisions of the Foreign Trade Policy 2009-14 (Paragraph 2.11). Also, under the Foreign Trade Policy, all STEs granted special privileges to import (export) must make such purchases (sales) in accordance with commercial considerations including price, quality, availability, marketability, and transportation. STEs should act in a non-discriminatory manner.

70. The value of imports by STEs during the period under review is shown in Table III.11. India last filed its STE notification in 2010; however, the statistics were on STEs imports up to 2006.

71. STEs also assist India in its goal of "balancing" Indian imports and exports through the use of countertrade, which involves an agreement for one country to sell goods to another in exchange for goods (perhaps also involving some cash or services) of an equal value from the second country. The

[84] Department of Commerce online information, "Trade Statistics: Imports of Sensitive Items". Viewed at: http://commerce.nic.in/tradestats/import.asp.

[85] Foreign Trade (Development and Regulation) Amendment Act 2010.

[86] iloveindia.com online information, "Importing Cars in India". Viewed at: http://www.iloveindia.com/cars/imported-cars/index.html.

[87] Imports of second-hand cars over three-years old are prohibited.

[88] Customs Notification No. 52/2008, 22 April 2008.

[89] WTO document G/STR/N/8/IND, G/STR/N/9/IND, G/STR/N/10/IND, and G/STR/N/11/IND, 6 May 2010.

practice is most prevalent between countries that have foreign exchange constraints or balance-of-payments issues.[90] India has stated that it has no countertrade requirements, although private companies are reportedly "encouraged to use countertrade" and MMTC Ltd. promotes countertrade operations on its website.[91] Most recent uses of countertrade by India involved capital goods.[92] Private companies are encouraged to use countertrade. Global tenders usually include a clause stating that, all other factors being equal, preference is given to companies willing to agree to countertrade.[93]

Table III.11
Value of imports subject to state trading, 2007-11

State-trading enterprises	Product	HS code	Import value (Rs million)			
			2007/08	2008/09	2009/10	2010/11[a]
Food Corporation of India	Wheat	1001.10.90, 1001.90.20, 1001.90.39	26,575.1	0.2	2,317.6	595.6
	Rye	1002.00.90	0.0	0.0	0.0	0.0
	Oats	1004.00.90	82.5	144.7	133.9	28.4
	Maize	1005.90.00	79.6	234.9	574.3	14.0
	Rice	1006.10.90, 1006.20.00, 1006.30.10, 1006.30.20, 1006.30.90, 1006.40.00	4.2	5.4	3.7	1.6
	Grain sorghum	1007.00.90	0.0	0.0	0.0	0.0
	Buckwheat, millet, canary seed, jawar, bajra, ragi, other cereals	1008.10.90, 1008.20.19, 1008.20.29, 1008.20.39, 1008.30.90, 1008.90.90	8.2	29.0	33.0	7.1
State Trading Corporation	Copra	120300.00	0.0	0.0	0.0	0.0
	Crude oil (coconut oil and its fractions)	1513.11.00	0.0	138.9	392.6	0.0
	Other (coconut oil and its fractions)	1513.19.00	352.6	675.3	137.7	0.0
Indian Oil Corporation; Bharat Petroleum Corporation Ltd.; Hindustan Petroleum Corporation Ltd.; Oil and Natural Gas Corporation Ltd.; Mangalore Refinery and Petrochemicals Ltd.; Numaligarh Refinery Ltd.; Reliance Industries Ltd.; Essar Oil Ltd.; and Shell India Pvt. Ltd.	Special boiling point spirits (other than Benzene Toulol) with nominal boiling point range 55-115°C[b]	2710.11.11	787.6	6,063.0	6,296.6	2,846.8
	Special boiling point spirits (other than Benzene, Benzol, Toluene, and Toulol) with nominal boiling point range 63-70°C[b]	2710.11.12	0.0	0.0	0.0	0.0
	Other special boiling point spirits (other than Benzene, Benzol, Toluene, and Toulol)[b]	2710.11.13	0.0	0.1	355.7	540.4
	Other motor spirit[b]	2710.11.19	5,280.1	12,110.6	11,890.1	8,174.2
	Aviation turbine fuel[b]	2710.19.20	124.1	326.6	3,939.3	540.5
	High speed diesel[b]	2710.19.30	86,256.4	103,837.4	67,387.1	24,390.6

Table III.11 (cont'd)

[90] Department of Commerce (2010a).

[91] WTO (2007); USTR (2009); and MMTC online information, "MMTC Inside". Viewed at: http://www.mmtclimited.com/frame.php?url=newsitejewellery/index.htm.

[92] *The Economic Times*, "Offsets in Indian Defence Sector," 22 May 2009; *FDI Magazine*, "Countertrade Still Thrives," 8 December 2003; *Indonesian Commercial Newsletter*, "Indonesia—India Agrees on Counter Trade," 26 March 2002; and *AsiaPulse News*, "India to Use 'Counter Trade' to Boost Grain Export," 25 March 2002.

[93] USTR (2010).

State-trading enterprises	Product	HS code	Import value (Rs million)			
			2007/08	2008/09	2009/10	2010/11[a]
Indian Oil Corporation	Natural gasoline liquid	2710.11.20	31.2	2.3	0.3	0.0
	Other natural gasoline liquid	2710.11.90	161,683.2	155,321.2	34,938.7	13,184.9
	Light diesel oil	2710.19.40	28.6	10.3	8.3	2.5
Indian Oil Corporation; Bharat Petroleum Corporation Ltd.; Hindustan Petroleum Corporation Ltd.; IBP; and State Trading Corporation	Superior kerosene oil	2710.19.10	55,830.4	71,914.3	25,688.6	11,545.2
State Trading Corporation; Minerals and Metals Trading Corporation; and Indian Potash Ltd.	Urea whether or not in aqueous solution	3102.10.00	79,445.9	95,876.5	5,549.7	9,464.0

a April to June.
b Bharat Petroleum Corporation Ltd., Hindustan Petroleum Corporation Ltd., and IBP have been granted rights to market these products (Ministry of Petroleum and Natural Gas, Resolution No. P-23015/1/2001-MKT, 8 March 2002).

Source: WTO document G/STR/N/8/IND, G/STR/N/9/IND, G/STR/N/10/IND, and G/STR/N/11/IND, 6 May 2010; Department of Commerce (2010), Schedule 1: Import Policy, *Foreign Trade Policy 2009-2014*, incorporating Annual Supplement, 23 August. Viewed at: http://dgft.gov.in; and information provided by the Indian authorities.

(viii) Contingency measures

(a) Anti-dumping and countervailing measures

Overview

72. India's anti-dumping and countervailing legislation is contained in the Customs Tariff Act 1975, as amended by the Customs Tariff (Amendment) Act 1995, and the Customs Tariff (Identification, Assessment, and Collection of Anti-Dumping Duty on Dumped Articles and for Determination of Injury) Rules 1995. This legislation was notified to the WTO in 1996.[94] The authorities noted that India considers anti-dumping duties, in particular, and trade remedial measures in general, as necessary protection instruments to eliminate injury caused to the domestic industry by unfair trade practices. Interventions are aimed at re-establishing a situation of open and fair competition in the Indian market.

73. Anti-dumping investigations may be initiated by the Directorate General of Anti-Dumping and Allied Duties (DGAD), in the Department of Commerce, upon a written application by or on behalf of domestic industry, or on its own initiative if there is justification to launch an investigation. An application is scrutinized by the DGAD to ensure it is adequately documented and provides sufficient evidence for initiation. If the evidence is not adequate, a "deficiency letter" is issued, normally within 20 days of the receipt of the application. For an investigation to be initiated, the investigation petitioners must account for at least 25% of total domestic production of the like article; and the domestic producers expressly supporting the application must account for more than 50% of the total production of the like article by those expressly supporting and opposing the application. In accordance with the Indian legislation, dumping *per se* is not actionable. For a petition to proceed, the DGAD must verify the accuracy and adequacy of the evidence provided and determine that there is sufficient evidence of dumping or injury (where applicable), and a causal link between the dumped

[94] WTO documents G/ADP/N/1/IND/1, 15 August 1995; G/ADP/N/1/IND/2/Corr.1, 9 January 1996; and G/ADP/N/1/IND/2/Suppl.1, 23 December 1996.

imports and the alleged injury, before initiating an investigation. In addition, other injury causes have to be investigated so that they are not attributed to dumping.[95]

74. The DGAD informs the government of the exporting country, and issues a public notice with details of the initiation and the time-limits for interested parties to provide comments. The public notification is usually issued within 45 days of receipt of documentation, and the time-limit for interested parties to express their views is a further 30 days. A preliminary finding regarding export price, normal value, and margin of dumping is normally issued in a public notice within 150 days of initiation of the investigation. Following this finding, the Department of Revenue may decide to impose a provisional duty not exceeding the margin of dumping. The provisional duty may be imposed only after the expiry of 60 days from the date of initiation of the investigation. It may remain in force for a period not exceeding six months, extendable to nine months upon the request of exporters representing a significant percentage of trade. The final determination is normally made within 150 days of the date of the preliminary determination, and within one year from the initiation of the investigation. This period may be extended by the Central Government by a maximum of six months under special circumstances, which include the complexity of the case and judicial interventions by courts.

75. The margin of dumping for each exporter or producer is determined by the DGAD, following which the Department of Revenue may, within three months of publication of the final findings, impose the anti-dumping duty by notification in the *Official Gazette*. Under Indian law, the Government is obliged to restrict the anti-dumping duty to the lower of the margin of dumping or the margin of injury. Anti-dumping duties may remain in place for five years unless revoked earlier or extended by the DGAD.[96]

76. Indian legislation provides for levying anti-dumping duty retrospectively, where there is a history of dumping that caused the injury or when the injury is caused by massive dumping, in a relatively short time, so as to seriously undermine the remedial effect of an anti-dumping duty. The retrospective application may not go beyond 90 days of the date of imposition of a provisional duty. No retrospective application prior to the date of initiation of an investigation is allowed. The authorities indicated that there has been no retrospective application of duties during the period under review.

77. An investigation may be terminated by the DGAD at any time if: there is a written request from or on behalf of the domestic industry at whose instance the investigation was initiated; there is insufficient evidence of dumping or injury; the injury is negligible; the margin of dumping is less than 2% of the export price; or the volume of the dumped imports is less than 3% of imports of the like product, unless the countries accounting for 3% individually account for over 7% collectively of imports of the like product.

78. Rules to initiate and conduct a sunset review (SSR) are contained in Trade Notice No. 1/2008 of 10 March 2008.[97] An SSR may be initiated upon petition of the domestic industry or may be self-initiated by the DGAD. In accordance with the rules, the DGAD must issue an alert letter to the domestic industry soon after the fourth year in which the anti-dumping measures are in place. The domestic industry must inform the DGAD, within 40 days of the dispatch of the letter, whether it intends to file an application to extend the anti-dumping measures. If so, an application on the need to keep the anti-dumping measures in force, must be received by the DGAD at least six months before the date of expiry of the anti-dumping measures. The DGAD may then initiate the SSR on the basis

[95] Directorate General of Anti-Dumping and Allied Duties (undated).

[96] Any review of a measure must be concluded within 12 months of initiation of the review.

[97] Department of Commerce online information, "Anti-dumping Trade Notices". Viewed at: http://commerce.nic.in/traderemedies/ad_tradenotices.asp?id=14.

of the domestic industry's application. If the DGAD decides to self-initiate the investigation, it must issue a questionnaire to the domestic industry; comments must be received by the DGAD within the following 40 days substantiating the need for the continued imposition of the anti-dumping measures. After receipt of the questionnaire, the DGAD may issue a letter to other interested parties regarding the need to continue or otherwise the AD measures; comments must be received by the DGAD within 40 days of the date of issuance of the letter. If there is sufficient ground for continuation of the anti-dumping measures (with or without modification) after receipt of information from various parties, the DGAD may recommend this to the Central Government. The investigation is closed if there is insufficient ground for continuation of the measure in force. The new procedures superseded all previous instructions or trade notices issued by the DGAD with regard to sunset reviews.

79. The DGAD conducts mid-term reviews to assess the need for continued imposition of anti-dumping duties. These reviews may be self-initiated or on request from an interested party and in view of changed circumstances. The review follows the same procedures prescribed for an investigation to the extent that they are applicable. In 2010, a trade notice was issued to clarify the initiation of mid-term reviews.[98] The notice indicates that an application for initiation of a mid-term review of an anti-dumping duty in force may be made to the DGAD by an interested party including exporters, importers, domestic producers, trade representative bodies, firms or institutions, which are representative of the domestic industry. The applicant must submit positive information substantiating the need for a review. The notice also indicates that the application for an interim/mid-term review may be accepted by the DGAD provided that a reasonable period of time, i.e. at least one year, has elapsed since the imposition of the definitive anti-dumping duty by the Central Government. However, the DGAD may review the need for the continued imposition of the duty, where warranted, on its own initiative.

80. The DGAD is required to carry out a review for determining margins of dumping for any new exporter or producer from a country that is subject to anti-dumping, provided that exporters or producers are new and not related to any of the other exporters.

81. The authorities may suspend or terminate an investigation if the exporter concerned accepts an undertaking to revise prices in order to remove the dumping or the injurious effect of dumping. No undertaking is accepted before a preliminary determination is made. During the period under review, a price undertaking was accepted from Sri Lanka in August 2009, as a result of the anti-dumping investigation concerning "Imports of Plain Medium Density fibre Board from China, Malaysia, New Zealand, Thailand, and Sri Lanka".

82. Anti-dumping duty is not payable on products imported by units in export-processing zones (EPZs) or export-oriented units (EOUs), or on products imported by Advance Licence holders (now Advance Authorization Scheme, Table AIII.6).[99] The final anti-dumping duty paid on imported goods used in the manufacture of export goods may be refunded as brand rate of duty drawback in accordance with the drawback rules.[100]

83. Countervailing measures may be imposed under the Customs Tariff Act 1975 (Part 9) and the Customs Tariff (Identification, Assessment and Collection of Countervailing Duty on Subsidized

[98] Department of Commerce, Trade Notice No. 1/2010 of 17 May 2010 introduced clarification regarding the initiation of mid-term reviews in terms of Rule 23 of the Anti-dumping Rules (Identification, Assessment and Collection of Anti-Dumping Duty on Dumped Articles and for Determination of Injury).

[99] Customs Notification No. 41/97, 30 April 1997.

[100] The brand rate of duty drawback comprises the actual taxes to which the exporter was subject. It is calculated after checking the documents for the different duties paid for all inputs and input services used in the manufacture of the exported good. In this fashion, any anti-dumping duty paid on imported goods used in the manufacture of goods for export may be refunded as brand rate of duty, in accordance with the drawback rules.

Articles and for Determination of Injury) Rules 1995. The decision to initiate an investigation must be notified through a public notice, with relevant information to be provided by interested parties within 30 days of the notice. Provisional duties may be imposed six months after the date of initiation of the investigation, and may remain in force for a maximum of four months. Final findings must be published by the DGAD within one year of the date of initiation; the period may be extended by the Central Government in exceptional circumstances, by a further six months. Definitive countervailing measures must be imposed by the Central Government on DGAD recommendation within three months of the final findings being published. Final measures may remain in force up to five years.

84. Anti-dumping and countervailing measures may be appealed to the Customs, Excise and Service Tax Appellate Tribunal (CESTAT), in accordance with Chapter XV (Section 129) of the Customs Act 1962. The appeal must be filed within 90 days of the final duty being notified by the Central Government.[101] Between 2006 and October 2010, 40 appeals were made to the CESTAT, of which 7 cases were settled. In five of the seven cases, the measures imposed were upheld and the appeals rejected; the appeal was successful in one case; and the other case was referred back to the DGAD. The CESTAT decision may be appealed to the Supreme Court. During 2006-10, two CESTAT decisions were appealed to the Supreme Court of India: in one case the decision was upheld.

Measures

85. India is one of the most active users of anti-dumping measures among WTO Members. From the inception of the WTO until 30 June 2010, India accounted for 436 of the 2,433 anti-dumping measures adopted by Members, that is 17.9% of the total. During the same period, India initiated 613 investigations, out of a total of 3,752. The initiations affected mainly China (137), Korea, Rep. of (47), Chinese Taipei (45), the EU (42), Thailand (36), Japan (30), the United States (29), Indonesia (24), Singapore (23), Malaysia (22), and the Russian Federation (19).[102]

86. Between January 2006 and 31 December 2010, India initiated 209 anti-dumping investigations against 34 trading partners, compared with 176 reported in its last Review (Chart III.4).[103] The products involved included chemicals and products thereof, plastics and rubber and products thereof, base metals, and textiles and clothing. As at 31 December 2010, 207 anti-dumping measures were in force, compared with 177 on 30 June 2006.[104] India did not take any countervailing actions during this period. Measures were applied on 30 trading partners.[105] The majority were applied on China (67 or 32.4% of the total), Korea, Rep. of (19 or 9.2%), Chinese Taipei (19 or 9.2%), Thailand (14 or 6.8%), the EU or its members states (12 or 5.8%), and Japan, Malaysia, and the United States (9 or 4.3% each).

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[101] For further information, see CESTAT online information. Viewed at: http://cestat.gov.in/.

[102] Other countries/territories affected include: Iran (11), Hong Kong, China (10), Ukraine (10), Germany (9), South Africa (9), Brazil (7) (WTO online information, "Statistics on anti-dumping". Viewed at: http://www.wto.org/english/tratop_e/adp_e/ad_meas_rep_member_e.xls; and http://www.wto.org/english/tratop_e/adp_e/ad_init_rep_member_e.xls).

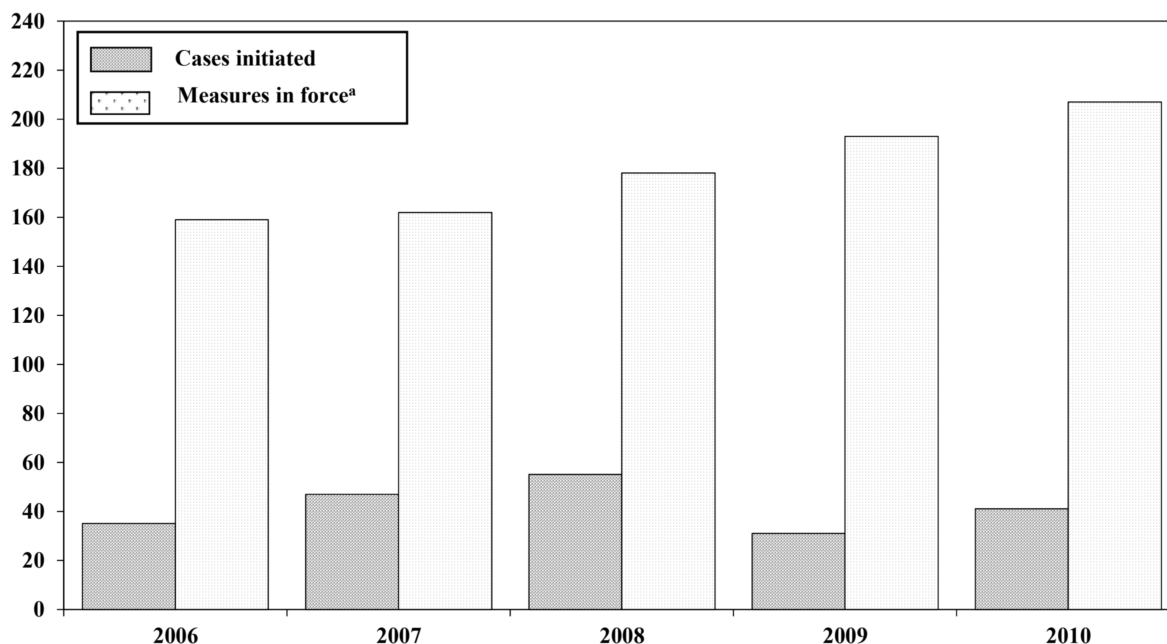
[103] Department of Commerce online information, "Anti-Dumping Cases in India". Viewed at: http://commerce.nic.in/traderemedies/ad_casesinindia.asp?id=2&criteria=&CurrPage=7; and WTO document WT/DAP/N/209/IND, 19 April 2011. The WTO Members most affected by the initiations during the period were: China (56), Korea and Thailand (17 each), Chinese Taipei (13), Malaysia (12), and the EU, Japan, and the United States (11 each).

[104] WTO (2007).

[105] Australia; Belarus; Bulgaria; China; the EU; France; Germany; Hong Kong, China; Indonesia; Iran; Japan; Kingdom of Saudi Arabia; Korea; Malaysia; New Zealand; Oman; Qatar; Russian Federation; Singapore; South Africa; Sri Lanka; Sweden; Switzerland; Chinese Taipei; Thailand; Turkey; the United Arab Emirates; the United Sates; and Viet Nam (WTO document G/ADP/N/209/IND, 19 April 2011).

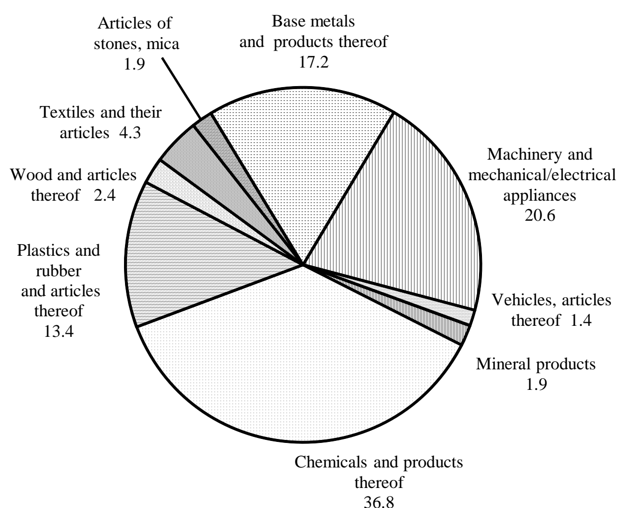
Chart III.4
Anti-dumping measures, January 2006-December 2010

(a) Number of cases initiated and measures in force

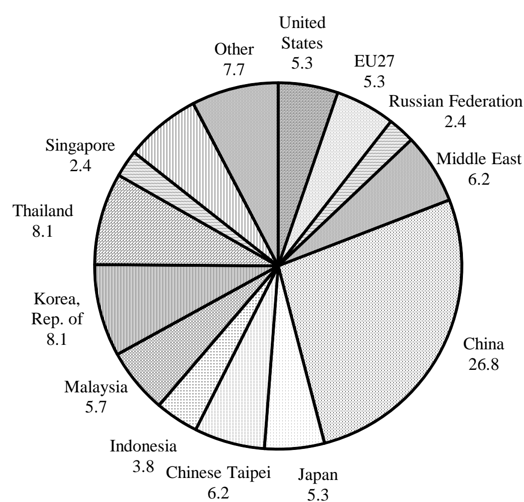


a On 31 December.

(b) Initiations by product
Per cent



(c) Initiations by origin
Per cent



Source: Notifications to the WTO.

87. As of 30 June 2010, the average length of an anti-dumping measure applied by India was 56.7 months. The longest lasting measure was 161 months (acrylonitrile butadiene rubber from Korea); 18 duties had been in place for over 10 years, and 81 measures for at least 5 years.

88. During 2006-10, 113 sunset reviews were initiated. They resulted in the elimination of the measure in 38 cases, and in re-imposition in 57 cases; the remaining cases were pending as of late 2010.

89. No definitive countervailing measure is currently in place (June 2011). An investigation, with respect to imports of sodium nitrite from China, was initiated in January 2008, but was terminated without the imposition of countervailing duties.[106]

90. Three of the anti-dumping measures applied by India have been challenged in the DSB; two cases are still pending, and one was settled between the parties.[107]

(b) Safeguards

Legislative and administrative framework

91. Indian safeguard legislation has been enacted under Sections 8B and 8C of the Customs Tariff Act 1975, with Section 8C relating specifically to imports from China. The Customs Tariff (Identification and Assessment of Safeguard Duty) Rules 1997, and the Customs Tariff (Transitional Products Specific Safeguard Duty) Rules 2002, describe the procedures for the application of safeguard measures. The authorities have noted that domestic legislation and its implementation follow Article XIX of the GATT 1994 and the WTO Agreement on Safeguards.

92. The Director General (Safeguards), in the Department of Revenue has responsibility for hearing the petitions and conduct investigations on safeguards. The Director General is also responsible for carrying out recommendations under the Indo-Singapore Trade Agreement (Safeguard Measures) Rules 2009. A request for a safeguard investigation must be made in writing to the Director General, by or on behalf of the domestic industry. The Director General may also self-initiate an investigation upon information received from any Commissioner of Customs. If the safeguard measures are requested to be imposed for more than a year, details of efforts made or planned in order to adjust positively to import competition, including details of progressive liberalization, must be provided, under the Safeguard Duty Rules 1997. Thereafter, the Director General may initiate an investigation to determine the existence of serious injury or threat thereof to the domestic industry, caused by the import of an article in such increased quantities, absolute or relative to domestic production. A safeguard investigation must be completed and notified publicly within eight months of initiation of the investigation (or within the period allowed by the Central Government). The proceedings of the Standing Board on Safeguards are not open to the public. Its views are placed before the Finance Minister for approval in respect of safeguard duties and before the Commerce Minister for imposition of quantitative restrictions.[108] If the Central Government, after

[106] WTO document G/SCM/N/212/IND, 6 September 2010.

[107] WTO document series: DS318 (India: anti-dumping measures on certain products from the Separate Customs Territory of Taiwan, Penghu, Kinmen, and Matsu (complainant: Chinese Taipei)), 28 October 2004: still pending, but inactive as at October 2010; DS306 (India anti-dumping measures on batteries from Bangladesh (complainant: Bangladesh)), 28 January 2004: settled between the parties in 2006; and DS304 (India: anti-dumping measures on imports of certain products from the European Communities (complainant: European Communities)), 8 December 2003: still open, but inactive as at October 2010.

[108] Directorate General of Safeguards online information, "FAQ". Viewed at: http://dgsafeguards.gov.in/faq.html.

conducting a safeguard investigation, is satisfied that any article is imported into India in such increased quantities and under such conditions as to cause or threaten to cause serious injury to domestic industry, it may, by notification in the *Official Gazette*, impose a safeguard duty on that article. The Central Government may exempt any article from payment of the whole or part of the safeguard duty upon notification in the *Official Gazette*. The notification must include the article exempted, the quantity exempted, and the article's origin.

93. If a request is made for provisional safeguard measures, full and detailed information regarding the existence of critical circumstances and how a delay in applying the measures would cause damage difficult to repair needs to be considered. The Director General may record preliminary findings in such cases and issue a public notice. These preliminary findings are placed before the Central Government thorough the Board on Safeguards.[109] Provisional measures may be imposed by the Central Government for up to 200 days.

94. The duty is levied only during the period necessary to prevent or remedy serious injury and to facilitate positive adjustment. It ceases to have effect four years after the date of imposition. However, if the Central Government is of the opinion that the domestic industry has taken measures to adjust to the injury or threat thereof and that the safeguard duty remains necessary, it may extend the period of imposition, up to a maximum of ten years from first imposition of the duty. A safeguard in place for more than one year must be liberalized progressively at regular intervals.

95. Until 2010, safeguard measures could only take the form of duty surcharges. The Foreign Trade (Development and Regulation) Amendment Act 2010 (No. 25 of 2010) amended India's safeguard legislation to allow for the use of quantitative restrictions as remedy measures.[110] The amendment allows "the Central Government, after conducting such enquiry as it deems fit, is satisfied that any goods are imported into India in such increased quantities and under such conditions as to cause or threaten to cause serious injury to domestic industry, it may, by notification in the *Official Gazette*, impose such quantitative restrictions on the import of such goods as it may deem fit." The quantitative restrictions may not be applied on imports of goods originating from a developing country if the share of imports does not exceed 3%; or on imports of goods originating from more than one developing country so long as the aggregate of imports from all countries does not exceed 9% of the total imports of such goods into India.[111]

96. The Director General's (Safeguards) decisions on safeguards cannot be appealed under the legislation[112], but appeals may be made to the High Court and the Supreme Court. If the period of imposition of a safeguard duty exceeds three years, the Director General must review the situation not later than the mid-term of such imposition and, if appropriate, recommend the withdrawal or the increase of the liberalization of duty.

Measures

97. Initiations of safeguard investigations increased substantially during the period under review. Although no investigations were initiated in 2006 and 2007, and only two were initiated in 2008, 13 investigations were initiated during 2009. A review investigation was initiated in the first quarter

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[109] Directorate General of Safeguards online information. Viewed at: http://www.cbec.gov.in/info-act/dg/dg-safeguards.htm.

[110] Foreign Trade (Development and Regulation) Amendment Act 2010.

[111] The list of developing countries for the purpose of the Agreement on Safeguards is contained in Customs Notifications Nos. 103/98, 14 December 1998; and 62/99, 13 May 1999.

[112] Directorate General of Safeguards online information, "Legal Framework". Viewed at: http://www.dgsafeguards.gov.in/Legal%20Framework.html.

of 2010 and a new safeguard investigation (N1, 3-dimethyl butyl-N Phenyl paraphenylenediamine), in December 2010.[113] Another new investigation was initiated in the first quarter of 2011.

98. Over 2007-10, 18 investigations were initiated, some involving more than one of case. In eight of these cases (seven investigations), the Director General (Safeguards) recommended the application of measures: in one case (oxo alcohol), the Board on Safeguards rejected the recommendation; in one case, the Director General recommended the application of the safeguard measures for three months; in another case, for a year; in another, for two years; in two cases, for three years; and in one case, and the Director General recommended the application of safeguards for four years (aluminium products). In some cases, the Board decided to apply the measure for a shorter than that suggested by the Director General. The Board decided to apply the safeguard measure for one year in the case of phtalic anhydride instead of three, and for two years in the cases regarding dimethoate, aluminium flat rolled products, and aluminium foil (Table AIII.3). All safeguard measures consisted of an increase in tariffs at the same or lower rates than those recommended by the Director General. No safeguard measures were applied in the remaining 11 investigations; the investigation ended due to a withdrawal of the petition in seven cases (four investigations); the Director General recommended that no safeguard measures be applied in seven cases (six investigations), and the case initiated in December 2010 is still under investigation.

(ix) Technical regulations and standards

(a) Standards

99. According to the authorities, there were no major changes related to the process of standardization in India during the review period. Indian standards are established based on the provisions of the Bureau of Indian Standards (BIS) Act 1986 and BIS Rules 1987. The BIS is responsible for formulating and enforcing standards for 14 sectors.[114] Its role also includes the development of activities relating to certification of product and quality systems, testing and calibration, enforcement, international cooperation, and creating awareness among consumers. Other agencies are responsible for enforcement of standards in other areas (Table AIII.4). Sectoral coordination committees have been established for food processing, power, steel, automotives, textiles, and information technology, in order to develop harmonized standards at the national level. The BIS has been placing emphasis on harmonizing national standards with international and regional standards; thus international standards are often adopted as Indian standards under the numbering system of ISO/IEC, or are harmonized with international standards in areas of India's trade interests.

100. The BIS is a member of the International Organization for Standardization (ISO) and participates in ISO technical and policy-making committees.[115] The BIS is also a member of the International Electrotechnical Commission (IEC); it participates in 73 IEC technical committees and it is an observer in 83. The BIS has bilateral cooperation memoranda of understanding with the

[113] WTO document G/SG/N/6/IND/28, 7 January 2011.

[114] These are: production and general engineering; civil engineering (as of 1 January 2011); chemical (15 October 2010); electro-technical (1 July 2009); food and agriculture (9 June 2010); electronics and information technology (1 April 2010); mechanical engineering (1 April 2010); management and systems (1 Oct 2010); metallurgical engineering (6 July 2010); petroleum, coal, and related products (1 July 2010); transport engineering (1 January 2011); textile (1 April 2008); water resources (1 April 2010); and medical equipment and hospital planning (1 January 2011) (Bureau of Indian Standards online information, "Composition of Technical Committees". Viewed at: http://www.bis.org.in/sf/composition.htm).

[115] BIS holds secretarial responsibilities for five ISO technical committees (leather, cycles, lac, mica, and measurement of liquid flows) and for five subcommittees (spices and condiments, velocity area methods, sediment transport, raw hides and skins, and tanned leather) and participates in 51 technical committees.

national standards bodies of Afghanistan, Bhutan, Brazil, France, Germany, Israel, Mauritius, Nigeria, South Africa, the UAE, and the United States.[116] It also has an MRA with the national standards body of Sri Lanka.

101. There were around 18,623 Indian standards as at 31 March 2010 and about 84% were harmonized with international standards (Table III.12). This is a result of the emphasis placed on making Indian standards identical to or compatible with international standards to keep pace with India's increasing integration into the global economy.

Table III.12
Standards, 2007-10

	2007/08	2008/09	2009/10[a]
Total number of standards in force	..	..	..
Total number of Indian standards in force	18,470	18,592	18,592
Per cent equivalent to international standards	..	..	84

.. Not available.

a 31 March 2010.

Source: Information provided by the Indian authorities.

102. Indian standards are formulated according to the procedures stipulated in the BIS Rules 1987. A preliminary draft standard prepared by expert bodies (generally committee members) is considered by the respective technical committee.[117] Once the draft is approved by the technical committee, it is circulated amongst the various stakeholders and posted on BIS website for comments. Comments should be provided within two months. The technical committee finalizes the draft standard taking into account these comments. The finalized standard, its revisions, amendments, and cancellation are published in the *Official Gazette*. Most standards in India are voluntary, although health and safety regulations are mandatory for several products and have evolved into technical regulations.

(b) Technical regulations

103. Under the WTO Agreement on Technical Barriers to Trade, the Ministry of Commerce has nominated the BIS as the national WTO-TBT enquiry point for disseminating information on standards, technical regulations, and certification. The Ministry remains responsible for implementing the Agreement. India accepted the WTO TBT Code of Good Practice in 1995.[118] Between 2002 (India's first notification) and February 2011, India made 41 notifications to the TBT Committee, 20 were made during the review period.

104. Responsibility for the formulation of technical regulations is with the agency in charge of the respective area. The formulation of a technical regulation follows a similar process to the formulation of a standard. A draft technical regulation is sent out for comments prior to its adoption by the concerned ministry/department/organization and publication in the *Official Gazette*. Comments must be provided within 60 days of the publication of the notice. The draft technical regulations are also notified to WTO Members for comments. Comments received on the draft are examined by the ministry concerned. If divergent comments are received, an expert group examines and considers the comments and their incorporation in the final version. The process of finalization of draft regulations takes 6 to 12 months, including approval of the competent authority, vetting, and translation into

[116] Information provided by the authorities.
[117] BIS technical committees comprise manufacturers, consumers, governmental agencies, regulatory authorities, experts, and laboratories.
[118] WTO document /TBT/CS/N/26, 29 January 1996.

Hindi. The final regulation (via a notification) is published in the *Official Gazette* giving its date of implementation; it is simultaneously notified to the WTO. Amendments to technical regulations are made through a similar process, from time to time, based on industry needs or due to new scientific developments, new sanitary and environmental circumstances, and harmonization with international standards.

(c) Certification and conformity assessment

105. The BIS is the national certifying body. Conformity assessment procedures are regulated by the BIS Act 1986 and the BIS Rules and Regulations 1988. The Central Government, on grounds of public interest, notifies which articles or processes should conform to an Indian standard and should bear the BIS certification mark under a licence from BIS.[119] Some 81 products are subject to the mandatory BIS certification mark.[120] As at May 2011 there were more than 1,000 products under voluntary certification.[121] According to the authorities, the requirements for the use of the BIS certification mark are the same for domestic and imported products. Besides the normal product certification scheme, the BIS also grants licences to environment-friendly products under a special scheme and awards the ECO mark to such products.

106. Foreign producers who wish to export products subject to mandatory certification must obtain a licence from the BIS. Foreign manufacturers must set up a liaison/branch office in India to obtain a licence if the BIS has not signed a MOU with the country where the manufactured goods originate.[122] Otherwise, foreign manufacturers may nominate an authorized representative in India responsible for checking compliance with the provisions of the BIS Act 1986, and its Rules and Regulations. The applicant needs to supply the prescribed BIS application along with the application fees. Fees under the Foreign Manufacturers Certification Scheme, in place since 1999, are: Rs 1,000 for the application, US$300 for processing, US$2,000 for marking, and a unit rate fee, which varies according to the product. The BIS licence is granted to the factory address at which the manufacturing takes place and the final product is tested to assess compliance with the relevant Indian standards. After receiving a licence the user must pay an annual fee of Rs 1,000, as well as a quarterly fee for units of production marked. The latter is fixed according to product.

107. Licences are initially valid for one year. They can be renewed for one or two years upon application to the BIS and payment of the required fees.[123] Products are not required to be tested at the time of renewing a licence. However, regular surveillance through random sampling is undertaken during the operation of the licence, by BIS laboratories and in accredited laboratories, to ensure standard conformity of certified products. If the product is found to be in non-compliance, a penalty is imposed, which may include stop-marking, deferment of licence or cancellation of licence. India recognizes foreign laboratories under the provisions of the BIS Act 1986. Once manufacturers (domestic or foreign) obtain a licence, they are allowed to self-mark their products. Products for which the BIS certification mark is mandatory may not be sold without it during the approval process.

[119] BIS Act, Section 14.

[120] For items subject to mandatory certification, see Bureau of Indian Standards online information. Viewed at: http://www.bis.org.in/.

[121] Information provided by the authorities.

[122] Bureau of Indian Standards online information, "Brief of Certification procedure for Foreign Manufacturers". Viewed at: http://www.bis.org.in/cert/fm.htm

[123] The renewal application fee is Rs 500, the licence fee is Rs 1,000 per year, and there is a minimum annual marking fee of US$2,000 and a marking fee based on production marked during the preceding operative year of licence payable in U.S. dollars less the amount already paid on a quarterly basis.

108. In order to implement its certification schemes, the BIS conducts conformity testing through its central laboratory at Sahibabad (near Delhi), and four regional and three branch laboratories.[124] The major areas covered at the central laboratory are electrical, mechanical, and chemical (testing), and electrical and mechanical (calibration). BIS laboratories have test facilities for most products under the Certification Marks Scheme. In addition to the BIS laboratories, services are provided by 115 national laboratories recognized under the BIS Laboratory Recognition Scheme.

(d) Accreditation

109. The National Accreditation Board for Testing and Calibration Laboratories (NABL), an autonomous body under the Department of Science and Technology, is the sole accreditation body for testing and calibration laboratories in India.[125] NABL is a partner of the Asia Pacific Laboratory Accreditation Cooperation (APLAC) Mutual Recognition Arrangement and is signatory to the International Laboratory Accreditation Cooperation (ILAC). NABL's accreditation system is in accordance with ISO/IEC 17011:2004 (General requirements for accreditation of bodies accrediting conformity assessment bodies). NABL accredits laboratories that are performing tests/calibrations in accordance with ISO/IEC 17025:2005 (general requirements for the competence of testing and calibration laboratories), and ISO 15189:2007 (particular requirements for quality and competence of medical laboratories) in the case of medical laboratories. These services are accessible to all testing and calibration laboratories in India and abroad, regardless of their ownership, legal status, size, and degree of independence.

110. Laboratories seeking accreditation must comply with the relevant standards of accreditation as well as with NABL's specific requirements, such as successfully completing a proficiency testing programme.[126] The accreditation process consists of five stages[127]; and accreditation is valid for two years. NABL conducts annual surveillance visits of the accredited laboratories to verify their continued compliance with the requirements. As at February 2011, the NABL had granted 2,267 accreditation certificates; a different certificate is issued for each type of accreditation service or category. Laboratories must apply for renewal of accreditation at least six months prior to the certificates' expiration date. Decision on accreditation may be appealed to the NABL, and may lead to an investigation; the NABL's decision is final.

111. The BIS runs a Laboratory Recognition Scheme for BIS product-testing needs for certification purposes in line with IS/ISO/IEC 17025:2005 (General Requirements for the Competence of Testing and Calibration Laboratories). Once laboratories are recognized under this scheme, they are subject to audits to ensure continued suitability. Recognition is granted for three years, renewable for similar periods, and there are two surveillance visits during this period. As at February 2011, 115 laboratories had been recognized under this scheme.

(e) Labelling

112. The Legal Metrology Act 2009 and the Legal Metrology (Packaged Commodities) Rules 2011 implemented as of 1 April 2011, replaced the Standards of Weights and Measures Act 1976, the Standards of Weights and Measures (Enforcement) Act 1985, and the Standards of

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[124] Except for two of the branch laboratories, all laboratories are accredited by NABL.

[125] National Accreditation Board for Testing and Calibration Laboratories online information, "Introduction". Viewed at: http://www.nabl-india.org/nabl/html/about-intro.asp.

[126] Information provided by the authorities.

[127] For more information, see National Accreditation Board for Testing and Calibration Laboratories online information, "Laboratory Accreditation". Viewed at: http://www.nabl-india.org/nabl/html/about-lab-acc.asp.

Weights and Measures (Packaged Commodities) Rules 1977, which regulated labelling requirements in India. According to the authorities, labelling requirements are uniform across all states and for all foreign suppliers.

113. Packaged commodities must bear a label securely affixed. These labels should include the: name, trade name or description of food contained in the package; ingredients used; name and address of manufacturer or importer; net weight or measure of volume (in accordance with the metric system based on the international system of units) of contents; item/package sale price (MRP Rs __) (inclusive of all taxes); month and year of manufacture or packaging; date of expiry[128]; licence number where relevant; and name, address or e-mail if available of person or office to be contacted in case of a complaint.[129] For products containing natural flavouring substances, the common name of the flavours should be mentioned on the label. The label should also indicate the animal origin of gelatine in products that contain it. The Ministry of Health and Family Welfare has recently notified the quantitative ingredient declaration requirement as an additional labelling requirement for food. More specific labelling requirements exist for specified products, such as infant milk substitutes and infant foods, bottled mineral water, and milk products.

114. Labels must be in Hindi (Devnagiri script) and in English. In certain instances, they must be written in the language of the locality where the product is ultimately sold. This increases distribution costs, since India has 16 official languages, and food-processing companies often do not know which pallet of food products will be transported to a specific State. The requirement that packaging must specify the maximum retail price of the product, including taxes, is a further complication, since sales taxes are levied at the state level.

115. Currently there is no mandatory labelling requirement for genetically modified (GM) products. However, legislation is in the pipeline: the Ministry of Health and Family Welfare has proposed comprehensive labelling requirements for GM foods, requiring all packages of food/food ingredients of GM origin, that are subject to the approval of the Genetic Engineering Approval Committee (GEAC), to bear a label indicating that they are of GM origin, and that the product has been cleared for sale in the exporting country.

(x) Sanitary and phytosanitary measures (SPS)

116. SPS matters continue to be governed and enforced through a number of laws and agencies (Table III.13). The main institutions involved in the establishment and implementation of SPS measures for food items are the Ministry of Health and Family Welfare, the Department of Animal Husbandry, Dairying, and Fisheries; the Directorate of Plant Protection, Quarantine and Storage; the Bureau of Indian Standards; and other state government agencies.

117. India has nominated three institutions as national enquiry points under the WTO SPS Agreement: the Department of Animal Husbandry, Dairying, and Fisheries for animal health and related issues; the Department of Health for food-safety related issues and plant protection; and the Department of Agriculture and Cooperation for plant health or phytosanitary issues. Between 1996, when its first SPS notification was submitted, and February 2011, India made 71 notifications to the Committee on SPS Measures, 22 of which during the review period, including measures on: food items including processed food; pet food products of animal origin; plants and plant materials; food packaging materials; horns/hooves of animals; meat and meat products; milk and milk products; food additives; maximum residues limits (MRLs) of different pesticides in carbonated water; MRLs of pesticides on different food commodities; pre-packaged food; and food safety and standards rules.

[128] For products containing aspartame, it should not be more than three years from the date of packing.
[129] Legal Metrology (Packaged Commodities) Rules 2011.

Table III.13
Sanitary and phytosanitary legislation, 2011

Legislation	Description	Implementing institution
Prevention of Food Adulteration Act 1954	Aims to protect consumers against the supply of adulterated food. It specifies minimum quality level standards for various food products. The Act is mandatory; infringement may lead to fines and imprisonment	Central Committee for Food Standards under the Directorate General of Health Services (Ministry of Health and Family Welfare)
Essential Commodities Act 1954	Regulates the manufacture, commerce, and distribution of essential commodities, including food. A number of control orders have been formulated under the provisions of this Act	Central and state government agencies
Fruit Products Order 1955	Regulates the manufacture and distribution of all fruit and vegetable products, sweetened aerated waters, and vinegar and synthetic syrups. The manufacture or re-labelling of products require a licence from the Ministry for Food Processing Industries, which is granted when the quality of products, sanitation, personnel, machinery, and equipment and work area standards are satisfactory	Ministry for Food Processing Industries
Solvent Extracted Oils, De-oiled Meal, and Edible Four Control Order 1967; Vegetable Products Control Order 1976	These orders control the production and distribution of solvent extracted oils, de-oiled meal, edible flours, and hydrogenated vegetable oils (vanaspati). Production and distribution of the above-mentioned products require a licence, which is granted when products conform to the specifications laid down in the schedules. The Directorate also regulates the price of vanaspati	Directorate of Vanaspati, Vegetable Oils, and Fats under the Department of Food and Public Distribution (Ministry of Consumer Affairs, Food, and Public Distribution)
Meat Products Control Order 1973	Regulates the manufacture, quality, and sales of all meat products	Directorate of Marketing and Inspection under the Department of Agriculture and Cooperation (Ministry of Agriculture)
Milk and Milk Product Order 1992	Provides for setting up an advisory board to advise the Government on the production, sale, purchase, and distribution of milk powder. Units with installed capacity for handling milk of over 10,000 litres per day, or milk products containing milk solids in excess of 500 tonnes per year, are required to register with the Department of Animal Husbandry and Dairying	Department of Animal Husbandry Dairying, and Fisheries (Ministry of Agriculture)
Livestock Importation Act 1898 (amended in 2001)	Allows the Central Government to regulate, restricts, or prohibits import of animal and animal products into India	Department of Animal Husbandry, Dairying, and Fisheries (Ministry of Agriculture)
Destructive Insects and Pests Act 1914	Regulates import of plants to prevent introduction into and the transport from one State to another in India of any insects, fungus or other pest that is or may be destructive to crops	Directorate of Plant Protection, Quarantine and Storage (Ministry of Agriculture)
Plant Quarantine (Regulation of Import into India) Order 2003	It regulates the import of plants and plant materials	Plant Quarantine Division in the Ministry of Agriculture
Standards on Weights and Measures (Packaged Commodities) Rules 1977	They lay down certain obligatory conditions for all commodities in packed form, with respect to declarations on quantities contained	Directorate of Weights and Measures under Department of Consumer Affairs (Ministry of Consumer Affairs, Food, and Public Distribution)

Source: Information provided by the Indian authorities.

118. India has not notified the WTO regarding the recognition of equivalence of other countries' SPS measures.

119. In August 2006, the Central Government passed the Food Safety and Standards (FSS) Act of 2006 to consolidate separate laws[130], and to establish the Food Safety and Standards Authority of India (FSSAI). According to the authorities, this law has been notified (Chapter II(2)(i)). However,

[130] These laws include: the Prevention of Food Adulteration Act 1954; the Fruit Products Order 1955; the Meat Food Products Order 1973; the Vegetable Oil Products (Control) Order 1947; the Edible Oils Packaging (Regulation) Order 1988; the Solvent Extracted Oil, De-Oiled Meal and Edible Flour (Control) Order 1967; and the Milk and Milk Products Order 1992.

the rules and regulations to operationalize this Act have not been notified yet. Once the Food Safety and Standards Regulations, 2010 and Rules 2011 are notified, the Food Safety and Standards Act 2006 will be fully implemented and will repeal some of the separate laws.

120. The FSSAI also aims to establish a single reference point for all matters relating to food safety and standards, by moving from a multi-agency to a centralized system. To this end, the Act establishes an independent statutory authority, the Food Safety and Standards Authority of India (FSSAI), which began operating in July 2008. The mandate of the FSSAI is to ensure the availability of safe and wholesome food for human consumption, through establishing and enforcing science-based food-safety standards for domestically produced and imported foods, licensing and registering businesses selling food for human consumption, and regulating food manufacturing practices and labelling. The various agencies implementing food laws will be brought under the FSSAI.

121. Imports of animal products into India require sanitary import permits issued by the Department of Animal Husbandry, Dairy and Fisheries; permits must be obtained prior to shipping from the country of origin. The Department approves or rejects the application after an import risk analysis on a case-by-case basis. Permits are valid for six months and may be used for multiple consignments. A sanitary import permit is not a licence, but a certificate verifying that India's sanitary requirements are fulfilled. Some imports of animal products also require an import licence issued by Director General of Foreign Trade (section (2)(vi)). Imports of animal products are only allowed through designated ports where animal quarantine and certification services are available (Amritsar, Bangalore, Chennai, Delhi, Hyderabad, Kolkata, and Mumbai). Imports of fish products are allowed through the port of Vishakhapatnam (in the State of Andhra Pradesh) and the land custom station at Petrapole (for imports from Bangladesh only).

122. Imports of plants and plant materials are regulated under the Destructive Insects and Pests Act 1914, the Plant Quarantine (PQ) (Regulation of Import into India) Order 2003[131], and international conventions. All plant and plant material consignments must be accompanied by a phytosanitary certificate issued by the national plant protection organization of the exporting country and an import permit issued by the officer in charge of the plant quarantine station. Products listed in Schedule VII of the PQ Order 2003 may be imported without import permit but may be required to fulfil other conditions, such as fumigation.[132] Other phytosanitary requirements covering some 980 products are listed in Schedules V, VI, and VII of PQ Order 2003 (Table III.14). Schedule IV lists all the plant species that are prohibited for import. As in the case of imports of animal products, imports of plant and plant products may only enter the Indian territory through designated ports.[133]

123. Plants and seeds that require post-entry quarantine are listed in Schedules V and VI of the PQ Order 2003. These plants and seeds have to be grown in post-entry quarantine facilities established by and at the cost of the importer, and approved and certified by the inspection authority. The quarantine period is determined based on the type of plant materials and time taken by the plant material to grow to the stage where symptoms of diseases appear.

[131] Plant Quarantine (Regulation of Import into India) Order 2003.

[132] Plant Quarantine (Regulation of Import into India) Order 2003, Chapter II (General conditions for import (Requirement of Import of Wood and Timber).

[133] For the list of seaports, airports, and land frontiers in operation through which imports of plants are allowed, see Plant Quarantine (Regulation of Import into India) Order 2003, Schedule I.

Table III.14
Plant quarantine, 2011

Schedule No.	Description	No. of products covered
IV	List of plants/planting materials and countries from where imports are prohibited along with justifications	14
V	List of plants and plant materials restricted: imports are permissible only with the recommendation of authorized institutions with additional declarations and special conditions	17
VI	List of plants/plant materials permitted to be imported with additional declarations and special conditions	628
VII	List of plants/planting materials where imports are permissible on the basis of phytosanitary certificates issued by the exporting country, the inspection conducted by inspection authority, and fumigation, if required, including all other general conditions	288
VIII	List of quarantine weed species	31
IX	Inspection fees	n.a.
X	List of permit issuing authorities for imports of seeds, plants and plant products, and other articles	n.a.

n.a. Not applicable.

Source: Plant Quarantine (Regulation of Import into India) Order 2003.

124. Sampling and testing of consignments to prevent the risk of exotic pests is undertaken according to the International Standards for Phytosanitary Measures Guidelines No. 23 and 31.[134] If commodities are found free from pests, they are cleared for import. If not, they must undergo fumigation with the accredited fumigation operators according to the Schedules V, VI, and VII of PQ Order 2003.[135] Fumigation is done at the importer's cost.[136]

125. Imports of GM food, feed, and organisms, and living modified organisms for R&D, food, feed, processing in bulk, and environment release is governed by the Environment Protection Act 1986 and Rules 1989. Imports of products containing GM material for industrial production or environmental release are allowed only with the approval of the Genetic Engineering Approval Committee (GEAC). Importers of GM materials for R&D must submit a proposal to the Review Committee for Genetic Modification under the Department of Bio-Technology. If these GM materials are used for commercial purposes, GEAC approval is also required. All consignments containing products subject to genetic modification must carry a declaration stating that the product is genetically modified. If it does not, the importer is liable to penal action under the Foreign Trade (Development and Regulation) Act 1992. The GEAC has accorded one-time approval for imports of GM soybean oil derived from round-up-ready soybean for the purpose of consumption after refining.[137]

(3) MEASURES DIRECTLY AFFECTING EXPORTS

(i) Procedures

126. With a few exceptions (Table AIII.1), exporters must register with the Directorate General of Foreign Trade (DGFT) and obtain an importer-exporter code (IEC) number to be able to export.[138] In addition to the IEC, exporters also need to obtain a business identification number from the DGFT to

[134] Secretariat of the International Plant Protection Convention (2005) and (2008).

[135] There are 357 registered fumigation agencies for methyl bromide fumigation and 157 for aluminium phosphide fumigation.

[136] Fumigation generally takes 24 hours with methyl bromide, and 7 to 10 days with aluminium phosphide.

[137] Department of Commerce (2010a), Schedule 1: Import Policy.

[138] Foreign Trade (Development and Regulation) Act 1992.

be allowed to file the shipping bill. The shipping bill may be processed manually or through the electronic data interchange (EDI) system. For manual submission, supporting documents (e.g. invoice, and packing list) must be filed along with the shipping bill. Under the EDI system, exporters must file only a declaration or shipping bill; no supporting documents are required.[139] However, the supporting documents must be submitted to Customs at the time of grant of the "let export" order.[140] The shipping bill may be filed seven days in advance of the presentation of goods to Customs (15 days for exports by sea). About 96% of export documents are processed electronically.[141]

127. Once the shipping bill has been processed, goods are examined by Customs before they are given a "let export" order.[142] Goods subject to export restrictions and quotas must also be accompanied by licences from the DGFT (section (v)(b) below). If goods are to be exported under an export promotion scheme (section (vii)(b) below), this must be declared on the shipping bill.[143] A risk management system (RMS), already implemented for import procedures (section (2)(i)), and expected to be operational for exports by June 2009[144], had not been implemented as at February 2011. It will be implemented in a phased manner.

128. The average time for the completion of export procedures is 17 days (down from 27 days in 2007), which includes 8 days for documents preparation and 2 days for customs clearance and technical inspections. According to World Bank information, export procedures cost on average US$945 per container, including documents preparation (US$350) and customs clearance (US$120).[145]

(ii) Quality control and preshipment inspection

129. Since 2007, India's quality control and preshipment inspection measures for exports have remained broadly unchanged. Under the Export (Quality Control and Inspection) Act 1963, the Export Inspection Council of India (EIC) carries out quality control and preshipment inspection to ensure minimum standards for exports of products notified under the Export (Quality Control and Inspection) Act 1963 and non-notified products.[146] The Act empowers the Central Government to notify commodities and specify the minimum standards for their export. According to the authorities, there are currently over 800 notified products (no products have been notified since 2007).[147] The authorities noted that quality control and preshipment inspection measures were simplified during the review period. They currently apply to basmati rice, black pepper, dairy, eggs, fish and fish products,

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[139] Department of Valuation online information, "Procedure for Clearance of Imported and Export Goods". Viewed at: http://www.dov.gov.in/newsite3/clearance_procedure.asp.

[140] Supporting documents include: invoice, packing list, licence or quota certificate as required; no objection certificate as required and certificate of analysis as required.

[141] Chaturvedi (2009).

[142] Department of Valuation online information, "Procedure for Clearance of Imported and Export Goods". Viewed at: http://www.dov.gov.in/newsite3/clearance_procedure.asp.

[143] WTO (2007).

[144] Chaturvedi (2009).

[145] World Bank/IFC Doing Business online information. Viewed at: http://www.doingbusiness.org.

[146] The EIC has five export inspection agencies across India's major cities, supported by 38 sub-offices and laboratories. It has also accredited external inspection agencies and laboratories (Department of Commerce, 2009).

[147] A product is notified under the Export (Quality Control and Inspection) Act 1963, based mainly on the requirements of the importing countries. However, the quantity of the product exported and the number of foreign complaints are also considered while notifying a product for export. The minimum standards for export of a product are developed based on the standard specified by major importing countries, national standards, and scientific data.

honey, meat and meat products, and processed food products containing red chillies.[148] Under the Export Policy Schedule (Foreign Trade Policy 2009-14), it appears that preshipment inspection also applies to exports of canned meat products and marine species (except those contained in the Wild Life (Protection) Act 1972).[149]

130. Export certification is through inspection of consignments or a "systems approach" inspection. The systems approach includes in-process quality control throughout the production process, self-certification, and food safety management systems certification (FSMSC). The FSMSC, which is based on international standards, applies to fish and fishery products, eggs, and dairy products, which accounted for around 81% of India's certified exports[150] (by value) in 2008/09 (latest available data).[151] The EIC charges 0.4% and 0.2% of the f.o.b. value of the exports for consignment and systems approach inspections, respectively. Testing of samples is generally free of charge.[152] Other EIC export certificates include health certificates (for fishery products), authenticity certificates (basmati rice), residue certificates (dairy, poultry, and eggs products), preferential certificates of origin, and non-GMO certificates.[153] EIC certification has been recognized for a range of food and non-food products by Australia, Brazil, China, the EU, Italy[154], Japan, the Kingdom of Saudi Arabia, Korea, Rep. of, Russia, Singapore, Sri Lanka, Turkey, the United States, and Viet Nam.

(iii) Export taxes, charges, and levies

131. Export taxes are used as a policy instrument to, *inter alia*, ensure domestic supply of raw materials for higher-value-added industries, promote further processing of natural resources, ensure an "adequate" domestic price, and preserve natural resources. Export taxes for tanned and untanned hides, skins, and leathers (except manufactures of leather) have remained in place since the last Review of India in 2007. Export taxes for iron ores and concentrates (including iron ore fines)[155], chromium ores and concentrates, and products of iron and steel (including ferrous waste and scrap, flat rolled products, and tubes and pipes) were introduced in 2009 (Table III.15). Export taxes are sometimes used with other measures to attain short-term goals. For instance, in April 2010 India introduced export licensing/EARCs for raw cotton and cotton waste in addition to export taxes for six months to ensure an adequate domestic supply and to contain an increase in the price of cotton in the domestic market (section (v) below) (Table III.15).

132. An export cess is collected for the development of a specific industry; it is consequently levied on certain exports for the development of that industry. As at 2011, a cess applies to exports of shellac and lac-based products, manganese ore, chrome ore, mica products, and iron ore (Table III.16). The Spices Cess Act 1986 and the Tobacco Cess Act 1975 were repealed by the Cess

[148] EIC online information, "Export Certification System: Pre-shipment Inspection and Certification Schemes". Viewed at: http://www.eicindia.org/eic/index1.htm.
[149] Department of Commerce (2010a), Schedule 2: Export Policy.
[150] Certified exports are exports of notified products that have been certified by the competent authority.
[151] EIC online information, "Food Safety Management System based Certification". Viewed at: http://www.eicindia.org/eic/index1.htm; and Department of Commerce (2009).
[152] Department of Commerce (2009).
[153] EIC online information, "Other Services". Viewed at: http://www.eicindia.org/eic/index1.htm; and Department of Commerce (2009).
[154] Italy signed an MoU with the EIC for exports of fish and fishery products (information provided by the authorities).
[155] Iron ore pellets have been fully exempt from export duty since 1 March 2011.

Laws (Repealing and Amending) Act 2006. The additional export cess, under the Agricultural Produce Cess Act 1940, which applied to both of these products, was also repealed in 2006.[156]

Table III.15
Export taxes, 2011

Product	Rate	Implementation/status
Tanned and untanned hides, skins, and leathers (except manufactures of leather)	10%-25% of the f.o.b. value	2007/in force
Iron ores and concentrates, including iron ore fines	20% of the f.o.b. value for iron ores and concentrates 5% of the f.o.b. value for iron ore fines	2009/in force
Chromium ores and concentrates	Rs 3,000 per tonne	1 March 2007/in force
Ferrous waste and scrap, and remelting scrap ingots of iron or steel	15% of the f.o.b. value	1 March 2007/in force
Raw cotton	Rs 2,500 per tonne	April 2010/removed in October 2010
Cotton waste	3% of the f.o.b. value	April 2010/removed in October 2010

Source: CBEC online information, "Customs Tariff 2009-10: Part III: The Second Schedule: Export Tariff and Corresponding Exemption Notifications". Viewed at: http://www.cbec.gov.in/customs/cst-0910/cst-main.htm; Government of India Press Information Bureau, Press Release, "FM Announces Fresh Additional Relief Package in His Reply to the Debate on Finance Bill 2010", 29 April 2010; and information provided by the Indian authorities.

Table III.16
Export cess, 2011

Product	Cess rate
Shellac and lac based products	Rs 2.30 per quintal
Manganese ore	Rs 4 per tonne
Chrome ore	Rs 6 per tonne
Mica products	3.5% of the f.o.b. value
Iron ore	Rs 1 per tonne

Note: The cess on manganese ore, chrome ore, and iron ore is levied under the Iron Ore Mines, Manganese Ore Mines, and Chrome Ore Mines Labour Welfare Cess Act 1976.

Source: CBEC online information, "Customs Tariff 2009-10: Part III: The Second Schedule: Export Tariff and Corresponding Exemption Notifications". Viewed at: http://www.cbec.gov.in/customs/cst-0910/cst-main.htm.

(iv) Minimum export prices

133. Under the Export Policy Schedule (Foreign Trade Policy 2009-14), India maintains minimum prices on exports of onions and basmati rice. It maintains minimum prices for onions exported by state trading enterprises. At present, MEPs for onions are revised and fixed by an Inter-Ministerial Review Committee at the Department of Commerce (Table II.4). Bangalore rose onions and Krishnapuram onions are subject to export licensing and to a minimum export price of US$600/tonne.[157] The minimum price for exports of basmati rice, which is set by the DGFT, was initially US$1,100/tonne of the f.o.b. value; it was reduced to US$900/tonne in September 2009.[158] The authorities have indicated that Basmati rice is subject to a minimum export price to ensure prices and availability in the domestic market.

[156] Customs Circular No. 05/2008, 12 March 2008; and Taxindia online information, "Customs: Cess Act Notification". Viewed at: http://www.taxindiaonline.com/RC2/subCatDesc.php3?subCatDisp_Id=1&filename=wnew/cus-cess-01.htm.

[157] DGFT Notification No. 36(RE-2010)/2009-2014, 23 March 2011.

[158] DGFT Notification No. 5/2009-2014, 7 September 2009.

134. Although exports of non-basmati rice were prohibited at the time of India's last Review, exports of the PUSA-1211, a variety of non-basmati rice, were allowed, subject to a minimum price of US$1,200/tonne of the f.o.b. value until 1 April 2008.[159] Exports of non-basmati rice are currently prohibited (Table AIII.5), except for certain varieties subject to quotas and MEPs.[160]

(v) Export prohibitions, restrictions, and licensing

(a) Export prohibitions

135. Export prohibitions apply mainly for environmental, food-security, marketing, pricing, and domestic supply reasons; and to comply with international treaties. Since 2007, additional products have been subject to export prohibitions, including non-basmati rice, wheat, pulses, and edible oils (Table AIII.5).

136. Although exports of non-basmati rice and wheat are prohibited, the ban does not apply to exports of organic non-basmati rice and organic wheat certified by the Agricultural and Processed Food Products Export Development Authority (APEDA). These products are subject to an export quota of 10,000 tonnes and 5,000 tonnes per year, respectively.[161]

137. Export prohibitions and export quotas are notified on an annual basis; they are usually in place for a specific period, during which they may be subject to changes. These changes diminish the predictability of the regime. For instance, exports of edible oils were initially prohibited in 2008, and thereafter extended until 30 September 2011, due to a lack of supply to meet domestic demand.[162] However, this prohibition has been relaxed for branded consumer packs of oil of up to 5 kg since 2008, which have since been subject to an export quota of 10,000 tonnes.[163] Customs are in charge of monitoring the quota. Also, the prohibition on exports of shavings of shed antlers of Chital and Sambhar (including manufactured articles) was relaxed from 8 to 30 September 2009[164]; it was a one-time relaxation and exports have been prohibited since October 2009. Exports of pulses have been prohibited since 2006 and will remain prohibited until up to 31 March 2012.[165] According to the authorities, the prohibition is in place to ensure domestic supply. Under the Foreign Trade Policy 2004-09, exports of cement were prohibited as of April 2008, except for exports from the domestic tariff area (DTA) to special economic zones (SEZs) for use in SEZs.[166] However, exports of cement were liberalized by December 2008.

138. In addition, India bans exports of some products to the Democratic People's Republic of Korea, Iran, and Iraq, under UN resolutions; and of rough diamonds to the Bolivarian Republic of Venezuela, under the Kimberly process.[167]

[159] DGTF Notification No. 37 (RE-2008)/2004-2009, 3 September 2008.

[160] During the 2010-11 monsoon season, an export quota of 125,000 tonnes of non-basmati rice was allowed at an MEP of US$850 per tonne.

[161] Export contracts must be registered with APEDA prior to shipment (DGFT Notifications Nos. 19/2009-2014 and 20/2009-2014, 7 December 2009).

[162] DGTF Notifications Nos. 85(RE-2007)/2009-2014, 17 March 2008; and 07 (RE-2010)/2009-2014, 30 September 2010.

[163] DGTF Notifications Nos. 04/2009-2014, 4 September 2009; and 09(RE-2010)/2009-2014, 1 November 2010.

[164] DGFT Notification No. 06/2009-2014, 8 September 2009.

[165] DGTF Notifications Nos. 35/2009-2014, 30 March 2010; and No. 35(RE 2010)/2009-2014, 23 March 2011.

[166] DGFT Notification No. 5(RE-2008)/2004-2009, 15 April 2008.

[167] Department of Commerce (2010a).

(b) Export licensing and quotas

139. Under the current Export Policy Schedule, some 167 lines (171 lines in 2007) at the HS eight-digit level, excluding products of special chemicals, organisms, materials, equipment, and technologies (SCOMET), are currently subject to restrictions.[168] Products may be exported only if a licence is issued by the DGFT.

140. Export licensing is sometimes used as a policy tool to ensure the domestic supply of certain products. For example, exports of cotton (HS 5201, 5202, and 5203), excluding cotton yarn (HS 5205, 5206, and 5207), were restricted (i.e. subject to an export licence) from 21 May 2010 to 30 September 2010.[169] Cotton yarn was subject to a restriction from December 2010 to March 2011.[170] In addition, exports of cotton and cotton yarn require an export authorization registration certificate (EARCs). EARCs are issued by the Directorate General of Foreign Trade (as of December 2010[171]) only when the domestic supply of cotton is ensured (Table II.4). For instance, no EARCs were granted from 19 April 2010 to 21 May 2010[172]; this decision to suspend exports was aimed at lowering domestic prices and ensuring a stock of 5 million bales of cotton for the domestic garment and handloom sectors up to the start of the next cotton season (in October).[173]

141. Exports of brown seaweeds and sandalwood oil are subject to export quotas set by the DGFT. The quota is determined on the basis of domestic demand and anticipated production. Only exports of wheat products (HS 1001) are subject to a ceiling. Exports of sugar (by state-trading enterprises) are subject to quota under preferential regimes (Table III.17). In addition to this quota, the system of "export release order" for sugar exports was reintroduced in 2009.[174] Under this system, based on domestic demand and supply estimates, the Sugar Directory determines annually the amount of sugar that can be exported subject to a "release order".[175]

(vi) State trading

142. State trading of exports has the stated purpose of ensuring better marketing and prices of agricultural and minor forest products, grown by small-scale farmers, as well as to prevent fluctuations in domestic prices; and to ensure supply of kerosene and liquefied petroleum gas (used as domestic fuels), and conservation and proper use of some metal ores.[176] Since 2007, exports through state-trading have also included all varieties of onions (prohibited for exports from December 2010 to February 2011 (Table II.4)), manganese ores (above 46% manganese (Mn)), and beneficated chrome ore fines/concentrates (Table III.17).

[168] For the list of SCOMET, see Department of Commerce (2010a), Schedule 2: Export Policy: Appendix 3.

[169] DGFT Notifications Nos. 44/2009-14, 21 May 2010; and 58/2009-14, 17 August 2010.

[170] DGFT Notifications Nos. 14(RE-2010)/2009-2014, 22 December 2010; and 40(RE-2010)/2009-14, 31 March 2011.

[171] DGFT Notifications No. 12(RE-2010)/2009-14, 16 December 2010.

[172] *The Economic Times*, "Govt suspends registration of raw cotton exports", 20 April 2010; and *The Wall Street Journal*, "India Allows Cotton Exports Again", 21 May 2010.

[173] Due to a significant drop in cotton production across the world, several country producers have met their shortages by importing raw cotton from India (7% cheaper than the U.S. raw cotton), hence reducing India's stocks sharply until the next cotton season (*The Hindu*, "Curbs on raw cotton exports", 20 April 2010; and Government of India Press Information Bureau, Press Release, "Ceiling for cotton export", 28 April 2010).

[174] DGFT Policy Circular No. 87(RE-09) 2004-2009, 4 May 2009.

[175] Department of Food and Public Distribution, File No. 3-3/2010-ES, 1 January 2011. Viewed at: http://www.mahasugarfed.org/images/pdf/Sugar%20Export%20-2011.pdf.

[176] WTO document G/STR/N/8/IND, G/STR/N/9/IND, G/STR/N/10/IND, and G/STR/N/11/IND, 6 May 2010.

143. As for imports, state-trading enterprises (STEs) are granted special privileges to export but must act in accordance with commercial considerations and in a non-discriminatory manner. The exclusive right to export is granted to an enterprise by the DGFT under the provisions of the Foreign Trade Policy (Paragraph 2.11). However, if STEs are not interested in exporting, other exporters may approach the DGFT for permission to export.[177]

Table III.17
Exports subject to state trading, 2007-11

State-trading enterprises	Product	HS code	Exports (tonnes)			
			2007/08	2008/09	2009/10	2010/11
National Agricultural Cooperative Marketing Federation of India (NAFED) Ltd.; Maharashtra State Agricultural Marketing Board; Gujarat Agro Industries Corporation Ltd.; Spices Trading Corporation Ltd.; A.P. State Trading Corporation; Karnataka State Cooperative Marketing Federation Ltd.; National Cooperative Consumers Federation of India Ltd.; North Karnataka Onion Growers Co-operative Society; West Bengal Essential Commodities Supply Corporation Ltd.; M.P. State Agro Industries Development Corporation; Karnataka State Produce Processing and Export Corporation; Madhya Pradesh State Co-operative Oil Seeds Growers Federation Ltd.; and Andhra Pradesh Marketing Federation	Onion (all varieties), including Bangalore rose onions and Krishnapuram onions[a]	0703 10 10 0712 20 00	1,067.7	1,697.7	1,705.5	454.0
Tribal Cooperative Marketing Development Federation of India Ltd.	Gum Karaya[b]	1301.90.16	0.9	1.0	1.0	0.3
Indian Sugar Exim Corporation	Sugar[c]	Ex 1701.00.00	..	..	..	..
Kudremukh Iron Ore Company Ltd.	Iron ores concentrate prepared by beneficiation and/or concentration of low-grade iron ore containing 40% or less of iron[d]	Ex 2601.11.50	290.0	40.0	0.1	0
	Iron ore pellets[e]	Ex 2601.12.10	2,358.5	909.1	287.7	0
Minerals and Metals Trading Corporation	Iron ore other than those which are free	Ex 2601.11.00	66,117.5	67,164.7	100,984.5	21,912.7
	Manganese ores other than lumpy/blended manganese ore above 46% Mn	2602.00.00	208.4	205.4	289.5	75.0
	Beneficated chrome ore fines/concentrates (maximum feed grade to be less than 42% Cr_2O_3)	2610.00.30 2610.00.40	..	..	..	..
	Chrome ore lumps with Cr_2O_3 not exceeding 40%	2610.00.30	1.1	103.1	19.8	0
	Low silica, friable ore with Cr_2O_3 not exceeding 52% and silica exceeding 4%	Ex 2610.00.90	45.4	145.5	150.5	3.7
	Low silica friable/fine chromite ore with Cr_2O_3 in the range of 52-54% and silica not exceeding 4%	Ex 2610.00.90	..	..	..	..
Manganese Ore India Ltd.	Manganese ores other than lumpy/blended manganese ore above 46% Mn	2602.00.00	20.5	4.2	3.4	5.5

Table III.17 (cont'd)

[177] Information provided by the authorities.

State-trading enterprises	Product	HS code	Exports (tonnes)			
			2007/08	2008/09	2009/10	2010/11
Indian Oil Corporation	Crude oil	2709.00.00	29.3	56.9	34.6	0

.. Not available.

a No quantitative ceilings apply. Exports are subject to conditions of quality laid out by the National Agricultural Cooperative Marketing Federation of India from time to time. STEs may issue "no objection certificates" and charge shippers a uniform rate of 1% of the export value; they are not allowed to levy other charges. Exports are subject to minimum prices fixed by NAFED.
b Exports have been free since November 2010.
c Subject to preferential tariff-rate quotas.
d Produced by Kudremukh Iron Ore Company Ltd.
e Manufactured by Kudremukh Iron Ore Company Ltd. out of own production of concentrates.

Note: Exports of onions, except Bangalore rose onions and Krishnapuram onions, which are restricted subject to minimum export prices, were prohibited in December 2010 for two months until 18 February 2011.

Source: WTO document G/STR/N/8/IND, G/STR/N/9/IND, G/STR/N/10/IND, and G/STR/N/11/IND, 6 May 2010; Department of Commerce (2010), "Schedule 2: Export Policy", *Foreign Trade Policy 2009-14*, incorporating Annual Supplement, 23 August. Viewed at: http://dgft.gov.in; DGFT online information, "Notifications". Viewed at: http://dgft.gov.in; and information provided by the Indian authorities.

(vii) Export support

144. During the period under review, India did not make any notifications to the WTO regarding export subsidies on agricultural products.[178]

145. India's latest notification to the WTO Committee on Subsidies and Countervailing Measures dates from 2010.[179] The tax incentives notified were those provided under the Income Tax Act 1961 to free-trade zones (Section 10A), and to export-oriented units (EOUs) (Section 10B). The tax deductions for exporters on their profits under section 80HHC of the Income Tax Act 1961, notified previously by India have been phased out[180]; no deduction under this section has been available since 2005/06.[181]

146. India is an Annex VII (b) Member under the SCM Agreement and as such may maintain these export promotion schemes until its per capita gross national product (GNP) reaches US$1,000 in constant 1990 dollars for three consecutive years.[182] In the last three years for which data are available (2006-08), the country's gross national income (GNI)[183] has remained below US$1,000 in constant 1990 dollars.[184]

[178] India's most recent notification on export subsidy commitments dates from 2002 and covers 1996-97 to 2000-01 (WTO document G/AG/N/IND/3, 1 March 2002).

[179] WTO documents G/SCM/N/186/IND, 18 October 2010; and G/SCM/N/155/IND and G/SCM/N/123/IND, 29 October 2010.

[180] WTO document G/SCM/N/71/IND, 18 October 2001.

[181] Income Tax Act 1961, Section 80HHC (Deduction in respect of profits retained for export business).

[182] WTO documents G/SCM/110, 20 October 2003; and G/SCM/110/Add.1-Add.8, 3 June 2004-16 June 2011.

[183] The World Bank changed its methodology: it has stopped classifying countries according to GNP, and it now classifies them according to GNI. For more information, see World Bank online information, "Methodologies: Change in Terminology". Viewed at: http://web.worldbank.org/WBSITE/EXTERNAL/DATASTATISTICS/0,,contentMDK:20451503~menuPK:64133156~pagePK:64133150~piPK:64133175~theSitePK:239419~isCURL:Y,00.html.

[184] WTO document G/SCM/110/Add.7, 22 June 2010.

(a) Free-trade zones and export-oriented units (EOUs)

147. Exports are encouraged through the establishment of special economic zones (SEZs) and export-oriented units (EOUs).

Special economic zones (SEZs)

148. SEZs may be set up by the central or state governments or by private developers (including foreigners) as joint ventures with the State or fully private.[185] The legal framework regulating SEZs at the central government level is the SEZ Act 2005 and Rules 2006. Also, some states have enacted their own laws and rules to regulate SEZs.[186] State SEZ legislation follows the lines of the SEZ Act 2005.[187] All SEZs are under the administrative control of the SEZ Development Commissioner.

149. Firms established in an SEZ benefit from several incentives subject to generating net foreign exchange earnings within five years of operation (Table III.18). SEZ units are exempt from various taxes, including income tax, central sales tax, minimum alternate tax, dividend distribution tax, service tax, and from a series of state taxes (i.e. sales tax, stamp duty, and electricity duty) (Table III.18).[188] SEZ units may import all types of goods (including new and second-hand capital goods) duty free both from abroad and from the domestic tariff area (DTA).[189] Imports and exports into/from the SEZ are not subject to routine customs examination; for instance, "let export" orders are granted on the basis of self-certification by the SEZ.[190] Also, exports of products manufactured in SEZs are not subject to compulsory preshipment inspection.[191] State trading does not apply to SEZs (except for iron ore).[192] However, other export measures do apply to exports from the SEZs, but with exceptions. For instance, minimum export prices apply to exports from SEZs only when raw materials procured indigenously are exported unprocessed.[193]

150. There is no quantitative limit on the amount of SEZs exports into the DTA. However, sales into the DTA attract all the same duties and charges as any other import.

151. As at end 2010, India had 374 SEZs with 3,245 units producing manufactured goods and providing services and warehousing for a total investment of US$43 billion and 644,073 employees. During the period under review, exports from SEZs increased from some US$15 billion to US$49 billion, in value, accounting for 17% of total exports in 2009/10, compared with 9.08% in 2007/08.[194] Major exports from SEZs include chemicals and pharmaceuticals, computer and electronic software, and gems and jewellery (Table III.19). Taxes forgone as a result of the benefits

[185] SEZ Act 2005, Chapter II; and Dohrmann (2008).

[186] Dohrmann (2008).

[187] The states that have enacted SEZ Acts are Gujarat, Himachal Pradesh, Tamil Nadu, Uttar Pradesh, Haryana, and Punjab.

[188] SEZ Rules 2006, as amended; SEZ Act 2005; and SEZ online information, "About SEZs: facilities and incentives". Viewed at: http://sezindia.nic.in/about-fi.asp.

[189] DTA means an area within India that is outside SEZs, EOUs, electronic hardware technology parks, software technology parks, and bio-technology parks.

[190] Self-certification refers to certification regarding the sealing of containers or packages of goods for export. The certificate stipulates that the containers or packages have been sealed in the presence of a person authorized on behalf of the unit (SEZ Rules 2006, as amended, Chapter IV).

[191] Export Inspection Council of India online information, "Relaxations". Viewed at: http://www.eicindia.org/eic/qc&i/relaxations.htm.

[192] SEZ Rules 2006, as amended, Chapter IV; and Department of Commerce (2010a).

[193] SEZ Rules 2006, as amended, Chapter IV.

[194] Information provided by the authorities.

granted to SEZs have more than doubled between 2007/08 and 2009/10 (from Rs 18 billion to Rs 39.9 billion).[195]

Table III.18
Incentives granted to SEZ units, 2011

Duty-free imports/domestic procurement of goods for development, operation, and maintenance of SEZ units
100% income tax exemption for SEZ units for the first five years, 50% for the next five years, and 50% of the ploughed-back export profit for the next five years
Exemption from minimum alternate tax
Exemption from the central sales tax
Exemption from the service tax
Exemption from the state sales tax and other levies (e.g. stamp duty and electricity duty) as extended by the respective state government
External commercial borrowing by SEZ units up to US$500 million in one year without any maturity restriction through recognized banking channels
100% FDI investment through automatic route
Single-window clearance for central and state level approval procedures

Source: Department of Industrial Policy and Promotion (2010), *National Manufacturing Policy: A Discussion Paper*. Viewed at: http://dipp.nic.in/NMP_DiscussionPaper/NMP_DiscussionPaper_2010.pdf; SEZ Rules 2006, as amended; SEZ Act 2005; and SEZ online information, "About SEZs: facilities and incentives". Viewed at: http://sezindia.nic.in/about-fi.asp.

Table III.19
Exports from SEZs, 2007-10
(US$ billion, unless otherwise specified)

Sector	2007/08	2008/09	2009/10
Biotech	0.04	0.19	0.10
Computer/electronic software	0.89	3.61	10.17
Electronics hardware	2.47	2.90	3.87
Electronics	0.12	0.08	0.21
Engineering	0.37	0.69	0.93
Gems and jewellery	5.11	7.43	9.74
Chemicals and pharmaceuticals	0.32	1.42	16.44
Handicrafts	0.01	0.01	0.01
Plastic and rubber	0.15	0.08	0.15
Leather, footwear, and sports goods	0.05	0.06	0.10
Food and agri-industry	0.14	0.07	0.08
Non-conventional energy	0.03	0.05	0.31
Textiles and garments	0.29	0.66	0.74
Trading and services	4.64	4.18	5.53
Miscellaneous	0.20	0.75	0.66
Total	**14.81**	**22.15**	**49.05**
Percentage share of SEZs exports of India's total exports	9.1	12.0	27.4

Source: Information provided by the Indian authorities.

152. As a result of the development of SEZs, concerns have emerged regarding the acquisition of agricultural land for the establishment of SEZs, taxes forgone, and the conversion of DTA industries into SEZ units.[196] According to the authorities, the acquisition of waste and barren land would be the

[195] Information provided by the authorities.
[196] Department of Commerce (2009).

first priority to establish SEZs; single- or double-crop agricultural land may be acquired only if deemed necessary.[197]

Export-oriented units (EOUs)

153. The Export Oriented Units (EOUs) Scheme, introduced in early 1981, complements the SEZ scheme.[198] EOUs are regulated by the Foreign Trade Policy. As in the case of the EPZs, the main objectives of the EOU Scheme is to increase exports and foreign exchange revenues, promote the transfer of latest technologies, stimulate direct foreign investment, and generate additional employment. EOUs are similar to EPZs but may be located anywhere in the country.[199] Initially, EOUs were concentrated mainly in manufacturing (e.g. textiles, food processing, and electronics) but currently agri-businesses and firms supplying services also operate under the EOU Scheme.

154. The minimum investment in an EOU is Rs 10 million. EOUs are licensed to manufacture or provide services for export for an initial period of five years, which may be extended; they may benefit from tax and other incentives, subject to export performance. Sector-specific requirements are stipulated in the provisions of the EXIM Policy, and vary from sector to sector.[200] EOUs must also generate net foreign exchange earnings within five years of starting operations. If the unit is not NFEE positive, the Development Commissioner is required to inform the Central Excise authorities for recovery of the proportionate duty.[201]

155. As in the case of the SEZs, EOUs are exempt from various taxes, including income tax, until 31 March 2011 (Table III.20).[202] EOUs may import all types of goods (including new and second-hand capital goods) duty free from the DTA and abroad, and are exempt from routine customs procedures both when importing and exporting. Manufacturing EOUs are exempt from the state trading regime with the exception of chrome ore/chrome concentrate.

156. In principle, EOUs are established to export their entire production; however, subject to certain conditions, a specific percentage may be sold in the DTA upon payment of duties (including anti-dumping duties) and taxes, with some exceptions.[203] In general, EOUs may sell in the DTA goods and services for up to 50% of the f.o.b. value of exports, with the exception of producers of gems and jewellery who may sell up to 10% of the f.o.b. value of exports. Sales into the DTA are allowed only with the approval from the Development Commissioner; if similar goods are exported; and if the NFEE conditions have been fulfilled. Sales into the DTA are subject to the payment of a 25% basic customs duty and a 100% additional customs duty, with the exception of pepper and marble, which may not be exported to the DTA even upon payment of full duty.[204] Goods made of indigenous raw materials are subject to the payment of excise duties.

[197] If double-cropped agricultural land has to be acquired, it should not represent more than 10% of the total land required for SEZs (Department of Commerce, 2009).

[198] The Electronics Hardware Technology Parks (EHTPs), Software Technology Parks (STPs), and Bio-Technology Parks (BTPs) Schemes are similar to the EOUs Scheme in terms of requirements and benefits (Department of Commerce, 2010a).

[199] Prior to August 2008, locational restrictions applied (Chapter II(4)(ii)(b)).

[200] Department of Commerce (2010a).

[201] Central Board of Excise and Customs (2011).

[202] Export Promotion Council for EOUs and SEZs, Circular No. 77, 6 July 2009.

[203] DTA means an area within India that is outside SEZs, EOUs, electronic hardware technology parks, software technology parks, and bio-technology parks.

[204] Department of Commerce (2010a), Paragraph 6.8(h); and Central Board of Excise and Customs (2011).

Table III.20
Incentives granted to EOUs, 2011

Incentives
Inputs are exempt from customs duty
Exemption from customs and central excise duties on import/local procurement of capital goods, raw materials, consumables, spares, packing material, etc.
Reimbursement of central sales tax
Corporate/income tax holiday until 31 March 2011
Reimbursement of duty paid on fuels procured from domestic oil companies as per the rate of drawback
No import licences are required
Import of second-hand capital goods are allowed
Supplies from the DTA to EOUs are deemed exports and are exempt from payment of the excise duty
50% of production may be sold in the domestic market on payment of duty, generally 25%, plus a 100% additional customs duty
100% FDI investment through automatic route

Source: Department of Industrial Policy and Promotion (2010), *National Manufacturing Policy: A Discussion Paper*. Viewed at: http://dipp.nic.in/NMP_DiscussionPaper/NMP_DiscussionPaper_2010.pdf; and Export Promotion Council for EOUs and SEZs, Circular No. 77, 6 July 2009.

157. A special licence granted by the Board of Approvals is necessary to set up an EOU to manufacture arms and ammunition, explosives and defence equipment, atomic substances, narcotics and psychotropic substances and hazardous chemicals, distillation and brewing of alcoholic drinks, cigarettes/cigars and manufactured tobacco substitutes. Up to 100% of FDI is allowed in EOUs under the automatic route (Chapter II(4)(ii)) in areas where no FDI prohibition applies.[205]

158. In 2009/10, India had 2,553 EOUs, manufacturing goods and providing services, excluding trading, which is not allowed.[206] During the period under review, exports from EOUs decreased in value from some US$42 billion to US$18 billion, accounting for 10% of total exports in 2009/10, compared with 26% in 2007/08 (Table III.21).[207] This decline was due to some enterprises leaving the EOUs regime. Exports of chemicals and pharmaceuticals, the most important products exported by EOUs, declined from US$24 billion in 2007/08 to US$4.7 billion in 2009/10. Taxes forgone as a result of the EOU scheme decreased from Rs 105 billion in 2007/08 to Rs 70 billion in 2009/10.

Table III.21
Exports from EOUs, 2007-10
(US$ billion, unless otherwise specified)

Sectors	2007/08	2008/09	2009/10
Textiles and garments, yarn	1.73	1.20	0.79
Computer software	1.20	0.75	0.89
Electronics hardware	1.15	1.19	0.98
Engineering goods	4.74	4.14	3.18
Chemicals and pharmaceuticals	24.02	23.69	4.52
Leather and sports goods	0.18	0.18	0.17
Gems and jewellery	2.33	0.93	1.04
Plastic, rubber, and synthetic	0.38	0.37	0.32
Foods and agri and forest products	0.93	1.02	0.90

Table III.21 (cont'd)

[205] FDI is prohibited in manufacture of arms and ammunition, explosives, atomic substances, narcotics and hazardous chemicals, distillation and brewing of alcoholic drinks, and cigarettes, cigars, and manufactured tobacco substitutes.

[206] Export Promotion Council for EOUs and SEZs online information, "How to set-up an Export Oriented Unit". Viewed at: http://www.eouindia.gov.in/eou_settingup.htm.

[207] Information provided by the authorities.

Sectors	2007/08	2008/09	2009/10
Miscellaneous	5.30	5.01	4.86
Total	**41.96**	**38.47**	**17.64**
Percentage share of EOUs exports of India's total exports	25.7	20.8	9.9

Note: The figures do not include the export performance of Software Technology Park of India (STPI) units.

Source: Information provided by the authorities.

(b) "Drawback"

159. The Customs Act 1962 (Sections 74-76), and the Customs and Central Excise Duties and Service Tax Drawback Rules 1995 continue to regulate the drawback system in India. Under the drawback system, exporters are entitled to a refund of: the customs duties (including additional duties) on imported goods that are exported without transformation (Section 74); or customs duties, central excise duties, and the service tax levied on materials imported or procured locally to manufacture export products (Section 75). There are two types of drawback: the "all industry rate" and the "brand rate" for which the refund may be negotiated.

"All industry" drawback

160. Under the "all industry" drawback rate, the amount refunded (i.e. "drawback rate") is usually a percentage of the f.o.b. value of exports or a specific per-unit value. For certain products, there is a cap or maximum amount that may be refunded. Drawback rates are based on different parameters including the prevailing price of inputs, standard input-output norms published by the DGFT, share of imports in total inputs, and the applied rates of duty.[208] The "drawback rates" and caps are listed in the drawback schedule, which is reviewed and revised every year taking into account changes in the tariff duty rates.[209] Customs Notification No. 84/2010 (17 September 2010) introduced the All Industry Rates of Duty Drawback Schedule for 2010-11. It includes two rates per item depending on whether the exporter has already received a refund of the central excise duty and the service tax under the Central Value Added Tax (CENVAT) Credit Rules 2004.[210]

161. Under the All Industry Rates of Duty Drawback Schedule 2010-11, drawback rates on, *inter alia*, leather and leather articles (HS chapters 41, 42, and 64), textiles and textile articles (HS chapters 50-63), base metals and article of base metals (HS chapters 72-83), bicycles and bicycle parts (HS chapter 87), sports goods (HS chapter 95), and writing instruments (HS chapter 96), have decreased compared with those in force in 2009-10.[211] To discourage exports, and in line with measures taken by the authorities to contain increases in the domestic price of cotton, exports of cotton yarn (HS 5205, 5206, and 5207) have not been covered by the drawback schedule since April 2010.[212] Drawback on gold jewellery and parts thereof (HS 7113.01 and HS 7113.02) may only be granted to exports by airfreight, post parcel or authorized courier going through 13 designated

[208] Customs Circular No. 35/2010, 17 September 2010.

[209] Customs Notification No. 103/2008, 29 August 2008, introduced the Drawback Schedule for 2008-09. The authorities noted that the 2008-09 Drawback Schedule also covered 2009-10.

[210] According to Customs Notification No. 84/2010 (17 September 2010), the Drawback Schedule (items and descriptions) is aligned with rates in the Customs Tariff Act 1975 (First Schedule) at the four-digit level. However, it is not aligned at the six- or eight-digit levels.

[211] Customs Circular No. 35/2010, 17 September 2010.

[212] Customs (non-tariff) Notification No. 34/2010, 29 April 2010.

customs stations, and after examination. In addition, consignments exported through authorized courier are subject to a maximum f.o.b. value of Rs 2 million.[213]

"Brand rate" drawback

162. For all products on which the All Industry Rates of Duty Drawback Schedule indicates a drawback rate of "nil", the exporter may claim a "brand rate" drawback. The exporter must apply in writing to the Commissioner of Central Excise or to the Commissioner of Customs and Central Excise, for the determination of the amount or rate of drawback, stating the proportion in which materials/components/inputs were used in the production or manufacture of goods, and the duties paid on such materials/components, or the tax paid on input services, in accordance with the Customs, Central Excise Duties and Service Tax Drawback Rules 1995 (Rule 6).[214] If the exporter deems that the drawback level is too low, e.g. if the amount refunded is less than four fifths of the duties and taxes paid on the imported materials used for the manufacture of export products, the drawback rate may be adjusted upon request (Customs, Central Excise, and Service Tax Drawback Rules 1995 (Rule 7)). According to the authorities, the "brand rate" drawback is determined on the basis of the actual duty incidence on the inputs used to manufacture the goods exported.

163. Drawback is not allowed for some specific products: at present these are casein, cement, cotton yarn, milk and milk products, and rice; or if the market price is less than the amount of the drawback; if the drawback due is less than Rs 50; or if the exported products have benefited from other incentives (Box III.2).[215] The authorities noted that the drawback is not provided for specific export products as a matter of overall policy.

Box III.2: Drawback

Instances in which drawback may not be applied:

- products have been manufactured partly or wholly in a warehouse as defined under the Customs Act 1962 (Section 65);
- products are manufactured or exported in discharge of export obligations against Advance or Duty-free Import Authorizations issued under the Duty Exemption Scheme (Table AIII.6);
- products are manufactured or exported by 100% export-oriented units (EOUs);
- products are manufactured or exported by units in free-trade zones or export processing zones or special economic zones;
- products are manufactured or exported availing the benefit of Customs Notification No. 32/1997, 1 April 1997, which provides exemption from customs duty for materials when imported into India to produce exports; and
- products are exported under the Duty Entitlement Pass Book Scheme (Table AIII.6).

In addition, exports of gold jewellery and parts thereof (HS 7113.01) and articles of gold jewellery and parts thereof (HS 7113.02) subject to other export incentives schemes (Table AIII.6), are not entitled to drawback.

Source: Customs Notification No. 84/2010, 17 September 2010.

164. If the drawback is not paid within three months from the date of filing a claim, the exporter receives interest in addition to the drawback (Customs Act 1962, Section 75A).

[213] Customs Notification No. 84/2010, 17 September 2010; and Department of Commerce (2010b).
[214] Customs Notifications Nos. 13/2008, 29 August 2008, and 84/2010, 17 September 2010.
[215] Customs Act 1962 (Section 76).

(c) Other duty and tax concessions

165. In addition to the SEZs and EOUs regimes and the duty drawback system, India has a number of export incentive schemes, some of which are contingent on value addition and export obligations. India's exports concession schemes include: (i) duty exemption schemes, which allow exporters to import inputs (including fuel and oil) duty free; (ii) duty remission schemes, entitling exporters to a refund of customs duty on the inputs used to produce exports (post export replenishment/remission of duty paid on inputs); (iii) reward schemes granting exporters duty credits; and (iv) the Export Promotion Capital Goods Scheme, which allows exporters to import capital goods, at concessional or zero duty rates, subject to an export obligation. Special schemes are also in place for gems and jewellery, and for export and trading houses (Table AIII.6). Income forgone as a result of these schemes totalled Rs 312,922 million in FY 2009/10 (Table AIII.7).

166. The product coverage and the level of concession under these schemes changed during the period under review and new schemes were implemented. Amendments included: (i) introduction of a zero duty rate under the Export Promotion Capital Goods Scheme; (ii) increase of the duty credit to from 1.25% to 2% of the f.o.b. value of exports under the Focus Product Scheme, and from 2.5% to 3% of the f.o.b. value of exports under the Focus Market Scheme; (iii) reduction of the minimum value added required to receive benefits for gems and jewellery from 2%-6.5% to 1.5%-5%; and (iv) the introduction of a 15% minimum value added requirement under the Advance Authorization Scheme. Since 2007 two new export incentive schemes have been introduced, the Status Holder Incentive Scheme and the Agri Infrastructure Incentive Scheme (Table AIII.6).

167. Incentives granted under three schemes that were phased out in 2006 (i.e. the Duty Free Credit Entitlement Scheme for Status Holder, the Duty Free Replenishment Certificate Scheme, and the Target Plus Scheme) have been grandfathered (Table AIII.6).

168. As is the case with other measures, duty concessions are also used to attain short term objectives. For instance, as of April 2010, duty concessions granted under the Duty Entitlement Passbook Scheme to exporters of cotton yarn were suspended, for six months, to reduce exports in an attempt to control the domestic price of cotton.

(viii) Export promotion and marketing assistance

169. In addition to tariff concessions and export programmes, the Department of Commerce encourages exports indirectly, through a number of schemes. The Assistance to States for Development of Export Infrastructure and Allied Activities Scheme provides assistance for, *inter alia*, setting up new export promotion industrial parks/zones (including SEZs), and supporting infrastructure (e.g. road links to ports, inland container depots, container freight stations, and power supply). The Marketing Development Assistance Scheme supports export promotion activities through export promotion councils (EPCs); the Market Access Initiative Scheme supports EPCs and trade bodies (i.e. chambers of commerce and industries) that participate in export promotion activities. The Department of Commerce also provides support for trade facilitation (e.g. implementation of a single window for clearance of goods and e-trading facilities).[216] India's 20 EPCs and the five Commodity Boards continue to promote exports of specific products.[217] Other bodies affiliated to the Ministry of Commerce and Industry are also actively involved in promoting exports through training,

[216] Department of Commerce (2009).

[217] EPCs promote exports of textiles; pharmaceuticals, chemicals, and cosmetics; leather; gems and jewellery; engineering goods and civil construction projects; plastics; cashews; shellac; and sports goods. Commodity boards promote exports of tea, coffee, rubber, spices, and tobacco.

organizing trade fairs/exhibitions in India and abroad, and acting as arbitrators in commercial disputes.[218]

(ix) Export finance and insurance

170. Export finance is provided primarily by the Export-Import Bank of India (Exim Bank)[219], and through mandatory annual lending targets for foreign banks (see below). In order to promote trade and investment, the Exim Bank provides Indian exporters with export credits on a cost-plus basis at market-related interest rates. The Exim Bank also provides finance and export support for export-oriented units (EOUs)[220], and value-added services (e.g. advice and marketing support aimed at evaluating international risks and export opportunities). The Bank coordinates the work of other institutions financing trade (exports and imports). The Exim Bank may also provide lines of credit to governments and to overseas financial institutions to enable buyers in those countries to purchase goods and services from India; the terms of these credits are negotiated between the Exim Bank and the overseas agency, based on market interest rates usually linked to the LIBOR.[221]

171. The Exim Bank also provides various export guarantee schemes and fee-based services to support international trade and investment, and conducts related research.[222]

172. During 2009/10, the Exim Bank approved loans amounting to Rs 388.43 billion, up from Rs 267.62 billion in 2006/07.[223] The main industrial sectors to which the bank has exposure remain textiles and clothing, metals and metal processing, and chemicals and petroleum (Chart III.5).

173. Under the current guidelines on lending to priority sectors, foreign banks operating in India must reserve 32% of their adjusted net bank credit (ANBC) or credit equivalent amount of off-balance-sheet exposure (OBSE) (whichever is higher) for priority sectors, of which 12% of ANBC/credit equivalent of OBSE must be loaned to the export sector. No target is fixed on lending to exporters for domestic (private and state-owned) banks.[224] The loans may be provided in domestic or foreign currency and are at concessional rates of interest. As at March 2010, 20.64% of net bank credit by foreign banks went to the export sector: out of 28 foreign banks 24 have achieved the 12% target.[225]

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[218] These institutions are: the India Trade Promotion Organization; the export and development authorities for marine products, and for agricultural and processed food; the institutes for foreign trade, packaging, and diamonds; the Federation of Indian Export Organizations; the India Brand Equity Foundation; and the Indian Council of Arbitration (Department of Commerce online information, "About us: Autonomous Bodies". Viewed at: http://commerce.nic.in/aboutus/aboutus_epc.asp; and Department of Commerce, 2009).

[219] Established in 1982 under the Export-Import Bank of India Act 1981, the Exim Bank is wholly owned by the Government of India.

[220] The Bank provides loans, working capital, marketing support, export product development, export facilitation, import finance, and export guarantees to EOUs.

[221] Export-Import Bank of India online information, "About us: Organization". Viewed at: http://www.eximbankindia.com/organisation.asp.

[222] The guarantees include: bid bond guarantees; advance payment guarantees; performance guarantees; guarantees for release of retention money; and guarantee for raising borrowings overseas for execution of project export contracts (information provided by the authorities).

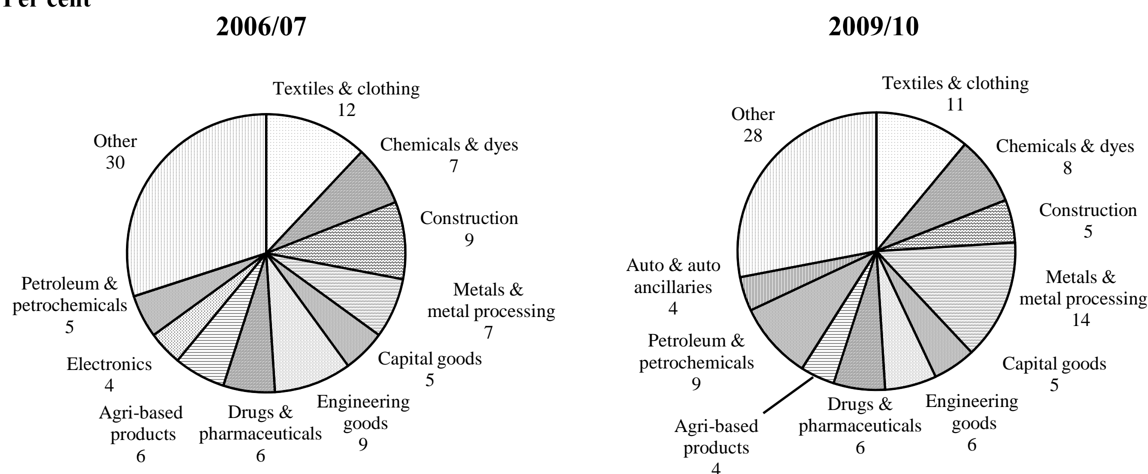
[223] Export-Import Bank of India (2010).

[224] Reserve Bank of India, Master Circular No. RBI/2010-11/80, 1 July 2010.

[225] Reserve Bank of India (2010a).

Chart III.5
Loans by the Export-Import Bank of India, by sector, 2006/07 and 2009/10

Per cent



Source: **Data provided by the Indian authorities.**

174. Insurance against export credit risk is provided by the Export Credit Guarantee Corporation of India Ltd. (ECGC). ECGC is a state-owned company, under the administrative control of the Ministry of Commerce and Industry, registered as a non-life insurance company under the Insurance Regulatory and Development Authority Act. It provides exporters insurance against commercial or country risks; it also grants guarantees to banks/financial institutions, which allows them to offer export credit facilities to exporters, on a more liberal basis.[226] The ECGC also provides overseas investment insurance to Indian companies investing in joint ventures abroad through equity or loans.[227] The ECGC holds 60% of India's total export credit risk market and covers exports to 193 countries.[228] The authorities noted that the ECGC does not receive a subsidy from the Government.[229] The ECGC also operates the National Export Insurance Account (NEIA), which covers export credit risk for large long- and medium-term overseas projects that are commercially viable and of national interest (i.e. strategically important from an economic and political point of view) but fall beyond ECGC's underwriting capacity.[230]

[226] According to the authorities, "liberal basis" implies that the ECGC cover is expected to provide increased comfort to exporters to export and to the banks to finance the exporters, but does not imply concessional rates of premium or terms (WTO, 2007).

[227] ECGC online information. Viewed at: www.ecgc.in/.

[228] Private insurance companies that have entered the export credit market include New India Assurance Company Ltd., Tata AIG General Assurance Company Ltd., ICICI Lombard General Insurance Company Ltd., and Bajaj Allianz General Insurance Company Ltd (Domain-B online information, "ECGC takes on competitors on their own turf", 10 April 2007. Viewed at: http://www.domain-b.com/companies/companies_e/export_credit_guarantee_corporation/20070410_competitors.html).

[229] Information provided by the authorities.

[230] Press Release, "Speech of the Commerce and Industry Minister on the Announcement of Trade Facilitation Measures", 26 February 2009.

(4) MEASURES AFFECTING PRODUCTION AND TRADE

(i) Incentives

(a) Tax incentives

175. India provides a number of tax incentives aimed at promoting investment. Under the Income Tax Act 1961, tax incentives are provided to several sectors (Section 35AD) and to disadvantaged areas. Section 80IB provides for tax benefits to industrial undertakings in the State of Jammu and Kashmir; these incentives will be provided for industries set up until 31 March 2012. Similar benefits available for industrial undertakings in the states of Himachal Pradesh and Uttarakhand will be phased out in 2012-13 and those provided to industries in the North-Eastern states by 2017-18. The authorities noted that several tax incentive programmes have been phased out since 2007 (Table III.22). During the period under review, revenue forgone due to incentives amounted to some US$27.94 billion (Table AIII.8).

Table III.22
Tax incentives phased out, 2006-10

Tax incentive	Income Tax Act 1961, Section	Date
Tax deductions provided to cooperative banks	80P	2006/07
Profit-linked tax deduction provided to companies carrying on scientific research and development	80IB	2006/07
Profit-linked tax deduction provided to the business of operating and maintaining a hospital in rural areas	80IB	2008/09
Profit-linked tax deduction provided to the business of laying and operating a cross-country natural gas distribution network, including pipelines and storage facilities	80IA	2009/10

Source: Information provided by the Indian authorities.

176. Tax incentives provided under the New Exploration Licensing Policy for the exploration and production of crude oil and natural gas under contracts entered into on or after 1 January 1999 are still in place.

177. The Income Tax Act 1961 provides additional incentives, including for the shipping companies (Section 33AC) and deductions for revenue and capital expenditure (other than for land) on scientific research (under Section 35).[231] In 2009, a new section (35AD) was introduced in the Income Tax Act 1961, which provides investment-linked deduction of 100% of capital expenditure (other than on land, and financial instruments) to sectors such as cold-chain facilities, agricultural warehousing and cross-country natural gas and oil pipeline networks. This incentive was extended to the hotel, hospital, and slum rehabilitation sectors in 2010.[232]

(b) Other support

Explicit subsidies[233]

178. Direct or explicit subsidies as reported in the Central Government's annual Budget amounted to Rs 1,641.5 billion (2.1% of GDP) in 2009/10, up from Rs 571.3 billion (1.3% of GDP) in 2006/07.[234]

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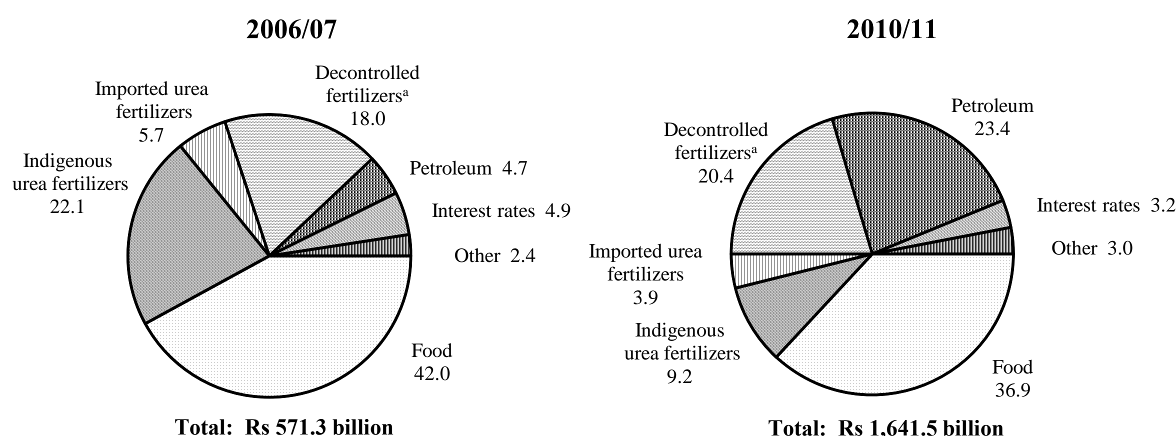
[231] Income Tax Act 1961, as amended.
[232] Ministry of Finance (2007a).
[233] The term "subsidy" in this section is used as in India's Budget and other official documents, and not in the sense of the WTO Agreement on Subsidies and Countervailing Measures.

179. The bulk of India's explicit subsidies continues to be aimed mainly at supporting the agriculture sector, to promote food security and reduce poverty. As a result, most of the outlays are allocated to food and fertilizers (Chart III.6). Food subsidies are provided by the Department of Food and Public Distribution to meet the difference between actual prices and the central issue prices fixed under the Targeted Public Distribution System (TPDS) and other welfare schemes. The Central Government also provides a subsidy to the Food Corporation of India to keep buffer stocks of wheat and rice as a food security measure. "Other subsidies", which account for 3% of the total explicit subsidies in 2010/11, include market intervention and price support schemes for agricultural products (section (iv) below and Chapter IV(2)). India continues to subsidize indigenous and imported (urea) fertilizers. The scheme was introduced after the prices of phosphatic and potassic fertilizers were decontrolled, with a view to enable farmers to maintain a proper ratio of nitrogen, phosphorus, and potassium, to keep the price of fertilizers under control, and to give producers a "reasonable" return on investment. India's farmers also benefit from input support for irrigation water, electricity, diesel, and seeds.

Chart III.6
Explicit subsidies, 2006/07 and 2010/11
Per cent



a Sale of decontrolled fertilizers with concessions to farmers.

Source: Ministry of Finance (2010), Expenditure Budget: Volume I: Non-Plan Expenditure, *Union Budget 2010-2011*. Viewed at: http://indiabudget.nic.in [23 May 2011].

180. Subsidies for domestic liquefied petroleum gas and kerosene under the Public Distribution System (PDS), and for freight[235], were put in place in 2002 after the dismantling of the administered pricing mechanism (APM), with the aim of protecting the poor.

Credit policies

181. The Central Government allocates funds to subsidize interest rates, including to exporters (Table III.23). Under these schemes, which are managed by different ministries (e.g. Ministry of Finance, and of Heavy Industries and Public Enterprises) central public sector enterprises (CPSEs) also have access to credit at preferential rates. Information is neither available regarding the amount

[234] Ministry of Finance (2011b).
[235] Freight Subsidy (For Far-flung Areas) Scheme 2002.

of credit provided at preferential rates or subsidized rates for each sector nor on the CPSEs which benefit from preferential interest rates.

Table III.23
Preferential interest rates to exporters, 2007-11

Period	Sector	Interest rate	
		Subsidy	Floor rate
01.04.2007 to 30.09.2008	Textiles (including handlooms, jute, and carpets), readymade garments, leather products, handicrafts, engineering products, processed agricultural products (including cashew, coffee, and tea), marine products, sports goods, toys, solvent extracted de-oiled cake, plastics and linoleum, man-made fibre, and exporting small and medium enterprises (SMEs)	2 percentage points	7%
	Leather and leather manufactures, marine products, and textiles (including readymade garments and carpets but excluding man-made fibre and handicrafts)	4 percentage points	7%
01.12.2008 to 31.03.2010	Textiles (including handloom), handicrafts, carpets, including readymade garments and carpets but excluding man-made fibre and leather, gem and jewellery, marine products, and exporting SMEs	2 percentage points	7%
01.04.2010 to 31.03.2011	Handicrafts, carpets, handlooms, textiles, engineering goods, leather and leather manufactures, jute and floor covering, and exporting SMEs	2 percentage points	7%

Source: Information provided by the Indian authorities.

182. India sets targets for priority-sector lending to ensure that banks provide credit to specific sectors.[236] Domestic and foreign commercial banks are required to reserve a percentage of their adjusted net bank credit (ANBC) or credit equivalent amount of off-balance-sheet exposure (OBSE), whichever is higher, for priority sectors. Domestic banks must reserve 40% of their ANBC/OBSE to lend to priority sectors and foreign banks 32% of their ANBC/credit equivalent of OBSE to priority sectors, out of which 12% must be channelled to exports (Table III.24). In 2009/10 public, private domestic, and foreign banks exceeded these targets, reaching 41.7%, 46%, and 35.1%, respectively; 24 out of 27 public banks, 20 out of 22 private domestic banks, and 24 out of 28 foreign banks met the target (Chapter IV(3)(ii)(a)).[237]

183. Subsidies are also provided to regional rural banks, cooperative banks, and public sector banks to provide short-term credit to farmers at preferential rates (Chapter IV(2) and (3)(ii)). For example, in 2009/10, the Central Government provided a subsidy of 2 percentage points on its own loans to public sector banks, to provide short-term production credit to farmers, of up to Rs 300,000 per farmer, at an interest rate of 7%.[238] If farmers reimbursed their loans within one year, an "additional subsidy" was granted to public banks so that they would reduce the interest rate by a further 1 percentage point, bringing the interest rate down to 6%. In 2010/11, the interest rate subsidy is at 1.5% and the "additional subsidy" was increased to 2 percentage points, lowering the effectively paid interest rate by farmer to 5%.[239] The funds allocated to this scheme amounted to Rs 70.5 billion during 2006/07-2009/10. Apart from this subsidy granted by the Central Government, farmers may benefit from other subsidized interest rate at the state level.

[236] The general categories of priority sectors are: agriculture (direct and indirect finance), micro and small enterprises (direct and indirect finance), micro credit, and education and housing loans (Reserve Bank of India, Master Circular No. RBI/2010-11/80, 1 July 2010).
[237] Reserve Bank of India (2010a), pp. 89-90.
[238] The nominal prime lending rate was 11%-12% for 2009/10 (Chapter I) (Reserve Bank of India, 2010c).
[239] Ministry of Finance (2009) and (2010c).

Table III.24
Targets for lending to priority sectors, 2011

Priority sectors	Domestic commercial banks	Foreign banks
Total advances to priority sectors	40% of the adjusted net bank credit (ANBC) or credit equivalent amount of off-balance-sheet exposure, whichever is higher	32% of ANBC or credit equivalent amount of off-balance-sheet exposure, whichever is higher
Agriculture	18% of ANBC or credit equivalent amount of off-balance-sheet exposure, whichever is higher	No target
Micro and small enterprises (MSEs)	12% of ANBC or credit equivalent amount of off-balance-sheet exposure, whichever is higher	10% of ANBC or credit equivalent amount of off-balance-sheet exposure, whichever is higher
Micro enterprises within MSEs	60% of advances to MSEs should go to micro enterprises[a]	Same as for domestic banks
Export credit	No target	12% of ANBC or credit equivalent amount of off-balance-sheet exposure, whichever is higher
Weaker sections[b]	10% of ANBC or credit equivalent amount of off-balance sheet exposure, whichever is higher	No target
Differential Rate of Interest (DRI) Scheme[c]	1% of total advances outstanding as at the end of the previous year. At least 40% of the total advances should go to scheduled caste/scheduled tribes. At least two third of advances should be granted through rural and semi-urban branches	No target

a Advances to micro enterprises amount to 50% of the total advances to MSEs in 2010-11. They will be increased to 55% in 2011-12 and 60% in 2012-13.
b Weaker sections include, *inter alia*, small and marginal farmers; artisans, and village and cottage industries; scheduled castes/scheduled tribes; and beneficiaries of the Differential Rate of Interest (DRI) Scheme.
c The DRI Scheme applies to borrowers with annual family income of Rs 18,000 in rural areas and Rs 24,000 in urban areas.

Source: Reserve Bank of India, Master Circular No. RBI/2010-11/80, 1 July 2010; and Reserve Bank of India, Master Circular No. RBI/2007-2008/279, 10 April 2008.

Micro and small enterprises

184. Support is also provided to micro and small enterprises (MSEs). Historically, in India a number of products have been reserved for exclusive manufacturing by MSEs. Products are eligible for reservation if manufacturing by MSEs is economically viable and technically feasible.[240] MSEs accounted for around 39% of India's manufacturing output and 33% of exports (in value) at end-March 2009.[241] However, the reservation policy, which has limited competition in reserved industries, has reportedly hindered competitiveness among MSEs. A recent study shows that MSEs continue to use obsolete technology, attract unskilled labour, have inefficient management, and face challenges such as marketing bottlenecks and poor infrastructure.[242] This lack of policy success may have been one of the reasons why there has been a progressive de-reservation of products.[243] The reservation/de-reservation of products is reviewed regularly by the Advisory Committee on Reservation, under the Ministry of Micro, Small, and Medium Enterprises (MSMEs). The trend towards de-reservation accelerated substantially during the period under review: at present, 20 products are in the reserved category, down from 236 in May 2006 (Table III.25).

[240] Department of Industrial Policy and Promotion (2009a); and Development Commissioner online information, "List of items reserved for exclusive manufacture in micro and small enterprises". Viewed at: http://www.dcmsme.gov.in/publications/reserveditems/resvex.htm.

[241] Development Commissioner online information, "Credit Guarantee Fund Scheme for Micro and Small Enterprises". Viewed at: http://www.dcmsme.gov.in/schemes/sccrguarn.htm.

[242] Penumaka (2010).

[243] Planning Commission (2006); and Development Commissioner online information, "List of items reserved for exclusive manufacture in micro and small enterprises". Viewed at: http://www.dcmsme.gov.in/publications/reserveditems/resvex.htm.

Table III.25
Products reserved for MSEs, 2011

Food and allied industries: pickles and chutneys, bread, mustard oil (except solvent extracted), and groundnut oil (except solvent extracted)
Wood and wood products: wooden furniture and fixtures
Paper products: exercise books and registers
Other chemicals and chemical products: wax candles, laundry soap, safety matches, fireworks, and agarbatties
Glass and ceramics: glass bangles
Mechanical engineering, excluding transport equipment: steel almirah, rolling shutters, steel chairs (all types), steel tables (all other types), steel furniture (all other types), padlocks, stainless steel utensils, and domestic utensils (aluminium)

Source: Development Commissioner (Ministry of Micro, Small, and Medium Enterprises) online information, "List of items reserved for exclusive manufacture in micro and small enterprises". Viewed at: http://www.dcmsme.gov.in/publications/reserveditems/resvex.htm.

185. In addition to the set-asides, MSMEs may benefit from a number of other assistance schemes, managed by the Ministry of MSMEs and supporting institutions (e.g. the Office of the Development Commissioner and the National Small Industries Corporation). These schemes aim to assist MSMEs, in particular MSEs, in the promotion and marketing of exports, product certification, technology upgrading, and human resources development (Table AIII.9). MSEs are also granted a 15% price preference for central government purchases (Table AIII.9). The authorities noted that this price preference is advisory in nature.

186. Despite the support they receive, access to credit remains difficult for MSEs, as they are regarded as high risk by banks.[244] According to the Associated Chambers of Commerce and Industry (ASSOCHAM), most MSEs operate at some 70% of their capacity due to lack of financial resources.[245] Therefore, one of the Government's priorities for the development of MSEs is to increase the flow of credit/funds from banks and financial institutions. Hence, within the policy on lending to priority sectors, domestic commercial banks are required to reserve 12% of their adjusted net bank credit (ANBC) or credit equivalent amount of off-balance-sheet (OBSE), whichever is higher, to MSEs, while foreign banks must reserve 10%. Micro enterprises must receive 60% of the percentage of ANBC/credit equivalent amount of OBSE reserved for MSEs (Table III.24).[246] Other schemes for improved access to credit have also been implemented (Table AIII.9). Despite these efforts, a study on 12,000 small and medium enterprises (SMEs) indicated that, on average, 25% of their funding comes from banks and financial institutions, 15% from internal sources, 10% from capital markets, and the remaining 50% from alternative sources (friends and family)[247]; 92% of SMEs remain dependent on personal and family savings.[248]

187. At the state level, other schemes also implemented to support the development of MSMEs include: the development of industrial estates, tax incentives, and subsidies for electricity and capital.[249] Under the General Excise Exemption Scheme, MSMEs with annual turnover of up to

[244] The share of credit to MSEs in the overall ANBC declined from 12.5% in March 2000 to 10.9% in March 2009 (from 7.8% to 4.9% for micro enterprises) (Government of India, 2010).

[245] ASSOCHAM Press Release, "74% of sick SMEs refer their sickness to low fund's availabily", 11 April 2010. Viewed at: http://www.assocham.org/prels/shownews.php?id=2387.

[246] Reserve Bank of India, Master Circular No. RBI/2010-11/79, 1 July 2010.

[247] De (2010).

[248] ASSOCHAM Press Release, "74% of sick SMEs refer their sickness to low fund's availability", 11 April 2010.

[249] Development Commissioner online information, "SSI Registration". Viewed at: http://www.dcmsme.gov.in/howtosetup/grgxx01x.htm.

US$1 million are granted full excise exemption up to US$375,000[250]; MSEs may also benefit from excise duty exemptions.[251]

188. Despite efforts to assist MSMEs, "sickness" or "incipient sickness" remain a concern.[252] According to the 4th All India Census of MSMEs (2006-07), sickness or incipient sickness among registered MSMEs has been due mainly to a lack of demand, shortage of working capital, marketing problems, and non-availability of raw materials[253]; about 6.49% of registered MSMEs were identified as sick or incipient sick.[254] According to ASSOCHAM, 74% of sick MSEs attributed their sickness to a lack of capital.[255] The Reserve Bank of India has issued guidelines for the rehabilitation of potentially viable or viable sick MSEs, mainly through the provision of concessionary credit by banks and financial institutions. The concessionary elements of the credits provided include: subsidized interest rates for working capital loans (and for working capital term loans), of 1.5% below the prevailing fixed/prime lending rate; interest-free credits for loans under the "funded interest term loan" modality; term loans (other than for working capital) are granted at a concessional rate of maximum 2% below the document rate (3% for tiny/decentralized small and medium enterprises); and contingency/loan assistance is granted at concessional rates of 1.5% below the prevailing fixed/prime lending rate.[256]

189. The Government-appointed Task Force on MSMEs has recommended a gradual agenda of actions in order to provide relief and stability to MSMEs. Recommendations cover credit, marketing, infrastructure, technology, skill developments, and taxation.[257] The agenda has not yet been implemented.

(ii) Role of state-owned enterprises (other than state-trading companies), and disinvestment

190. At end-March 2010, 217 of India's 249 central public sector enterprises (CPSEs) were in operation (Table AIII.10), 32 were in the process of being established, and 59 were sick or loss making.[258] CPSEs continue to play an active role in the economy, holding significant market-share in several sectors/subsectors, e.g. petroleum and mining, power transmission and generation, nuclear energy, heavy engineering, aviation industry, storage and public distribution system, shipping, insurance, and telecommunications.[259]

191. Since India's last TPR, disinvestment of CPSEs has continued; a few CPSEs were recently approved for disinvestment (Table III.26). India's disinvestment policy is aimed at encouraging

[250] Development Commissioner (2009).

[251] Development Commissioner online information, "Excise and SSI". Viewed at: http://dcmsme.gov.in/policies/central/t-ed.htm.

[252] A unit is "sick" when: (i) any of its borrowal account remains substandard for more than six months; or (ii) there is erosion in the net worth due to accumulated cash losses to the extent of 50% of its net worth during the previous accounting year; and (iii) it has been in commercial production for at least two years (Reserve Bank of India, Master Circular RBI/2010-11/79, 1 July 2010). To measure incipient sickness, the criterion used is the continuous decline in output for three consecutive years, while to measure sickness, the criteria utilized are a delay in the prepayment of a loan of over one year, and a decline in net worth of 50% (Ministry of Micro, Small, and Medium Enterprises, 2009).

[253] Ministry of Micro, Small, and Medium Enterprises (2009).

[254] Information provided by the authorities.

[255] ASSOCHAM Press Release, "74% of sick SMEs refer their sickness to low fund's availabily", 11 April 2010.

[256] Reserve Bank of India, Master Circular RBI/2010-11/79, 1 July 2010.

[257] Government of India (2010).

[258] This excludes seven insurance companies.

[259] Department of Public Enterprises (2010).

people-ownership of CPSEs while ensuring that the Government's equity does not fall below 51%, hence maintaining control of the enterprise. The Government approved an action plan for disinvestment in profit-making CPSEs in November 2009, which outlines two approaches to disinvestment.[260] First, profit-making CPSEs listed on stock exchanges with less than 10% mandatory public shareholding will be divested through a public offering. Second, unlisted profit-making CPSEs will be listed on stock exchanges or will issue fresh equity or a combination of both.[261] Listed profit-making CPSEs may use capital markets to finance their capital expenditure and the Government may consider disinvesting part of its shareholding.[262]

Table III.26
Overview of disinvestment, 2007-11

CPSEs	Scenario	Year	Government's share (%)
CPSEs disinvested			
Maruti Udyog Ltd.[a]	Sale of the Government's residual 10.27% shareholding	2007	0.00
Power Grid Corporation of India Ltd. (PGCIL)	Offer for sale of 5% Government's paid-up capital and issue of 10% fresh equity by PGCIL	2007	86.36
Rural Electrification Corporation Ltd. (REC)	Offer for sale of 10% Government's paid-up capital and issue of 10% fresh equity by REC	2008	81.82
	Offer for sale of 5% Government's paid-up capital and issue of 15% fresh equity by REC	2010	66.80
National Hydro-electric Power Corporation Ltd. (NHPC)	Offer for sale of 5% Government's paid-up capital and issue of 15% fresh equity by NHPC	2009	86.36
Oil India Ltd.	Issue of 11% fresh paid up capital by Oil India Ltd. through public offering; Offer for sale of 10% Government's equity to Indian Oil Corporation Ltd., Hindustan Petroleum Corporation Ltd., and Bharat Petroleum Corporation Ltd.	2009	78.43
NTPC Ltd.[b]	Offer for sale of 5% Government's paid-up capital	2010	84.50
NMDC Ltd.[c]	Offer for sale of 8.38% Government's paid-up capital	2010	90.00
Satluj Jal Vidyut Nigam Ltd.[d]	Offer for sale of 10.03% Government's shareholding	2010	64.47
Engineers India Ltd.	Offer for sale of 10% Government's paid-up capital	2010	80.40
Coal India Ltd.	Offer for sale of 10% Government's paid-up capital	2010	90.00
Power Grid Corporation of India Ltd. (PGCIL)	Offer for sale of 10% of Government's paid-up capital and issue of 10% fresh equity by PGCIL	2010	69.42
Shipping Corporation of India Ltd. (SCI)	Offer for sale of 10% of Government's paid-up capital and issue of 10% fresh equity by SCI	2010	63.75
Manganese Ore India Ltd.	Offer for sale of 10% of Government's paid-up capital; offer for sale of 5% of Maharashtra Government's paid-up capital; and 5% of Madhya Pradesh Government's paid-up capital	2010	71.57
CPSEs to be disinvested			
Steel Authority of India Ltd. (SAIL)	Offer for sale of 5% of the Government's paid-up capital	2011	76.97
Hindustan Copper Ltd. (HCL)	Offer for sale of 10% Government's paid-up capital and issue of 10% fresh equity by HCL	2011	81.45
Indian Oil Corporation Ltd.[a]	Offer for sale of 10% Government's paid-up capital and issue of 10% fresh equity by the company	2011	62.65
Oil and Natural Gas Corporation Ltd.	Offer for sale of 5% Government's paid-up capital	2011	69.14

Table III.26 (cont'd)

[260] Profit-making CPSEs are enterprises with positive net worth, no accumulated losses, and earned net profit during the three preceding years; 70% of CPSEs are reported to be profitable (KPMG, 2010a).
[261] Department of Public Enterprises (2010).
[262] Information provided by the Indian authorities.

CPSEs	Scenario	Year	Government's share (%)
Power Finance Corporation Ltd.	Offer for sale of 5% of Government's paid up capital and issue of 15% fresh equity by the Power Finance Corporation Ltd.	2011	73.72

a Car manufacturing.
b Power generation
c Mining exploitation
d Hydro-power generation.

Source: Ministry of Finance (2010), *Annual Report 2009-10*. Viewed at: http://finmin.nic.in/reports/AnnualReport2009-10.pdf; Department of Disinvestment online information, "Road ahead". Viewed at: http://www.divest.nic.in/road.htm; and information provided by the Indian authorities.

192. Proceeds from disinvestment are placed in the National Investment Fund created in 2007; 75% of the proceeds are allocated to the funding of selected social programmes and the remainder is invested in the modernization or expansion of profitable or revivable CPSEs. However, due to the economic slowdown (over 2008-09) and a recent drought, the Government decided that, over April 2009-March 2012, proceeds would be fully used to finance social sector programmes.[263]

(iii) Competition policy

193. Since its last Trade Policy Review, India has made several amendments to its main competition policy legislation embodied in the Competition Act 2002. At present, legislation dealing with competition issues in India are the Competition Act 2002, the Competition (Amendment) Act 2007, the Competition (Amendment) Act 2009, and various regulations issued by the Competition Commission of India (CCI).[264] Though the Act was passed in 2002, substantive provisions, in particular those relating to anti-competitive agreements and abuse of dominant position, were brought into force only in May 2009[265], and more recently (2011) those relating to mergers and acquisitions. In 2009, the Monopolies and Restrictive Trade Practices Act 1969 (MRTP Act), which had entered into force in 1970, was repealed. The MRTP Commission established under the MRTP Act was to continue dealing with the cases filed prior to 1 September 2009 until 2011 (i.e. two years from the date of repeal of the MRTP Act)[266]; thereafter, the Competition Commission of India (CCI) created under the 2002 Act would take on the MRTP Commission's tasks.

194. The MRTP Act did not meet the needs of India's new economic environment, with a steadily growing private sector and the dismantling of state-owned monopolies. The MRTP Act covered restrictive practices but did not cover abuse of dominance. In addition, the MRTP Commission was restricted to dealing with cases referred to it, it did not have the power of inquiry and there was no provision for the Commission to play an active role in promoting competition.[267]

195. The Competition Commission of India (CCI) was established on 14 October 2003[268], but started operating only in May 2009, when the provisions of the Competition Act relating to

[263] Ministry of Finance (2010a) and (2007b).
[264] Competition Commission online information, "Rules and Regulations". Viewed at: http://www.cci.gov.in/index.php?option=com_content&task=view&id=19.
[265] Section 1(3) of the Competition Act 2002 empowers the Central Government to bring the various provisions of the Act into force on different dates by issuing a notification in *Official Gazette*.
[266] OECD (2009b).
[267] OECD (2009b).
[268] Department of Company Affairs, Notification S.O.1198(E), 14 October 2003. Viewed at: hpp://www.mca.gov.in/Ministry/notifications_2003.html.

anti-competitive agreements and abuse of dominant position were notified and entered into force.[269] All cases pending under the MRTP Commission were moved to the CCI in 2009. As at December 2010, the CCI had received 130 requests for investigations, many inherited from the MRTPC, and issued 30 orders.[270] The requests covered insurance, travel, automobile manufacturing, real estate, pharmaceuticals, the financial sector, and entertainment.

196. Unlike the MRTPC, the CCI has powers of inquiry and enforcement, and may impose penalties for non-compliance with its procedures.[271] The Commission may also take remedial actions to deal with anti-competitive agreements and abuse of dominant position, and impose penalties of up to 10% of the average turnover of an enterprise for the three preceding financial years. In the case of a cartel, the Commission may impose on each member a penalty of up to three times the profit or up to 10% of turnover, whichever is higher, for each year of the continuation of the agreement.[272] After the inquiry, the CCI may issue a cease-and-desist order directing a delinquent enterprise to discontinue and not to re-enter an anti-competitive agreement or abuse its dominant position.[273] The CCI may self-initiate investigations.

197. The orders, directions or decisions made by the CCI may be appealed before the Competition Appellate Tribunal (CAT), established in October 2009.[274] Appeals must be filed within 60 days from the date on which a copy of the direction or decision or order made by the CCI is received, unless the CAT is satisfied that there was sufficient cause for not filing the appeal within that period. Orders issued by the CAT are enforced in the same manner as a decree made by a court; contravention (without any reasonable ground) of any order of the Appellate Tribunal, may be subject to a fine not exceeding Rs 10 million or imprisonment for a term up to three years, or both, as the Chief Metropolitan Magistrate (Delhi) may deem fit.[275] During 2010, some 25 appeals were filed before the CAT and 14 appeals have been disposed of. A number of appeals filed under the MRTPA were also being dealt with by the CAT.[276]

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[269] Various sections of the Competition Act were notified and entered into force between 2003 and 2009, through S.O.340(E), 31 March 2003; S.O.715(E), 19 June 2003; S.O.1747(E), 12 October 2007; S.O.2167(E), 20 December 2007; and S.O.1242(E) and S.O.1241(E), 20 May 2009. As at February 2011, the notification of some sections of the Act were pending. For example, section 5 dealing with the regulation of combinations (mergers and acquisitions), had not been notified, although section 6 dealing with the same issue, was notified in 2007. Sections dealing with mergers and acquisitions were notified in March 2011.

[270] CCI online information, "Orders of the Commission". Viewed at: http://www.cci.gov.in/index.php?option=com_content&task=view&id=150

[271] These include: (i) the power to order compensation for loss or damage incurred by contravention of its orders; (ii) a fine of Rs 100,000 per day for failure to comply with its directions; (iii) a penalty of up to 1% of total turnover or assets, whichever is higher, for failing to furnish information on a combination; and (iv) a fine of Rs 500,000 to Rs 10 million for knowingly making a false statement or omitting any material particular.

[272] Section 46 of the Act empowers the Commission to grant leniency by levying a lesser penalty on a member of the cartel who provides full, true, and vital information regarding the cartel. For details of the conditions for lesser penalty, see CCI Regulation No. 4 of 2009, 13 August 2009.

[273] Section 33(2) of the Act, introduced in the 2007 amendment, states that where during an inquiry it is proved to the satisfaction of the Commission that importation of any goods is likely to contravene specified sections of the Act, it may, by order, grant a temporary injunction restraining any party from importing such goods until the conclusion of such inquiry or until further orders, without giving notice to the opposite party.

[274] Ministry of Corporate Affairs, Notification S.O.1240(E), 15 May 2009.

[275] Competition Appellate Tribunal online information, "Introduction". Viewed at: http://compat.nic.in/Introduction.html.

[276] Competition Appellate Tribunal online information, "Cause List". Viewed at: http://compat.nic.in/CauseList%20of.html.

198. The CCI has a role in competition advocacy, which the MRTPC did not have. The Commission must take the necessary measures for promoting competition, creating awareness, and imparting training on competition issues.[277] As part of its advocacy role, the Commission has designed the Suggested Framework for Compliance of the Competition Act 2002 by Enterprises.[278]

199. The Commission also has powers to inquire into an anti-competitive agreement or abuse of dominant position taking place outside India, if it has, or is likely to have, an appreciable adverse effect on competition in India. No such cases have been taken to the Commission.[279]

200. The CCI must issue an annual report[280]; its 2009-10 report was sent to Parliament as required.

201. Sector-specific regulators exist in many sectors, such as capital markets, insurance, telecommunications, electricity, petroleum and natural gas, and civil aviation. According to the Competition (Amendment) Act 2007, when any competition issue is raised before a sector-specific regulator, the CCI should give its opinion. When giving their views, both the CCI, and the sector-specific regulators, should aim to ensure efficiency and consumer welfare. Their roles are intended to be complementary; however, there appear to be conflicts because of the differences in interpretation of laws.[281]

202. The Competition Act 2002 contains provisions dealing with anti-competitive agreements, abuse of dominant position, and "combinations" (mergers and acquisitions). The Act prohibits anti-competitive agreements related to production, storage, purchase or control of goods, and provision of services. These agreements include cartels, price fixing, limiting production, and sharing markets or agreements between manufacturers and distributors.[282] However, an exception to this prohibition applies when these agreements increase efficiency. There have been no such cases during the period under Review.[283] The law also recognizes intellectual property rights and in order to facilitate their protection, allows reasonable restrictions imposed by their owners. While agreements related to production, supply, distribution, and control of goods and services for export may have appreciable adverse effects on competition, they are exempt from prohibition.[284]

203. Abuse of dominant position has been prohibited under the 2002 Act, since the notification of the relevant section in May 2009. Enterprises are prohibited from imposing unfair or discriminatory conditions when purchasing or selling goods or services; or when pricing goods and services. The Act also prohibits other practices including: restricting the production of goods and the provision of services; denying market access; concluding contracts subject to the acceptance of conditions not related to the contract; and using dominant position to enter a market or protect other markets.[285] These practices are not prohibited *per se* but are dealt with by "rule of reason" when they cause adverse effects.

[277] Competition Commission online information. Viewed at: www.cci.gov.in.
[278] Competition Commission of India (undated b).
[279] Information provided by the Indian authorities.
[280] Ministry of Corporate Affairs, Notification GSR 808(E), 21 November 2008. Viewed at: http://www.mca.gov.in/Ministry/actsbills/rules/CCI-004_2jan2009.pdf.
[281] Competition Commission online information, "Competition, Public Policy, and Common Man". Viewed at: http://www.cci.gov.in/images/sunday1.pdf.
[282] Competition Act 2002, Chapter II, Section 3.3.
[283] Information provided by the authorities.
[284] Competition Commission online information, "Enforcement Activities Prohibition of Anticompetitive Agreements". Viewed at: http://www.cci.gov.in/index.php?option=com_content&task=view&id=35.
[285] Competition Act 2002, Chapter II, Section 4.

204. The Act also regulates combinations of large enterprises. Combinations covered by the Competition Act 2002 include mergers and acquisitions involving large enterprises, defined in the Act as those above certain thresholds.[286] If any enterprises involved in the combination belong to a group, the threshold is four times higher.[287] Also covered is the category of combinations involving the acquisition of control over an enterprise by a person who already has direct or indirect control over another enterprise producing, distributing or trading similar or substitutable goods or services, also subject to similar thresholds. These thresholds are to be revised every two years to reflect movement in the wholesale price index (WPI) or exchange rate fluctuations. In general, mergers or acquisitions that are likely to have an adverse effect on competition are illegal in India. The CCI has not dealt with any cases of mergers and acquisitions because the Central Government had not notified Section 5 of the 2002 Act dealing with mergers and acquisitions until March 2011, and hence the provisions related to them were not in force until 1 June 2011. In addition, the Central Government has made some exemptions to the application of Section 5 of the Competition Act 2002 on grounds of public interest. Exemptions apply when the enterprises to be acquired have assets of less than Rs 2.5 billion or its turnover is below Rs 7.5 billion or when a "group" exercises less than 50% of voting rights in the other enterprise.

205. According to the law, any person/enterprise, who/which proposes to enter into a combination, as defined in Section 5 of the Act, must give notice to the Commission.[288] However, according to a CCI booklet, only combinations that exceed the prescribed threshold must be pre-notified.[289] If the combination is not notified, the Commission may inquire into it within one year of merger taking effect. If the inquiry finds appreciable adverse effects on competition, the CCI may order the dissolution of the merger. The beneficial and adverse effects of the proposed combination on competition in the relevant market in India must be evaluated by the CCI with reference to specific factors as stated in the law (Box III.3). The Commission is also authorized to impose a fine of up to 1% of the total turnover or the assets of the combination, whichever is higher, for failure to notify the merger.

206. The share subscription or financing facility or any acquisition, *inter alia*, by a public financial institution, foreign institutional investor, bank or venture capital fund, pursuant to any covenant of a loan agreement or investment agreement, is exempt from the notification requirement. However, the institution concerned is required to file details of such transactions to the Commission within seven days.[290]

[286] Acquisitions involving large enterprises are those where joint assets amount to over Rs 10 billion or turnover amounts to over Rs 30 billion in India; or, in India and abroad, joint assets amount to over US$500 million, including at least Rs 5 billion in India, or turnover of over US$1.5 billion, including at least Rs 15 billion in India (Competition Act 2002, Section 5(a)).

[287] The term "group" is defined in the Act. Two enterprises belong to a group if one is in position to exercise at least 26% of voting rights or appoint at least 50% of the directors or controls the management or affairs in the other; and if the enterprise resulting from the amalgamation has, in India, a value of more than Rs 10 billion or a turnover of more than Rs 30 billion, or aggregate assets in India and abroad valued at more than US$500 million or a turnover of more than US$1.5 billion. That is, a combination is regulated by the law if the combined assets of the group to which the amalgamated enterprise belongs to exceed Rs 40 billion or the group has a joint turnover of more than Rs 120 billion after acquisition or merger. Similarly, the law applies to combinations of enterprises belonging to a group with combined assets outside India of more than US$2 billion, including at least Rs 5 billion in India, or a turnover of more than US$6 billion including at least Rs 15 billion in India (Competition Act 2002, Section 5(b)).

[288] Competition Act 2002, Section 6(1).

[289] Competition Commission of India (undated a).

[290] Competition Commission of India (undated a).

Box III.3: Factors to be considered by the Commission while evaluating appreciable adverse effect of combinations on competition in the relevant market

Actual and potential level of competition through imports in the market;

Extent of barriers to entry into the market;

Level of concentration in the market;

Degree of countervailing power in the market;

Likelihood that the combination would result in the parties to the combination being able to significantly and sustainably increase prices or profit margins;

Extent of effective competition likely to sustain in a market;

Extent to which substitutes are available or are likely to be available in the market;

Market share, in the relevant market, or the persons or enterprise in a combination, individually or as a combination;

Likelihood that the combination would result in the removal of a vigorous and effective competitor(s) in the market;

Nature and extent of vertical integration in the market;

Possibility of a failing business;

Nature and extent of innovation;

Relative advantage, by way of the contribution to the economic development, by any combination having or likely to have appreciable adverse effect on competition;

Whether the benefits of the combination outweigh the adverse impact of the combination, if any.

Source: Competition Act 2002, Section 20, Subsection (4).

207. The Competition Act 2002 covers all commercial activities of government-related bodies. However, specific exemptions may be granted on grounds of security or public interest; international treaty, agreement or convention obligations; or if an enterprise is performing a sovereign function on behalf of the Central Government or a state government.[291] No antitrust exemptions are applicable to central public sector undertakings including price or purchase preferences.[292] The absence of explicit antitrust exemptions is a positive element of the Competition Act, as are the references to the Commission's role to foster competition. However, the OECD notes that the Act does not impose any obligation on any government body to make reference to the Commission (for competition fostering issues), and the Commission's opinions are non-binding.[293]

(iv) Price controls

208. The Government maintains minimum support prices (MSPs) for major agricultural commodities.[294] The MSPs and products subject to MSPs are reviewed annually. MSPs are announced prior to each planting season. India maintaines MSPs for 25 major agricultural commodities: paddy, jowar, bajra, maize, ragi, arhar (tur), moong, urad, cotton, groundnut in shell, sunflower seed, soybean, sesamum, niger seed, wheat, barley, gram, masur (lentils), rapeseed/mustard, safflower, toria, copra, de-husked coconut, jute, and tobacco.[295] MSPs are fixed by

[291] Competition Act 2002, Chapter IX.

[292] Gouri (undated).

[293] OECD (2009b), Chapter 5: Competition Policy.

[294] A MSP is the price at which the Government guarantees to purchase from the farmer.

[295] Products subject to MSPs in 2007 were: paddy, maize, coarse cereals, pulses, cotton, groundnuts, sesame, niger seed, wheat, barley, rapeseed/mustard, safflower, sunflower seed, soy bean, toria, copra, jute, sugarcane, and tobacco (WTO, 2007).

the Government following the recommendations of the Commission for Agricultural Costs and Prices (CACP), which takes into account several factors.[296] MSPs are the same throughout the country even though the cost of production varies according to region.

209. The Price Support Scheme (PSS) is a procurement system to ensure that farmers of specific commodities (e.g. cereals, pulses and oilseeds, cotton and jute) can sell their produce at the MSP; designated agencies purchase the produce from farmers at the MSP.[297]

210. The Market Intervention Scheme (MIS), in place since 2001, covers agricultural commodities that are not covered by MSPs. The Department of Agriculture and Cooperation implements the MIS at the request of state/union territory (UT) governments to protect farmers from a price decline when there are bumper crops. In these instances, a market intervention price (MIP) is fixed. The MIP is set taking into account of the cost of production and a "small" margin to support farmers. The National Agricultural Cooperative Marketing Federation of India Ltd. (NAFED) and other state-designated agencies purchase at this fixed prices and distribute the products. The authorities noted that the MIS is not used frequently.

211. Under the Targeted Public Distribution System (TPDS), a programme that focuses on reducing poverty, the price of some essential commodities, i.e. wheat, rice, coarse grains, sugar and kerosene, are subsidized for a targeted population living below the poverty line. These products are distributed by the state governments/UTs through the fair price shops and kerosene oil depots. According to the authorities, the price for rice and wheat has not been revised since 2002.[298]

212. In 2009, the statutory minimum price (SMP) for sugarcane was replaced by the fair and remunerative price (FRP).[299] The FRP is fixed by the Central Government on the basis of the recommendations of the Commission for Agricultural Costs and Prices (CACP), which consults with the state government and sugar associations. The main difference between the SMP and the FRP is that an additional factor (i.e. a "reasonable" profit margin for sugarcane producers taking into account risk) is taken into account when setting the FRP. The FRP is a minimum price, below which no sugar mill may purchase sugarcane from a farmer.[300] State governments also set a state advisory price (SAP) for sugarcane. If the SAP is higher than the FRP set at the central level, the state governments have to bear the loss.[301]

[296] Factors taken into account include: cost of production, changes in price of inputs, input/output price parity, market prices, inter-crop price parity, effect on industrial costs, effect on cost of living, effect on general price level and international price.

[297] The Food Corporation of India (FCI) is designated under the PSS to purchase cereals; the National Agricultural Cooperative Marketing Federation of India (NAFED), Central Warehousing Corporation (CWC), and National Cooperative Consumer Federation of India Ltd (NCCF) are designated to purchase pulses and oilseeds; the Cotton Corporation of India and NAFED to purchase cotton; and the Jute Corporation of India to purchase jute.

[298] The price for wheat remains at Rs 4.15/kg for consumers below poverty line (BPL), and Rs 2/kg for Antyodaya Anna Yojana (AAY) (i.e. the poorest of the poor); and for rice, it is Rs 5.65/kg for BPL and Rs 3/kg for AAY (information provided by the authorities).

[299] Sugarcane Control (Amendment) Order 2009.

[300] Other factors taken into account to fix the FRP include: the cost of production of sugarcane; the return that growers would have if planting alternative crops; the general trend of prices of agricultural commodities; supply of sugar to consumers at a "fair" price; price of refined sugar (made with sugarcane) at the mill; earnings made from selling by-products (e.g. molasses, bagasse, and pressed mud); and a "reasonable" profit margin for sugarcane producers to also account for risk.

[301] PRS Legislative Research (2009).

213. Traditionally, India operated an administered pricing mechanism (APM) for petroleum products, based on the "retention price" concept, under which oil refineries, oil marketing companies, and pipelines were compensated for operating costs and assured a 12% post-tax return on net worth.[302] Under the APM system, the fixed level of profitability was ensured subject to oil companies achieving specified capacity utilization targets. Upstream companies, i.e. the Oil and Natural Gas Corporation Ltd. (ONGC), Oil India Ltd., and GAIL (India) Ltd., also operate under the retention price concept and are assured a fixed return.[303] The APM mechanism was, in principle, dismantled in 2002 with the objective of introducing market-determined prices for all petroleum products, except for kerosene under the public distribution system (PDS) and liquefied petroleum gas for domestic use (domestic LPG). Domestic retail prices of petrol and diesel were revised in 2003, but not since then. Although the APM was in principle dismantled in 2002, India did not actually end state control over petrol prices at the refinery and retail level until 26 June 2010, and allow them to vary according to international prices.[304] For kerosene and LPG, the PDS Kerosene and Domestic LPG Subsidy Scheme 2002[305] and the Freight Subsidy (For Far-flung Areas) Scheme 2002 were put in place after the APM was dismantled.[306] These schemes, which were to be phased out by 2008, have been extended until 31 March 2014.[307] The retail price of diesel is still under control and set according to "trade parity".[308]

214. At present, a two-price regime system is in place for natural gas: gas priced under the APM and non-APM gas.[309] The APM applies to gas produced in fields awarded to India's national oil companies (ONGL and OIL) prior to the implementation of the New Exploration Licensing Policy (NELP) in 1999. The non-APM applies to: (i) gas produced in field awarded under the NELP for which the price is determined by the production sharing contract (PSC) between the Government and the private contractor; and (ii) to imports of liquefied natural gas (LNG) for which the price is determined by an agreement between buyer and seller. The price formula used to determine the prices under the PSC must be approved by the Government. APM gas may only be used by priority sectors, i.e. fertilizers (urea), LPG plants (owned by GAIL and ONGC), power, city gas distribution, steel plants, refineries, and petrochemicals. Other consumers are not allowed to use subsidized gas and must buy it from private companies or LNG importers. The price of gas produced by ONGC and OIL under the APM was increased as from June 2010 to US$4.2/mmbtu (less royalty), to bring it on par with non-APM gas (i.e. gas produced by NELP operators).

215. The Government closely monitors the price of certain hydrocarbons. In case of high price volatility in the international market, the Government will intervene to stabilize prices.[310]

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[302] Under this scheme, each unit is awarded an ex-factory price based on prescribed norms with respect to capacity utilization and consumption of inputs. This ex-factory price is referred to as the retention price. The post-tax return of 12% on networth is considered as a reasonable return in this scheme. The difference between the retention price and the APM is paid back to the oil company manufacturer as subsidy.

[303] Ministry of Petroleum and Natural Gas online information, "Pricing". Viewed at: http://www.petroleum.nic.in/apppric.htm.

[304] Information provided by the authorities.

[305] PDS Kerosene and Domestic LPG Subsidy Scheme 2002. Viewed at: http://ppac.org.in/notifications/A11-03.pdf.

[306] Freight Subsidy (For Far-flung Areas) Scheme 2002. Viewed at: http://ppac.org.in/notifications/A10-03.pdf.

[307] Information provided by the authorities.

[308] "Trade parity pricing" is based on the weighted average of import and export prices taking into account the inland freight, the marketing margin, the dealers commission, the excise duty, and the VAT, state entry taxes, and local levies (information provided by the authorities).

[309] Information provided by the authorities.

[310] Information provided by the authorities.

216. The New Pricing Scheme (NPS) for urea, in place since 2003, was initially expected to be phased out by 31 March 2010 but it has been extended indefinitely.[311] Thus, the price of urea for agricultural use continues to be controlled. However, price controls on other fertilizers (e.g. phosphatic and potasiac fertilizers) were eliminated in 2010 and replaced by a "nutrient-based subsidy (NBS) policy", implemented as of 1 April 2010, which applies to phosphatic and potassic fertilizers including imports.[312] At present, manufacturers/importers fix the retail price and the Government provides a fixed annual subsidy based on the nutrient content of the fertilizer produced. The subsidy granted to central public sector enterprises (CPSEs) and to private firms producing fertilizers is equivalent.

217. The Drugs Price Control Order (DPCO) 1995 allows for the price of drugs to be controlled, with the stated purpose of ensuring that quality drugs are available at "reasonable prices". At present, the price of 74 bulk drugs and related formulations are controlled. The Department of Pharmaceuticals (DoP) administers the DPCO. The National Pharmaceutical Pricing Authority (NPPA), an independent office attached to the DoP, fixes and revises the price of controlled bulk drugs and formulations from time to time. It also monitors the price of decontrolled drugs in order to keep them at a reasonable level. If within one year there is an increase in price beyond 10%, the NPPA will ask for the price to be reduced. The price of drugs for "popular use" is controlled when drugs are produced under a "monopolistic" situation (i.e. a single formulator has at least 90% of the market shares) and a turnover of at least Rs 10 million. For other drugs, the price may be controlled if formulators have a turnover of at least Rs 40 million.[313] The price for bulk scheduled formulations is fixed according to the cost of production plus "maximum allowable post-manufacturing expenses" (MAPE).[314] The MAPE must not exceed 100% of the cost of production for national products, and 50% of the landed cost for imports. In respect of imported formulations for which equivalent domestic substitutes are available, a 35% margin is allowed by the NPPA. Ceiling prices are also fixed for commonly marketed formulations. The ceiling price for commonly marketed standard pack size of price controlled formulations is obligatory for all producers, including small-scale units.[315] The price for bulk "non-scheduled" formulations may be fixed on grounds of "public interest" and monitored.[316]

218. A new pharma policy was drafted in 2006 but still under consideration.

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[311] The NPS replaced the retentions price scheme (RPS) in 2003.

[312] The Nutrient Based Subsidy (NBS) Policy is applicable for muriate of potash (MOP), di ammonium phosphate (DAP), mono ammonium phosphate (MAP), triple super phosphate (TSP), single super phosphate (SSP), ammonium sulphate, and 16 grades of NPK fertilizers (complex fertilizers containing nitrogen, phosphorus, and potash elements together) (Information provided by the authorities).

[313] Genetically engineered drugs produced by recombinant DNA Technology and specific cell/tissue targeted drug formulations will not be put under price control for the first five years from the date of manufacture in India.

[314] "Bulk drug" means any pharmaceutical, chemical, biological or plant product, including its salts, esters, stereo-isomers, and derivatives, conforming to pharmacopoeial or other standards specified in the Second Schedule to the Drugs and Cosmetics Act 1940, and which is used as such or as an ingredient in any formulation. Scheduled bulk drug means a bulk drug specified in the First Schedule of the Drugs (Prices Control) Order 1995. "Scheduled formulation" means a formulation containing any bulk drug specified in the First Schedule either individually or in combination with other drugs (Medindia online information, "Drug Price in India". Viewed at: http://www.medindia.net/buy_n_sell/pharm_industry/ph_drugprice.asp#ixzz1DICKGpbB).

[315] National Pharmaceutical Pricing Authority online information, "Modifications in Drug Policy 1986: Investment and Pricing". Viewed at: http://www.nppaindia.nic.in/Dp1986mod.htm#present.

[316] Non-scheduled formulation means a formulation not containing any bulk drug specified in the First Schedule to the Drugs and Cosmetics Act 1940.

(v) Government procurement[317]

(a) Overview

219. India became an observer to the WTO Agreement on Government Procurement in February 2010. According to the authorities, reforms to date have moved India towards a more transparent and competitive procurement framework. India's procurement system continues to be decentralized, comprising an array of entities at various levels of Government (central, state, and local) in addition to numerous central public sector enterprises (CPSEs). There is no central agency responsible for framing policies or regulating public procurement at a national level and no common legislation governing procurement at different levels of government and by CPSEs. Consolidated data are not available on the economic significance of government procurement, including a breakdown of the value of contracts by tendering method.

220. The authorities consider public procurement as an important instrument of government policy used to obtain certain socio-economic objectives such as developing indigenous industries and micro, small, and medium-scale industries, uplifting disadvantaged sections of society, developing rural and under developed regions, and creating jobs. As a result, the Central Government has set reservations and price preferences as part of the procurement system.[318] However, competition from foreign suppliers is ordinarily allowed in tenders advertised in India. If procurement is restricted to domestic manufacturers/suppliers, it is clearly indicated in the tender notification.

221. Certain control and oversight functions are carried out by central authorities, such as the Comptroller and Auditor General and the Central Vigilance Commission. Procurement decisions at the central level are still subject to audit by the Comptroller, and to legislative review and judicial scrutiny. There is a similar system at the state level. The public procurement carried out at state level is also subject to audit and oversight by the respective state vigilance departments, auditors, and judiciary. Some states (Tamil Nadu and Karnataka) have also passed laws to regulate public procurement.

222. Disputes regarding procurement should be resolved in the first instance through consultation. If the parties fail to resolve the dispute within 21 days, either party may give notice to the other of its intention to commence arbitration. For contracts with domestic suppliers, the applicable arbitration procedure is under the Indian Arbitration and Conciliation Act 1996. If the contract is with a foreign supplier, the supplier may chose arbitration either through the Indian Arbitration and Conciliation Act 1996 or the United Nations Commission on International Trade Law (UNCITRAL).[319] Remedies regarding public procurement contracts may also be sought under the provisions of the Indian Contract Act 1872, the Specific Relief Act 1963, and the Sale of Goods Act 1930. A public procurement process may be subject to judicial review before a High Court in India on grounds of, *inter alia*, arbitrariness, fairness in action, bad faith or violation of a fundamental or legal right enshrined in the Constitution of India.[320]

223. Under India's competition law, collusive bidding or bid rigging is one of the horizontal agreements that is considered to have an adverse effect on competition. The Competition Commission of India (CCI) has the competence to determine whether collusive bidding or bid rigging

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[317] This section is based on: ADB (2006); Global Legal Group (2010), Chapter 20; Ministry of Finance (2006a); Ministry of Finance (2006b); General Financial Rules 2005; and Indian Government Tenders Information System online information. Viewed at: http://www.tenders.gov.in.

[318] Radhakrishnan (2010).

[319] Global Legal Group (2010).

[320] Global Legal Group (2010).

is anti-competitive. However, the CCI only makes an enquiry if there are complaints of an alleged contravention. After the enquiry the CCI might direct the parties to review the agreement and may impose a penalty if it deems necessary (section (iii) above).

(b) Regulatory framework

224. India does not have a unified piece of legislation regulating government procurement. The regulatory framework for public procurement includes rules, directives, and government orders. At the central procurement level, comprehensive rules and directives have been put in place: (i) the General Financial Rules (GFRs), 2005; (ii) the Delegation of Financial Powers Rules (DFPR); (iii) the *Manual on Policies and Procedures for Purchase of Goods* issued by the Ministry of Finance; (iv) government orders regarding price or purchase preference or other facilities to sellers in the handloom sector, cottage and small scale industries and to CPSEs; and (v) the guidelines issued by the Central Vigilance Commission to increase transparency and objectivity in public procurement. There are also sectoral laws such as the Telecom Regulatory Authority Act 2000, the Electricity Act 2003, and the Petroleum and Natural Gas Board Act 2006, which also regulate public procurement. In addition, various government instruments and agencies including ministries and departments (e.g. the Public Works Department and the National Highways Authority of India) have their own public procurement system.[321]

225. The General Financial Rules (GFRs) 2005, issued by the Ministry of Finance, lay down the principles for financial management, and the broad rules and procedures for the procurement of goods and services and for contract management (Chapters 6 and 8). The GFRs and the *Manual of Purchase Policies and Procedure*, also issued by the Ministry, set the guidelines for procurement of goods and services at the central level.[322] The rules and procedures framed by individual departments are based on their perceptions and interpretations of the GFRs and the manual, both of which provide only broad guidelines. In addition, the GFRs and the manual are guidelines with no legal standing and therefore are not enforceable as law.[323]

226. The various ministries or departments have full powers to make their own arrangements for the procurement of goods. However, if they do not have the required expertise to procure goods, procurement may be done through the Directorate General of Supplies and Disposal (DGS&D), the central purchase organization, with the approval of the competent authority.[324] The DGS&D keeps a registry of manufacturers/suppliers and Indian agents of foreign manufacturers, and arranges the clearance of imported goods purchased by central government departments.

227. The procurement selection and qualification criteria must be stated in the bidding documents. Selection of the winning bidder follows the principle of value for money. Only the winning bidder is informed of the result of the bid evaluation. The reasons for selecting bidders are recorded but not disclosed. Post-tender negotiations are forbidden but the GFRs allow two exceptions: post-tender negotiations may be conducted with the bidder offering the lowest price, and for ad hoc purchases in exceptional circumstances (i.e. there is only one supplier).

228. The applicable procurement method depends on the value of the contract to be awarded and other factors (e.g. emergency situations) as stipulated in the GFRs 2005. The splitting of purchases into contracts of smaller value is explicitly forbidden. The procurement methods are: invitation to tender; limited tender enquiry; single tender enquiry; purchase of goods by purchase committee;

[321] Global Legal Group (2010).
[322] These rules were overhauled extensively in 2005.
[323] Radhakrishnan (2010).
[324] General Financial Rules 2005.

purchase of goods without quotation; and purchase of goods directly under rate contract (Table III.27).

Table III.27
Government procurement methods, 2011

Method	Description
Invitation to tender by advertisement	For procurement of goods of a value of at least Rs 2.5 million, an advertisement must be posted in the *Indian Trade Journal*, in one national daily newspaper of wide circulation, and on the website of the tendering organization. The tendering organization should also post the complete bidding documents online. It may issue a global tender enquiry when goods are not available in India and it is necessary to seek suitable offers from abroad; it sends tender notices to Indian embassies abroad and foreign embassies in India, depending on the availability of the goods in the specific countries. Ordinarily, a minimum of three weeks from publication of the tender notice or availability of the bidding documents is allowed for submitting bids, whichever is later. Late bids are not considered.
Limited tender enquiry	For procurement of goods of less than Rs 2.5 million, bidding documents should be sent by speed post/registered post/courier/e-mail to registered suppliers. A direct request from at least three suppliers is required. Goods of a value of over Rs 2.5 million may be procured through limited tender enquiry when the purchase is urgent and there are adequate reasons (i.e. public interest) and justifications (e.g. the sources of supply are definitely known).[a] These grounds are not defined in the Rules but must be documented in writing by the procuring entity.
Single tender enquiry	Goods may be procured from a single source when: (i) only a particular firm manufactures the goods; (ii) the goods need to be purchased from a particular source in case of emergency; and (iii) for standardization of machinery or spare parts to be compatible with the existing equipment.
Purchase of goods by purchase committee	Goods of a value ranging Rs 15,000-Rs 100,000 may be purchased on the recommendations of a local purchase committee consisting of three members of an appropriate level, as decided by the head of the department. The committee surveys the market to ascertain a reasonable rate, quality and specifications, and identifies the appropriate supplier.[b] It must certify that purchased goods are of the required specification and quality, priced at the prevailing market rate[c], and that the supplier recommended is reliable and competent to supply the goods (General Financial Rules 2005, Rule 146).
Purchase of goods without quotation	Goods up to a value of Rs. 15,000 may be purchased without inviting quotations or bids on the basis of a certificate to be recorded by the competent authority indicating the satisfaction with the good purchased in terms of quality, specification, and price (General Financial Rules 2005, Rule 145). The formal procedure of calling for quotations through a tender enquiry is not used.
Purchase of goods directly under rate contract	Ministries or departments may procure goods through the DGS&D under "rate contract" from suppliers, the prices to be paid for such goods cannot exceed those stipulated in the rate contract, and the other terms and conditions of the purchase should be in line with those specified in the rate contract.

a Information provided by the authorities.
b An appropriate supplier is determined by using the certificates recorded by the members of the purchase committee wherein they must certify that the supplier is reliable and competent.
c The prevailing market is identified by the Committee through a market survey.

Source: General Financial Rules 2005; and information provided by the Indian authorities.

229. The DGS&D concludes "rate contracts" for goods identified as "common use items" and needed on a recurring basis by various central government ministries or departments. The ministries or departments must follow those rate contracts to the maximum extent possible. A rate contract is an agreement between the purchaser and supplier to supply stores (i.e. goods) at specified prices during the period covered by the contract. However, no quantities or minimum purchase requirements are mentioned in the contract. Supply orders may be placed with any of the firms holding a "rate contract" directly by the authorized officers of the central government ministries/departments or by the DGS&D.

230. "Rate contracts" are concluded by inviting bids from suppliers, including foreign suppliers and their Indian agents, registered with the DGS&D, the National Small Industries Corporation (NSIC), and the Ministry of Defence. Eligible bidders are chosen considering: (i) the capacity of the tendering firm; (ii) the quantity that the tendering company commits to supply at the prices stipulated in the "rate contract"; (iii) the estimated amount required; and (iv) a reasonable price range. According to the DGS&D Annual Report, buying through rate contract facilitates procurement of

quality goods from reliable sources at the most reasonable prices without each department having to initiate tenders separately every time a demand arises.[325]

231. The DGS&D prepares lists of eligible and capable suppliers of commonly purchased goods. The NSIC also registers micro and small industries (MSEs), under the single point registration scheme; this is considered equivalent to DGS&D registration. MSEs registered under the scheme are exempt from payment of fees related to the issue of the tender and of earnest money and security deposit; and benefit from the preferences reserved for MSEs (see below). Registration is granted for a fixed period depending on the nature of the goods, and may be renewed upon application.

(c) Preferential policies at the central government level

232. India retains preferential treatment for micro and small enterprises (MSEs). At the time of the last Review of India in 2007, central public sector enterprises (CPSEs) were allowed to submit fresh bids in response to private sector bids. For tenders valued between Rs 50 million and Rs 1 billion, a CPSE whose bid was within 10% of that of a large private unit was allowed to revise its price downward and was eligible for a contract. This system was extended until 31 March 2008 and then discontinued.[326] However, preferences could be granted on a case-by-case basis after an assessment of the ministry concerned; the margins should be CPSE-specific, as required.[327]

233. Reservations still exist for MSEs and for certain products. MSEs receive purchase and price preferences in procurement by central government ministries/departments and CPSEs. Under the purchase-preference system, 358 items have been reserved for exclusive procurement from MSEs (Table AIII.9) and 21 items for exclusive manufacturing in the micro and small sectors (section (4)(i)(b)). The purchase-preference system offers price preferences of up to 15% to MSEs over the quotations provided by large-scale industries. MSEs are also assisted through the: (i) issue of tender sets free of cost; (ii) exemption from payment of "earnest money" (deposits); and (iii) waiver of security deposits up to the monetary limit for which the unit is eligible, based on certain "transparent" criteria (Table AIII.9). The NSIC serves as a single point of negotiation for eligible MSEs for government purchasing preference schemes.

234. The Central Government has reserved all items of handspun and hand-woven textiles (khadi goods) for exclusive purchase from the Khadi and Village Industries Commission (KVIC). The Central Government purchases all items of handloom textiles exclusively from the KVIC and/or the Association of Corporations and Apex Societies of Handloom, and coir products from the Coir Board.

235. In 2007, India issued a five-year policy indicating that the Central Government would exclusively purchase certain medicines manufactured by pharma CPSEs and their subsidiaries. This policy is aimed at increasing the market share of the CPSEs and their subsidiaries.[328] The reservation applies to a maximum of 102 medicines notified by the Department of Chemicals and Petrochemicals from time-to-time.[329] The purchasing departments, CPSEs, and autonomous bodies may invite

[325] Directorate-General of Supplies and Disposals (2010).

[326] Department of Public Enterprises, Office Memorandum No. DPE/13(15)/2007-Fin, 21 November 2007. Viewed at: http://dpe.nic.in/newgl/glch0612.htm.

[327] Department of Public Enterprises, Office Memorandum No. DPE/13(15)/2007-Fin, 21 November 2007; and Central Vigilance Commission, Circular No. 31/10/09, 9 November 2009. Viewed at: http://cvc.nic.in/rppp101109.pdf.

[328] Ministry of Chemicals and Fertilizers, Office Memorandum No. 50013/1/2006-SO (PI-IV), 7 August 2006. Viewed at: http://haryanahealth.nic.in/userfiles/file/pdf/guidelines_EDL_RC.pdf.

[329] For a the full list of medicines manufactured by CPSEs and proposed for purchase preference, see Ministry of Chemicals and Fertilizers, Office Memorandum No. 50013/1/2006-SO (PI-IV), 7 August 2006.

limited tenders from pharma CPSEs and their subsidiaries or purchase directly from them at the National Pharmaceutical Pricing Authority certified or notified price with a discount of up to 35%. However, if no pharma CPSEs can supply these medicines, the purchasing departments may purchase from other manufacturers. Pharma CPSEs and their subsidiaries must comply with the good manufacturing practices (GMP) norms stipulated in the Drugs and Cosmetic Rules.[330]

236. In addition, certain items purchased by the Central Government must have the mandatory Bureau of Indian Standards (BIS) ISI Marking, and the mandatory Bureau of Energy Efficiency (BEE) label star rating.[331]

237. Price variation clauses may be included in contracts where: (i) major raw materials (e.g steel or aluminium) constitute the main component of the cost; (ii) the price of the raw material is available from CPSEs such as the Steel Authority of India (SAIL) or the National Aluminium Company Ltd. (NALCO); (iii) there have been "substantial" price fluctuations of basic raw materials; and (iv) a specific time limit applies for manufacturing/processing of the product (e.g. 30 days). In these cases, bids must clearly define a price variation clause with a base price applicable on a specific date. The base price for calculating the variation is the price offered by CPSEs such as SAIL or NALCO.

(d) Procurement of services

238. Ministries or departments may hire external professionals, consultancy firms or consultants for a specific job and time frame or outsource certain services when no one in the ministry/department has the required expertise to undertake the task (Rules 163-164). Approval of the competent authority must be obtained before engaging consultants. Certain services (i.e. any service required for the functioning of a government office) may also be outsourced in the interest of the economy and efficiency (Rule 178).

239. The procuring agency, to outsource services, must prepare a tender enquiry containing, *inter alia*: (i) the details of the work or service to be performed by the contractor; (ii) the facilities and inputs to be provided to the contractor by the ministry or department; (iii) the eligibility and qualification criteria to be met by the contractor; and (iv) the statutory and contractual obligations to be complied with by the contractor (Rule 180).

240. When outsourcing services, a limited tender enquiry is used if the estimated value of the work or service is Rs 1 million or less (Table III.27). Eligible bidders are in the ministry/department's list of potential contractors. This list is prepared through formal or informal enquiries with other ministries and organizations involved in similar activities and research in trade journals. At least three contractors must be identified for issuing a limited tender enquiry. If the estimated value of the work or service is more than Rs 1 million, an advertised tender enquiry must be published in at least one popular largely circulated national newspaper and on the Ministry/department's website (Rule 181).

(e) E-government procurement

241. The DGS&D is mandated to computerize public purchases. A project on e-government procurement under the National e-Governance Plan (NeGP), initiated in 2004, has been in use since

[330] News on Projects online information, "Purchase preference policy for pharma CPSEs' products cleared", 5 September 2007. Viewed at: http://newsonprojects.com/story.asp?news_code=2541.
[331] The BIS is India's national standards body.

2006.[332] This reflects the Government's determination to implement electronic tools to ensure transparent and competitive procurement processes across all government entities. According to the authorities, e-tendering has facilitated the participation of bidders, increased competition and diminished the incentive to create cartels.

(f) Procurement at the state level

242. Some states (like Tamil Nadu and Karnataka) have enacted a law exclusively governing public procurement of goods. However, in most states the general financial rules (GFRs) govern procurement and are based on the Central Government GFRs, which were updated in 2005.

(g) Procurement in the railway and other specialized sectors

243. Procurement in the railway, postal system, telegraph, and defence industries is subject to specialized procedures developed by the ministries responsible, within the overall framework of the GFRs 2005. In general, competition from foreign suppliers is allowed in respect of high technology or high value items. For procurement in railways, foreign firms are free to participate in tenders advertised in India only, but payment against such contracts must be received in Indian rupees at par with indigenous suppliers. Global tendering is frequently used in procurement of rolling stock, wheels, machinery and plant equipment, including technology transfer. Indian Railways evaluates all offers based on the total destination cost. Domestic goods bids are evaluated based on freight up to destination including all taxes and levies. Offers from abroad are evaluated based on the c.i.f. value of imports and customs duties, but inland freight is not taken into account. According to the authorities, railway procurement has become more transparent and efficient since the implementation of the e-procurement system in 2006.

244. Procurement by the Ministry of Defence is regulated by the *Defence Procurement Procedure* (Capital Procurement) 2011 (DPP-2011) and the *Defence Procurement Manual* (DPM) (Revenue Procurement) 2009, as amended. The DPP-2011 covers all "capital acquisitions" (except medical equipment), purchased by the Ministry of Defence, the Defence Services, and the Indian Coast Guard, both in India and abroad. The procurement of capital goods is subject to minimum investment and domestic-content requirements depending upon the procurement method (Table III.28). India's defence "offsets" programme requires companies to invest at least 30% of the value of contracts above Rs 3 billion in value in Indian-produced parts, equipment, or services. Offset obligations must be discharged according to the methods outlined in the DPP with reference to "eligible" products and/or services provided by Indian industries (i.e. defence public sector enterprises, the Ordnance Factory Board or a private Indian industry).[333] The DPM 2009 contains principles and procedures relating to procurement of goods and services for the defence services, organizations, and establishments.[334] The 2009 manual introduced a system of offsets to require foreigners involved in large projects to invest in Indian companies to attain self-reliance.[335]

[332] For details on e-procurement activities, see DGS&D online information. Viewed at: www.dgsnd.gov.in.

[333] Ministry of Defence (2011).

[334] In the DPM, the term "procurement" means acquiring all types of goods (both scaled and non-scaled), such as equipment, stores, spares, technical literature, as well as all types of services, including packing, unpacking, and preservation.

[335] Ministry of Defence (2009).

Table III.28
Capital defence procurement, 2011

Category	Definition
"Buy"	Purchase of equipment
Buy (Indian)	Must have minimum 30% of indigenous content
Buy (global)	Foreign as well as Indian vendors
"Buy and Make"	Purchase from a foreign vendor followed by licensed production/indigenous manufacture in the country. Offset of 30% of the estimated cost of the acquisition
"Buy and Make (Indian)"	Purchase from an Indian vendor including an Indian company forming joint venture/establishing production arrangement with the original equipment manufacturer, followed by licensed production/indigenous manufacture in the country must have minimum 50% indigenous content on cost basis

Source: Ministry of Defence (2011), *Defence Procurement Manual (Capital Procurement).* Viewed at: http://mod.nic.in/dpm/DPP2011.pdf.

(vi) Intellectual property rights

(a) Overview

245. India is a party to the Convention Establishing the World Intellectual Property Organization (WIPO) (1975) and to other international conventions on intellectual property.[336] India has signed bilateral cooperation MOUs on IPRs with Australia, France, Japan, and Switzerland; and with the European Patent Office, the German Patent Office, the US Patent and Trade marks Office, and WIPO. There is also a joint statement of Intent of Bilateral Cooperation between India and the United Kingdom.[337] These agreements focus on capacity building and the creation of public awareness to facilitate enforcement of IPRs.

246. India's WTO contact point for intellectual property purposes is the Department of Commerce.[338] The institutional and legal framework with respect to the protection of intellectual property rights has not changed substantially since the previous review of India in 2007 (Table III.29). The Department of Industrial Policy and Promotion (DIPP), in the Ministry of Commerce and Industry, covers patents, trade marks, designs, and geographical indications, all of which are administered by the Office of the Controller General of Patents, Designs, and Trade Marks (CGPDTM), except for the provisions related to patent revocations and to infringements regarding patents, trade marks, designs, and geographical indications, which are dealt with by the judicial authorities. The departments of Higher Education, Information Technology, and Agriculture and Cooperation are in charge of copyright protection, protection of layout designs, and the protection of new varieties of plants, respectively.[339]

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[336] The Paris Convention (Industrial Property), since December 1998; the Berne Convention (Literary and Artistic Works), April 1928; the Patent Cooperation Treaty (PCT) (Patents), December 1998; the Geneva Convention (Unauthorized Duplication of Phonograms), February 1975; Budapest Treaty (Deposit of Micro-organisms), December 2001; and the Nairobi Treaty (Olympic Symbol), October 1983 (WIPO online information, "Information by country: India". Viewed at: http://www.wipo.int/members/en/details.jsp?country_id=80&country_code=IN).

[337] Department of Industrial Policy and Promotion online information, "Memorandum of Understanding on IPRs". Viewed at: http://dipp.nic.in/index_mou_ipr.htm.

[338] WTO document IP/N/3/Rev.9/Add.3, 16 February 2007.

[339] Department of Industrial Policy and Promotion (2009b).

Table III.29
Intellectual property legislation, 2011

Subject	Legislation
Patents	Patents Act, 1970 Patent Rules 1972 Repealing and Amending Act 1974 Delegated Legislation Provisions (Amendment) Act 1985 Patents (Amendment) Act 1999 Patents (Amendment) Act 2002 Patent (Amendment) Ordinance 2004 Patent (Amendment) Rules 2005
Trade marks	Trade Marks Act 1999 Trade Marks Rules 2002 Trade Marks (Amendment) Rules 2010 Trade Marks (Second Amendment) Rules 2010
Industrial designs	Designs Act 2000, in force since 2001
Copyright and related rights	
Copyright	Copyright Act 1957, as amended in 1983, 1984, 1992, 1994, and 1999 Copyright Rules 1958
Geographical indications	Geographical Indication of Goods (Registration and Protection) Act 1999, in force since September 2003
Unfair competition	Monopolies and Restrictive Trade Practices Act 1969, as amended
Plant variety protection	Protection of Plant Varieties and Farmers' Rights Act 2001, entered into force in June 2002

Source: WTO Secretariat.

247. The Intellectual Property Appellate Board (IPAB) was constituted in 2003 to hear appeals against the decisions of the registrar of trade marks and geographical indications.[340] However, as of 2007 the IPAB has also heard appeals regarding patents.[341] All appeals regarding patents that were pending before the various high courts, were transferred to the IPAB; and all new Rectification Applications under the Patents Act 1970, have since then been filed before the IPAB.[342]

(b) Patents

248. The Patent System in India is governed by the Patents Act 1970 (No. 39 of 1970) as amended by the Patents (Amendment) Act 2005, and by the Patents Rules 2003, as amended by the Patents (Amendment) Rules 2006, effective 5 May 2006. There have been no changes to this legislation since the previous Review of India.

249. Applications for patents may be submitted to the CGPDTM by nationals of any country. The Patent Office, under the Department of Industrial Policy and Promotion (DIPP) at the Ministry of Commerce and Industry, performs the statutory duties in connection with the granting of patents. There are patent offices in Chennai, Delhi, Kolkata, and Mumbai that deal with patent applications originating within their respective territorial jurisdictions. Applicants who are non-resident or have no domicile or no place of business in India, must employ a patent agent to file the patent application.[343] The location of the applicant determines the appropriate patent office where applications for patents should be filed.[344]

[340] *Gazette of India*, 15 September 2003.

[341] Ministry of Commerce and Industry, Notification No. 12/15/2006-IPR-III, 2 April 2007.

[342] Intellectual Property Appellate Board online information. Viewed at: http://www.ipab.tn.nic.in/.

[343] Registered patent agents must be Indian citizens and be at least 21 years old; they must have a degree in science, engineering or technology from any Indian university, and must have passed the qualifying examination prescribed for the purpose, or must have functioned as a patent examiner for at least ten years.

[344] Controller General of Patents, Design, and Trade Marks online information, "Patents Territorial Jurisdiction of Appropriate Office for the Applicants". Viewed at: http://ipindia.nic.in/ipr/patent/patents.htm.

250. Patent protection may be granted to any invention relating to either a product or process that is new, involves an inventive step, and is capable of industrial application (Section 2(1)(j)). The Act also sets out products or processes that are not recognized as inventions and are therefore not patentable.[345] Section 3(d) of the Patent Act refers to the scope of patentability of pharmaceutical and other chemicals and calls for proof of efficacy of the substance. The claimed substances should differ significantly in properties from the known substances with regard to efficacy, which needs to be proved at the time of filing or during the patent application to prove inventive step. Patents of addition for an improvement to a patented product can be granted to the holder of the original patent for the same period as the validity of the original patent.

251. Patent protection is a territorial right. Hence, for protection to be effective outside the Indian territory the applicant must file a corresponding application for the same invention in Convention countries[346], within 12 months from the filing date in India. It is also possible to file an international application (a Patent Convention Treaty (PCT) application) in India, in any of the different patent offices. In general, it is not necessary to obtain prior permission from the Patent Office to file a patent application abroad, unless: the applicant is an Indian resident and the invention originated in India; the applicant does not wish to file a patent application in India prior to filing abroad; the applicant is an Indian resident, an application has been filed in India, and less than six weeks have passed from the date of application; or when the invention relates to atomic energy or defence purposes.

252. Applications for patents should be filed before the publication of the invention and should not be disclosed or published until then. Generally, a patent application cannot be filed for an invention that has been published or publicly displayed. However the Patents Act provides a grace period of 12 months for filing a patent application from the date of publication of an invention in a journal or its public display in an exhibition organized by the Government, or its disclosure before any learned society or published by the applicant.[347]

253. A patent application must be examined before the granting of a patent. Applications are only examined if requested by the applicant or by another interested party within 48 months of the date of application, failing which the application is deemed to have been withdrawn. If all the requirements are met, the patent is granted and notified in the *Patent Office Journal*. If the application is found to be in order for grant, the patent is granted, provided no pre-grant opposition is filed or pending.[348]

254. Patent rights accrue from the date of publication of the patent application, which is within one month after completion of 18 months of its filing or earlier, if requested by the applicant. On average, it takes between 10 and 60 months to grant a patent, depending on the information provided by the applicant and the opposition the application generates. Post-grant opposition may be filed in the Patent Office up to 12 months from publication of the grant of the patent in the *Patent Office Journal*.[349]

[345] Patents Act 1970, Sections 3 and 4.

[346] Any country that the Government of India notifies in the *Official Gazette* for the fulfilment of a treaty, convention or an arrangement, and which affords to citizens of India similar privileges as are granted to its own citizens.

[347] Patents Act 1970, Chapter VI, Sections 29-34.

[348] It is possible to file for pre-grant opposition even before a request for examination has been filed. However, it will be considered only if and when a request for examination is received within the prescribed period.

[349] Pre-grant opposition must be made within four months of publication of the application, while the period for post-grant opposition is up to one year. The grounds for filing post-grant opposition are contained in the Patents Act 1970, Section 25(1).

255. The term of every patent in India is 20 years from the date of filing of the patent application, irrespective of whether it is filed with a provisional or a complete specification. For applications filed under the PCT the term of 20 years begins from the international filing date. Patent renewal fees are payable from the third year onwards.

256. Compulsory licensing is permitted under certain circumstances. Anyone interested in working a patent may, after the expiry of three years from the date of grant of the patent, apply for grant of a compulsory licence if: the reasonable requirements of the public with respect to the patented invention have not been satisfied; the patented invention is not available at a reasonably affordable price; or it is not worked in India.[350] Two years after a compulsory licence has been granted, the Central Government or any interested person may request the revocation of the patent. The Controller (of the Patent Office) must normally make a decision within one year. No compulsory licences have been granted since 2005.[351] The Central Government may, if necessary (as in the case of a national emergency), provide for the issue of a compulsory licence for a patented product through a notification in the *Official Gazette* (Section 92) and may use a patented invention for government purposes (Section 100). Compulsory licences are also permitted for exports of patented pharmaceutical products in certain exceptional circumstances[352], when the Government declares an emergency. The authorities noted that the Department of Industrial Policy and Promotions has issued a discussion paper on compulsory licensing with a view to developing a predictable environment to use such measure.

257. The Act stipulates that parallel imports are allowed when authorized under the law.[353] The authorities noted that: "under the law" should be interpreted as the law of the country where the item is being produced.

258. In 2009/10 India granted 6,168 patents; 37,334 patents were in force, of which 6,781 were granted to Indians and 30,554 to foreigners resident abroad. As a result of modernization, restructuring of offices, and procedural improvements, including a time-limit of three months for examiners to complete examinations once complete documentation is received, the number of patents granted relative to the number of patent applications has increased.[354] Patent applications increased from 4,824 in 1999/00 to 36,877 in 2008/09; the number of applications examined rose from 2,824 to 10,296 and the number granted increased from 1,591 to 16,061.[355]

259. The Indian Patent Office has been recognized as an International Searching Authority (ISA) and International Preliminary Examining Authority (IPEA) under the PCT.

260. Contravention of secrecy provisions relating to certain inventions or falsification of any information relating to the Patents Register is punishable by a fine or imprisonment for up to two years. False representation of any article sold in India as being patented in India or for which an application has been made is punishable by a fine of up to Rs 100,000.[356] Appeals may be made to the Appellate Board. Since 2007, 215 appeals regarding patents have been filed before IPAB.

[350] Patents Act 1970, Chapter XVI, Section 84.
[351] Information provided by the authorities.
[352] Patent Act 1970, Section 92A.
[353] Patent Act 1970, Section 107A.
[354] As of 20 July 2007, the Indian Patent Office has put in place an online filing system for patent applications. This facility is also available for filing trade mark applications.
[355] Department of Industrial Policy and Promotion (2009b).
[356] Patents Act 1970, Chapter XX (penalties).

(c) Trade marks

261. Trade marks are protected under the Trade Marks Act 1999, and the Trade Marks Rules 2002, both in force since September 2003. In 2009, the Trade Mark (Amendment) Bill 2009 was introduced in *Lok Sabha* (the lower house of Parliament).[357] The Trade Mark (Amendment) Act 2010 was passed by both houses of parliament, but is still not in force. The Act will enter into force once the Trade Marks (Amendment) Rules 2010[358] , and its amendment are notified.[359] This amendment will enable India to accede to the Madrid Protocol.[360] Membership of the Protocol will help Indian companies to register their trade marks in the Protocol member countries through a single application.

262. Trade mark law in India is a "first-to-file" system that requires no evidence of prior use of the mark in commerce. Any person claiming to be the proprietor of a trade mark used or proposed to be used in commerce may apply for registration in writing or electronically to one of the offices of the Trade Marks Registry within their territorial limits.[361] A single application may be used for registration of a trade mark for different classes of goods and services. The law protects product, service, certification, and collective trade marks. Protection is also granted to well known marks, as well as service and collective marks. The Office of Trade Marks does not maintain a register of well known marks. The law stipulates the types of trade marks that would be refused for registration.[362]

263. As a signatory to the Paris Convention, India recognizes foreign priority provided that the application in India is filed within six months of filing of the application abroad.

264. The registration of a trade mark in the Office of the Controller General of Patents, Trade Marks, Industrial Designs, and Geographical Indications typically takes about two to three years, subject to the trade mark not being opposed by a third party. A trade mark application may be filed in any of the Registry offices in Ahmedabad, Delhi, Chennai, Kolkata or Mumbai, based on the territorial jurisdiction. The steps involved in the registration process in India have not changed during the review period.[363] Proprietors of trade marks may file a trade mark application only if they have a place of business in India, otherwise the application must be filed through a trade mark agent/attorney.

265. The Trade Marks Office reviews filed applications to ensure that they are complete. When an application for registration of a trade mark has been accepted, it is published. Any person may oppose the registration, within three months from the date of its advertisement. If the trade mark is not opposed, the registration will proceed and the Trade Marks Registry will issue a registration certificate. Where registration of a trade mark is not completed within 12 months from the date of the

[357] Trade Marks (Amendment) Bill 2009.

[358] Trade Marks (Amendment) Rules 2010.

[359] Information provided by the authorities.

[360] Trade Marks (Amendment) Rules 2010. The major change introduced by the Rules 2010 is an amendment to the Fourth Schedule of the Trade Mark Rules to allow for the adoption of all 45 international classes. International classes 43, 44, and 45 were merged into class 42 in India until May 2010; a separate application must now be filed for services under these classes (Aswal, 2010).

[361] Electronically via the online Trade Marks Registry (Comptroller General of Patents Designs and Trade Marks online information, "E-filing of trade mark application". Viewed at: http://ipindia.nic.in/tmr_new/default.htm).

[362] These include trade marks that are devoid of any distinctive character or consist exclusively of marks or indications that may serve in trade to designate the kind, quality, quantity, intended purpose, values, geographical origin or the time of production of the goods or rendering of the service or other characteristics of the goods or service; as well as marks or indications that have become customary. Registration of names of chemical elements or international non-proprietary names is prohibited.

[363] For all the required forms, see Trade Marks Registry online information, "The First Schedule". Viewed at: http://ipindia.nic.in/tmr_new/first_schedule_forms/the_first_schedule.htm.

application, the Registrar after giving notice to the applicant, treats the application as abandoned. Appeals against a decision by the Registrar are made to the Intellectual Property Appellate Board (IPAB).[364]

266. Registration is not necessary to exercise the right over a trade mark, which is also acquired by use. However, registration of a trade mark gives the owner the exclusive right to the use of the registered trade mark and facilitates the seeking of relief in the appropriate courts in case of infringement of the exclusive right. The exclusive right is subject to any conditions entered on the register, such as limitation of area of use. The Trade Marks Act 1999, preserves common law rights in respect of an unregistered trade mark. Hence, even when a trade mark is unregistered the right holder is entitled to protection and may initiate action against a third party under the law.

267. Trade marks applications increased from 90,236 in 2001/02 to 130,172 in 2008/09; and the number of trade marks registered increased from 8,010 in 1999/00 to 102,257 trade marks in 2008/09.[365] As at November 2010, there were approximately 400,000 applications pending at various stages.

268. The period of trade mark protection is ten years, renewable for further periods of ten years on payment of the prescribed fee. A trade mark can be removed from the Register on grounds of non-use if the registered mark is not used for a continuous period of five years and three months from the date it was registered, or if the renewal fee is not paid. Appeals against a decision by the Registrar are made to the IPAB.[366]

269. The Trade Marks Act 1999 provides for both civil and criminal remedies. Penalties for falsification of trade marks and selling or providing goods that infringe trade marks include a prison term of six months to three years, and a fine of between Rs 50,000 and Rs 200,000. Second or subsequent convictions may lead to imprisonment for one to three years and a fine of between Rs 100,000 and Rs 200,000. Falsely representing a trade mark as registered may lead to imprisonment for up to three years and/or a fine. Other penalties include imprisonment for up to two years and/or a fine for improper description of a place of business as connected with the Trade Marks Office and for falsification of entries in the Register. If the offence is committed by a company, the company as well as every person in charge, and responsible to the company would be deemed guilty of the offence.

270. There are also provisions under the trade mark and customs laws that allow Customs to stop the importation of infringing goods. In 2007, the customs authorities promulgated guidelines, under which right holders may record their registered trade marks with the customs authorities.[367] These guidelines authorize customs officials to seize goods infringing the trade marks of the right holder at the border without a court order.[368] According to the authorities, there have been no such instances. After suspending clearance of suspected goods, the customs authorities inform the right holder, who must join in the proceedings against the importer within the prescribed period, otherwise Customs releases the suspended goods. Customs officers may destroy the suspended goods or dispose of them after it has been determined that the goods have infringed the trade marks of the right holder, and that no legal proceeding is pending in relation to such determination. Goods amounting to Rs 434 million were seized by Customs during May 2007 to March 2010.[369] The re-exportation of goods infringing

[364] Department of Industrial Policy and Promotion (2009b).
[365] Department of Industrial Policy and Promotion (2009b).
[366] Department of Industrial Policy and Promotion (2009b).
[367] Intellectual Property Rights (Imported Goods) Enforcement Rules 2007.
[368] Customs Notification No. 47/2007, 8 May 2007.
[369] Most recent information available provided by the authorities.

trade marks in an unaltered State is also prohibited. Under the trade mark law, the police have the power to *suo moto* conduct raids and seizure operations.

(d) Industrial designs

271. The Designs Act 2000 and the Designs Rules 2001 govern industrial designs in India. The Designs Rules 2001 were amended in 2008 to enable e-filing. India has not yet acceded to the Hague System for the International Registration of Industrial Designs, which gives the owner of an industrial design the possibility of protection in several countries by filing one application in one language with the International Bureau of WIPO.

272. As in the case of patents, India follows the first-to-file system. To be registered, designs must be new or original; they must not have been disclosed to the public in India or another country by publication prior to the filing or priority application date; they must be able to be reproduced by industrial means; they must be significantly distinguishable from known designs or combinations of known designs; they must not comprise or contain scandalous or obscene matter; must be appealing to the eye; and they must not include anything that is in substance a mere mechanical device.

273. Proprietors of designs may file for protection in India only if they have a business address in the country. If that is not the case, they may file an application through an attorney or agent. The application may be filed at the patents offices in Delhi, Chennai, Kolkata, and Mumbai.[370] After registration of the design, which could take 6 to 12 months, the particulars are entered in the Register of Designs and the design is published in the *Official Journal of the Patent Office* and made publicly available in a Register of Designs.

274. Registration of an industrial design in India gives the proprietor an exclusive right to sell, import, and apply it to any article. Once a design has been registered, the article on which the design is being used must be marked with the word "registered" (or any of its abbreviations REGD or RD) along with the design registration number, to inform the public that the right holder has the exclusive proprietary right to use it. If this is not done, the right holder must prove that an infringer was aware that he was violating the right holder's exclusive proprietary rights when using the infringing design.

275. A registered design is protected for ten years from the date of registration or from the priority date, renewable for five years upon application prior to the expiry of the initial period. Registration provides protection only in India. From 1999/00 to 2009/10 applications for protection of designs increased from 2,874 to 6,092, the number of applications examined rose from 2,067 to 6,266, and the number of designs registered increased from 1,382 to 6,025.[371]

276. The sale, import or imitation of any article in which the design is registered without the consent of the registered owner is punishable by a fine of up to Rs 25,000 to be paid to the registered owner together with any other damages incurred of up to Rs 50,000. In addition, since 2007, Customs officials are authorized to seize and eventually destroy goods infringing the designs of the rights holder at the border, without obtaining a court order.[372]

277. A design may be cancelled by the Controller General if it is determined that it does not fulfil the requirements for registration defined in the Act. Since 2007, 16 registered designs have been

[370] For the application form, see Controller General of Patents, Designs, and Trade Marks online information, "Designs: Forms". Viewed at: http://www.patentoffice.nic.in/.

[371] Department of Industrial Policy and Promotion (2009b).

[372] Intellectual Property Rights (Imported Goods) Enforcement Rules 2007.

cancelled. Appeals against a decision by the Controller General may be made to the High Court within three months of the decision; at present 28 cases are pending in the High Court.

(e) Copyright

278. The Copyright Act 1957, most recently amended in 1999, governs the copyright system in India. There have been no changes to this legislation since the previous Review of India. However the Copyright (Amendment) Bill 2010 proposing amendments to the Copyright Act 1957 is being discussed in Parliament. The Copyright Act 1957 grants protection to: original literary, dramatic, musical and artistic works; cinematographic films; and sound recordings. Registration is not mandatory. There is no difference in the copyright protection granted to a registered or unregistered work. However, as per Section 48 of the Act, registration provides prima facie evidence in case of a dispute. Both published and unpublished works may be registered.

279. Copyright owners may file an application with the Registrar of Copyrights either in person or through a representative; separate applications need to be filed for each piece of work.[373] After the application is filed, and if no objections are raised within 30 days, the Registrar enters the particulars of the application in the Register of Copyrights. In case of a dispute, the Registrar will hold an inquiry. Registration of a copyright takes between 8 to 12 months.

280. Protection is for the lifetime of the author plus 60 years for literary, dramatic, musical, and artistic works; and 60 years after the year of publication for anonymous and pseudonymous works, photographs, cinematographic films, sound recordings, and works owned by the Government or by a public undertaking or an international organization. Broadcast reproduction rights are for 25 years from the year of broadcast, and performers' rights are for 50 years from the date of performance. Through the International Copyright Order, copyright is protected in India for nationals of countries that are members of the Berne Convention, the Universal Copyright Convention, and the TRIPS Agreement.

281. Copyright may be licensed or assigned to another person provided the arrangement has been put in writing. Compulsory licences may be issued for works withheld from the public or for unpublished "Indian works" where the author is dead or unknown.[374] In such cases, applications may be made to the Copyright Board, which, after holding an inquiry, may direct the Registrar of Copyright to issue a licence under specified terms and conditions. Applications for licences to publish a translation of a literary or dramatic work in any language may be made to the Copyright Board seven years after publication of the work (three years if the translation is required for teaching, scholarship or research) (Article 32). Parallel imports of copyrighted works are not permitted by the law.

282. The copyright law in India provides for both civil and criminal remedies by which the holder may enforce their rights. Infringement of copyright could lead to imprisonment for six months to three years and/or a fine of between Rs 50,000 and Rs 200,000 (Section 63). Repeated offences are punishable by imprisonment for one to three years and/or a fine of Rs 100,000 to Rs 200,000. Any person who knowingly makes use of an infringing copy of a computer program is punishable by imprisonment for seven days to three years and/or a fine of Rs 50,000 to Rs 200,000 (Section 63B). The penalty for making or possessing plates for making infringing copies of protected works is imprisonment for up to two years and/or a fine (Section 65). Publication of a sound recording or a

[373] For the forms and other general information, see Copyright Office online information, "Handbook of copyright law". Viewed at: http://copyright.gov.in/Documents/handbook.html.

[374] "Indian work" is defined as an artistic work by a citizen of India or a cinematographic film or record made or manufactured in India (Articles 31 and 31A).

video film in contravention of the Act is punishable by imprisonment for up to three years and a fine (Section 68A). If any of these offences are committed by a company, every person who was in charge of the company at the time the offence was committed, as well as the company, should be deemed to be guilty of the offence and be punished accordingly.

283. Customs officials are authorized to seize at the border, and if necessary destroy, goods infringing copyrights, without obtaining a court order. In addition, upon an application by the right holder, the Registrar of Copyrights conducts an inquiry, and may prohibit the importation of copies made outside of India, which if made inside India would infringe the copyright. In these instances the Registrar of Copyright or any person authorized by him may enter any ship, dock or premises where such infringing copies may be found and examine such copies. From 2007 to February 2011 no such applications were received by the Registrar of Copyrights. Twenty-four states and UTs have set up Copyright Enforcement cells within the crimes section of the police, to enforce the copyright legislation. The authorities have indicated that, in 2008 the police registered 6,036 cases regarding copyright violations; 2,151 persons were convicted.

(f) Geographical indications

284. Geographical indications are protected under the Geographical Indications of Goods (Registration and Protection) Act 1999, and the Geographical Indications of Goods (Registration and Protection) Rules 2002.

285. Applications for registration of a geographical indication must be made in writing to the Registrar of Geographical Indications. The Act stipulates geographical indications that may not be registered.[375] Once an application is accepted, the Registrar advertises the application and if there is no opposition the GI is registered. If the application is not accepted, the grounds for refusal must be given in writing. Decisions by the Registrar may be appealed to the IPAB.

286. Protection for the owner of the GI and any authorized user is for ten years, but may be renewed by the Registrar for further periods of ten years. Additional protection may be provided by the Central Government to certain goods or classes of goods by notification in the *Official Gazette*. At present wines and spirits are the only class of goods that receive higher protection in India. Registration guarantees the exclusive use of the GI by the owner or authorized user and protection in case of infringement. The penalty for falsifying or falsely applying geographical indications or selling goods under false geographical indications is imprisonment for six months to three years, and a fine of Rs 50,000 to Rs 200,000.[376] Repeated offences are subject to a prison term between one and three years and a fine of Rs 100,000 to Rs 200,000.

[375] Geographical indications will not be registered if their use will likely deceive or cause confusion, would be contrary to any law in force, and if they comprise or contain scandalous or obscene matter or any matter likely to hurt religious susceptibilities, which would otherwise not be entitled to protection in a court. In addition, GIs determined to be generic names or indications of goods and therefore not protected in their country of origin, or that falsely represent that the goods originate in another country will not be registered.

[376] Infringement is defined under the Act as: use of the geographical indication to indicate or suggest that the goods originate in a geographical area other than the true place of origin in a misleading manner; use that constitutes an act of unfair competition, including passing off; and use of a geographical indication to falsely indicate that the goods are those to which the registered GI relates.

287. Though the Goods (Registration and Protection) Act was enacted in 1999, no GIs were registered until 2004 because the Act was not notified until 2003. By the end of 2009/10, 120 GIs of products had been registered representing a wide variety of goods.[377]

(g) Plant varieties

288. Plant varieties are protected in India through the Protection of Plant Varieties and Farmers' Rights Act 2001, and the Rules and Regulations 2006. Registration of a plant variety gives protection only in India and confers upon the right holder, its successor, agent, or licensee the exclusive right to produce, sell, market, distribute, import, or export the variety. New varieties may be registered if they conform to the following criteria: novelty, distinctiveness, uniformity, and stability. A variety that has already been on the market but for less than one year, may be eligible for registration as a new variety. Older varieties may be eligible for registration as extant varieties.

289. Registration of a variety is not allowed when it is necessary to prevent commercial exploitation of such variety to protect public order or public morality or human, animal, and plant life and health or to avoid serious damage to the environment.

290. Application for registration of a variety is made to the Registrar-General of Plant Varieties, who makes the required enquiries; once the Registrar deems the application fit, it is advertised. If there is no opposition, or if the opposition is rejected, the variety is registered in the Plant Varieties Registry, and an official certificate is given to the applicant. Until the Plant Varieties Protection Appellate Tribunal is established, a person aggrieved by a decision of the Protection of Plant Varieties and Farmers' Rights Authority (established in 2005) or the Registrar, may file an appeal before the IPAB or the High Court.

291. A certificate of registration is issued for a term of nine years for trees and vines and six years for other crops, and is renewable for a maximum of 18 years for trees and vines, or a total of 15 years for extant varieties (from the date of notification under the Seeds Act 1966) and other crops (from the date of registration of the variety) (Section 24 (6)). A certificate of registration for a variety confers an exclusive right on the breeder or his successor, his agent or licensee, to produce, sell, market, distribute, import or export the variety. However, farmers are entitled to save, use, sow, resow, exchange, share or sell their farm produce, including seed (except "branded seed")[378], of a variety protected by the Act.[379] Registration may not prevent the use of any variety for conducting experiments or research; or for the purpose of creating other varieties. The authorization of the breeder of a registered variety is required if the repeated use of the variety as a parental line is necessary for commercial production of another newly developed variety.

292. Compulsory licences may be granted after three years from the date of registration. A request may be made to the Authority for a compulsory licence for production, distribution, and sale of the seed or other propagating material on the grounds that the reasonable requirements of the public for seeds or other propagating material of the variety have not been satisfied or that the seed or other propagating material of the variety is not available to the public at a reasonable price. The Authority will determine the duration of the compulsory licence on a case-by-case basis but in no event will the

[377] These include goods such as Darjeeling tea, Pochampally ikat and Chanderi sarees, Mysore agarbathi, Kullu shawls, Coorg oranges, Aranmula mirrors, and Kancheepuram silk (Department of Industrial Policy and Promotion, 2009b).

[378] "Branded Seed" means any seed put in a package or any other container and labelled in a manner indicating that such seed is of a variety protected under this Act.

[379] Farmers' Rights Act, Chapter VI, Section 39.

duration of the licence exceed the total remaining period of protection. No compulsory licences have been granted so far.

293. The law defines infringement as: the sale, export, import or production of a protected variety without the permission of its breeder or within the scope of a registered licence without the permission of the registered licensee or agent; or the use, sale, export, import or production of any other variety that is given an identical or deceptively similar denomination of a variety registered under the Act so as to cause confusion. In case of an infringement of rights, the right holder may file a civil suit in court. The penalty for applying a false denomination is imprisonment for three months to two years and/or a fine of Rs 50,000 to Rs 500,000. The penalty for selling varieties to which a false denomination is applied is imprisonment for six months to two years and/or a fine of Rs 50,000 to Rs 500,000. The penalty for falsely representing a variety as registered is imprisonment for six months to three years and/or a fine of Rs 100,000 to Rs 500,000. Repeated offences are liable to imprisonment for between one and three years and/or a fine of Rs 200,000 to Rs 2 million. No cases of seizure or infringement have been reported.[380]

(h) Semiconductor integrated circuits layout-designs

294. The Semiconductor Integrated Circuits Layout-Design Act 2000 and the Semiconductor Integrated Circuits Layout-Design Rules 2001 is the prevailing law regulating the protection of integrated circuits. However, at present only Sections 3 and 5 of the law are in force.[381]

295. Layout-designs may not be registered if they are not original; they have been commercially exploited anywhere in India or in a Convention country; are not inherently distinctive; or are not inherently capable of being distinguishable from any other registered layout-design. A creator seeking registration of a layout-design must apply in writing to the Registrar. The Registrar may refuse the application or may accept it fully or subject to amendments. The Registrar will register the layout-design if the application is accepted and not opposed, or if opposed and the opposition is decided in favour of the applicant. Registration is valid for ten years from the date of filing or the date of first commercial exploitation anywhere in the world, whichever is earlier. Decisions by the Registrar may be appealed to the Layout-Design Appellate Board.

296. Infringement is defined as the unauthorized reproduction, whether by incorporating in a semiconductor integrated circuit or otherwise, of a registered layout-design or any part of it, or unauthorized import, sale, or distribution for commercial purposes of a registered layout-design or an article incorporating a semiconductor integrated circuit with a registered layout-design. However, reproduction of registered layout-design is permitted for scientific evaluation, analysis, research or teaching. If, by application of independent intellect, a person develops a layout-design that is identical to a registered one, that person may use it as desired without infringing. Infringement of a layout-design is considered to be a criminal offence in India: the penalty is imprisonment for up to three years and/or a fine of Rs 50,000 to Rs 1 million. There have been no cases of infringement of layout designs during the period under review.[382]

(i) Trade secrets

297. India has no specific legislation regulating the protection of trade secrets; hence enforcement measures/penalties for violations of trade secrets are available through common law. Trade secrets are protected either through contract law or through the equitable doctrine of breach of confidentiality.

[380] Information provided by the authorities.
[381] Information provided by the authorities.
[382] Information provided by the authorities.

The Indian Contract Act (Section 27) provides some sort of limited protection as it bars any person from disclosing information acquired as a result of a contract. It is also common to insert a confidentiality clause in a technology transfer or other licence agreement to maintain the confidential nature of the subject matter, not only during the employment period of the employees and contractors but also after its termination, though for a fixed period.[383] Aggrieved parties may seek action through the civil courts by obtaining an injunction preventing a third party from disclosing the trade secrets, return of all confidential information and proprietary information, and compensation for any loss suffered due to disclosure of trade secrets.

(j) Enforcement

298. Since its previous Review, India has taken several initiatives to modernize its IPR administration. The major achievements during the period include an increase in the level of computerization, providing Internet connectivity amongst the various offices, creating an online facility for filing and processing patent and trade mark applications, and computerizing intellectual property records to create databases. The Government has continued its efforts to step up training to increase awareness of IPR enforcement through the National Institute of Intellectual Property Management (NIIPM). Since 2007, the NIIPM has undertaken wide-ranging activities including training, education, and research.[384]

299. Enforcement of intellectual property rights in India (except at the borders) is under the purview of state governments. Enforcement is carried out by the police for domestic cases, and by the police and Customs for imports and exports. Under the Customs Act, Customs may seize and hold goods for a reasonable period (e.g. six months), including for suspected violations of intellectual property rights, following which, the goods must be released or a court injunction obtained to start infringement proceedings. In order to further implement border measures, in 2007 the Customs authorities issued a notification that prohibits imports of goods infringing intellectual property rights, and promulgated the Intellectual Property Rights (Imported Goods) Enforcement Rules 2007.[385] These Rules lay down a detailed procedure for right holders or their authorized representatives and for Customs to seek suspension of release of suspect imported goods. The Rules allow right holders to record their registered intellectual property, including patents, with Customs. After the grant of the registration by the Commissioner on due examination, imports of allegedly infringing goods into India may be prohibited. The Rules also permit *suo moto* action by Customs when infringing goods are found through random checks, and the disposal of the confiscated goods; however, the Rules do not call for any action against goods of non-commercial nature contained in personal baggage, sent in small consignments intended for personal use of the importer, or goods in transit.[386] The authorities noted that, in 2008/09, there were 23 instances of imports confiscated because of IPR infringement. In 2009/10 the number of cases increased to 56.

300. India has made important efforts in the field of enforcement, such as having specially trained IP judges in general courts, training judges on issues specific to IP litigation, and increased efforts by Indian customs officials to stop infringing goods from entering the country. In addition to the Government's efforts to enforce IPR, industries in India have become more proactive. The Ministry of Information and Broadcasting set up a Committee on Piracy, and IPR holders have created

[383] De Ranbaxy (2010).

[384] The NIIPM is a central government organization under the Ministry of Commerce and Industry engaged in conducting training and awareness programmes relating to IPRs (National Institute for Intellectual Property Management online information. Viewed at: http://www.patentoffice.nic.in/niipm/index.htm; and Department of Industrial Policy and Promotion, 2009b).

[385] Customs (non-tariff) Notification No. 47/2007, 8 May 2007.

[386] Intellectual Property Rights (Imported Goods) Enforcement Rules 2007.

associations and IPR committees to generate awareness on issues relating to counterfeit, fake, and spurious products. For example, the music and film industry, through the Film Federation of India, Motion Picture Association, and Indian Music Industry Association, cooperates and collaborates with the police in the design and implementation of anti-piracy programmes. To support the efforts of the industry, the state governments of Andhra Pradesh, Kerala, Maharashtra, and Tamil Nadu, where the film and music industry is prominent, have introduced legislation which stipulating that video piracy is an offence. The aim is that with enhanced coordination of the industry, enforcement will continue to improve.

IV. TRADE POLICIES BY SELECTED SECTOR

(1) OVERVIEW

1. The structure of India's economy has not changed significantly since 2007. The services sector, which has been the most dynamic sector during the period under review, continues to be the largest contributor to GDP (and employment) and has exhibited resilience to the negative effects of the global crisis. The share of the manufacturing sector in GDP has declined slightly, as has the share of agriculture. Sustained growth in all sectors in India would require measures to deal with bottlenecks and investment in infrastructure and education.

2. During the period under review, the share of agriculture in GDP fell from 18.1% to 16.6% and growth in the sector remained weak due to a prolonged drought, excessive reliance on monsoon-related crops, and low productivity. However, despite the decline in its relative share, agriculture continues to be the mainstay of the majority of the population, occupying some 52% of the total workforce (including non-organized labour); the sector is also critical for achieving the Government's objectives of food security and price stability. Reflecting its importance, support to the sector through various trade measures remains considerable. Average tariff protection on agriculture (33.2%) remains substantially higher than on manufactured goods (8.9%). In general, India's tariffs are higher for agricultural goods and processed goods than for semi-manufactures. This responds in part to the strategy of protecting agriculture while promoting the development of manufacturing activities, which require imports of intermediate goods. It may also reflect India's policy of granting import duty concessions for intermediate goods under different export and investment promotion schemes.

3. Manufacturing showed robust growth over 2006/07 and 2007/08, but was subsequently affected by the global economic crisis, which led to a decline in foreign demand, particularly in areas such as textiles and clothing. However, there was a resurgence of growth in 2009/10, mainly triggered by stronger domestic demand, particularly for consumer durables, capital goods, and industrial inputs. In order to encourage investment in the manufacturing sector, the Government has offered a wide range of tax incentives, concessionary credit, and other types of assistance.

4. The services sector, which accounts for 56% of GDP, has emerged as the main driver of economic growth, expanding by an average 10% between 2006/07 and 2009/10. Growth in services continued to be led by the financial sector, and the trade, hotel, transport, and communications subsectors. The importance of tourism, though not apparent from GDP figures, is considerable. Tourism has good growth potential and the capacity to create backward and forward linkages and cross-sectoral synergies. Foreign direct investment of up to 100% is allowed for most services activities, except for financial services, where foreign ownership limits apply. However, specific market-access conditions or permits apply, which in some cases may be more restrictive than an explicit investment cap.

5. Inadequate infrastructure has become a critical constraint to India's economic development. To address this concern, the 11th Five Year Plan outlined a comprehensive strategy to improve both rural and urban infrastructure including electric power, roads, railways, ports, airports, telecommunications, irrigation, drinking water, sanitation, storage, and warehousing. However, public investment alone would likely be insufficient to address India's infrastructure needs, particularly considering India's quest for fiscal consolidation. Hence, an increase in private investment in infrastructure would also be necessary. Private sector investment, including from foreign sources, could play an important role not only in developing infrastructure, but also in

providing an opportunity for foreign investors. This would result in more stable, less volatile, capital inflows.

(2) AGRICULTURE

(i) General overview

6. Agriculture and related activities contributed 16.6% to GDP in 2009/10, down from 18% in 2006/07 (Table IV.1), but their economic, social, and political importance are considerably higher than their share of GDP. Agriculture employs some 58% of the population[1]; the productive structure is dominated by small-scale farmers working small to marginal landholdings, who account for more than one half of total Indian agricultural production. The agriculture sector has long been characterized by underemployment[2] Rural areas are still home to some 72% of India's population; a large percentage of which lives under the poverty line. Most farmers depend on rain-fed agriculture (55.7% of the area sown is dependent on rainfall) and forests for their livelihoods.[3]

Table IV.1
Selected indicators for agriculture, 2006-10

	2006/07	2007/08	2008/09	2009/10[a]
GDP in the agriculture sector[b], at constant 2004/05 prices (growth rate, %)	3.7	4.7	1.6	0.2
Contribution of the agriculture sector[b] to current GDP (%)	18.1	17.9	17.1	16.6
Employment[b] (% of total)	..	..	..	52.1
Agricultural production (million tonnes)				
Oilseeds	24.3	29.8	27.7	24.9
Pulses	14.2	14.8	14.6	14.6
Maize	15.1	19.0	19.7	16.7
Rice	93.4	96.7	99.2	89.1
Wheat	75.8	78.6	80.7	80.7
Sugarcane	355.5	348.2	285.0	277.8
Cotton (million bales of 170 kg each)	22.6	25.9	22.3	23.9
Exports				
Agricultural products (US$ million)	13,781.9	19,641.6	18,718.9	18,880.0
Leading products (% of total agricultural exports)				
Rice basmati	4.5	5.5	11.0	12.1
Marine products	12.8	8.8	8.2	11.0
Cotton raw, including waste	9.8	11.2	3.3	10.7
Oil meals	8.8	10.3	11.9	8.8
Meat and preparation	5.3	4.7	6.2	7.0
Agricultural products (% of total exports)	10.9	12.1	10.2	10.6
Agricultural products (growth rates based on exports in US$, %)	24.0	42.5	-4.7	0.9
Agricultural products (growth rates based on exports in rupees, %)	26.8	26.6	8.7	4.2
Imports				
Agricultural products (US$ million)	6,544.8	7,431.8	8,097.9	12,520.4
Leading products (% of total agricultural imports)				
Vegetable oils fixed (edible)	32.2	34.4	42.6	44.6
Pulses	13.1	18.0	16.8	16.3
Wood and wood products	15.8	18.2	16.2	12.6
Sugar	0.0	0.0	1.6	10.0
Cashews nuts	6.1	5.7	7.2	5.1
Agricultural products (% of total imports)	3.5	3.0	2.7	4.4
Agricultural products (growth rates based on imports in US$, %)	34.8	13.6	9.0	54.6
Agricultural products (growth rates based on imports in rupees, %)	37.9	0.9	24.3	59.7

Table IV.1 (cont'd)

[1] Employment in the agriculture sector as a share of total workers, as per Census 2001 (Ministry of Finance 2011a).

[2] Planning Commission (2008).

[3] World Bank online information, "India: Priorities for Agriculture and Rural Development". Viewed at: http://web.worldbank.org/WBSITE/EXTERNAL/COUNTRIES/SOUTHASIAEXT/EXTSAREGTOPAGRI/0,,contentMDK:20273764~menuPK:548214~pagePK:34004173~piPK:34003707~theSitePK:452766,00.html.

	2006/07	2007/08	2008/09	2009/10[a]
Agricultural trade balance (US$ million)	7,237.2	12,209.8	10,621.0	6,359.6

.. Not available.

a Estimates.
b Including agriculture, forestry, and fishing.

Source: Department of Agriculture and Co-operation (2010), *Agricultural Statistics at a Glance 2010*, 24 September. Viewed at: http://dacnet.nic.in/eands/latest_2006.htm; and data provided by the Indian authorities.

7. Economic growth in India's farm sector has lagged significantly behind that of other sectors reaching only 0.4% in 2009/10 (compared to 3.7% in 2006/07), far below India's overall annual economic growth rate of about 8% for the same year. The authorities attribute the sector's lower-than-expected growth rates to: fluctuating world prices for agricultural commodities and efforts to keep domestic prices low for consumers; slow development of new agricultural technology and inefficient use of available technology and inputs; rapid and widespread decline in the groundwater table and lack of rain during 2009-10, with a particularly adverse impact on small and marginal farmers; and lack of public and private investment in agriculture.

8. India places high priority on raising agricultural productivity as a means of reducing poverty. However, raising productivity would require a policy shift away from the existing subsidy-based protected regime that no longer appears to be sustainable.[4] To meet production, as well as other agricultural policy objectives (e.g. poverty alleviation and self-sufficiency), the Government plans to increase public expenditure, while also encouraging private investment. Increased expenditure will be focused on: increasing productivity, improving irrigation infrastructure and management of water resource, and building the necessary infrastructure in rural area (e.g. roads, electricity) to support the agriculture sector; promoting research and development and extension services; and developing a modern marketing system. Public sector funds allocated to agriculture and related activities during the 11th Five Year Plan, increased by 124.7% over the amount allocated during the 10th Five Year Plan.

9. India produces a wide variety of agricultural products and is a major global producer of grains (wheat, rice, and corn), dairy, fruits and vegetables, and livestock. Food self-sufficiency has been India's main agricultural policy objective since the Green Revolution in the 1960s. This objective has been largely met as India is, by and large, self-sufficient: domestic agriculture supplies some 97% of agricultural consumption. India's commodity production patterns focus on intensive farming with high-yield seeds, almost exclusively for food grains, specifically rice, wheat, corn (maize), and millet (a coarse grain).

10. India is a net exporter of agricultural products. Its agricultural support policies promote domestic production at the expense of imports. Agricultural imports are relatively low (4.4% of total merchandise trade) and are concentrated in a few commodities, including vegetable oils, pulses, and wood products. In 2009/10, agricultural exports accounted for 10.6% of total merchandise exports; they increased from US$13.7 billion in 2006/07 to US$18.8 billion in 2009/10 (9.3% of the foreign exchange).[5] Basmati rice has become India's leading agriculture export product, followed by marine products and cotton.

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[4] World Bank online information, "India: Priorities for Agriculture and Rural Development". Viewed at: http://web.worldbank.org/WBSITE/EXTERNAL/COUNTRIES/SOUTHASIAEXT/EXTSAREGTOPAGRI/0,,contentMDK:20273764~menuPK:548214~pagePK:34004173~piPK:34003707~theSitePK:452766,00.html.

[5] Trade data on agriculture is different from trade data in Chapter I (Tables AI.1 and AI.2) because of difference in sources.

(ii) Agricultural policy objectives

11. Agricultural policy is formulated and implemented mainly by the Ministry of Agriculture at the central level with the assistance of other institutions (Table IV.2). India's current agricultural policy is outlined in the 11th Five Year Plan (2007–12), which identified three core policy objectives: food security, food self-sufficiency, and income support for farmers.[6] In order to meet these objectives, India actively intervenes in the agriculture sector, including in production, marketing, consumption, and international trade.

Table IV.2
Institutions involved in formulating and implementing agricultural policy, 2010

Institution	Function 2010
Ministry of Agriculture	Established in 1947 to formulate and implement policies and programmes to increase agriculture production and improve incomes of farm families
Commission for Agricultural Costs and Prices (CACP)	Established in 1965 to advise the Government on setting minimum support prices (MSPs) for different commodities (currently 25 essential commodities) and the mechanisms for implementing the MSPs
Food Corporation of India (FCI)	Set up in 1964 to implement the food policy, including procuring and maintaining buffer stocks of food grains and for distributing food grains through the public distribution system (PDS) and various welfare schemes for poverty alleviation
Central Warehousing Corporation	Set up in 1965 to support the FCI
National Agricultural Cooperative and Marketing Federation of India (NAFED)	Set up in 1958 to implement the Government's price support scheme
Cotton Corporation of India (CCI)	Procurement of other crops, e.g. cotton to undertake price support operations
Jute Corporation of India (JCI)	Procurement of other crops, e.g. cotton and jute to undertake price support operations
Ministry for Food Processing Industries	Set up in 1988 to implement infrastructure development and technological upgrade, develop backward linkages, enforce quality standards, and expand domestic and export markets for processed food products
Department of Animal Husbandry, Dairying, and Fisheries (Ministry of Agriculture)	Set up in 1991 and responsible for livestock production, preservation, and protection, and improvement of stocks; dairy development; the Delhi Milk Scheme and the National Dairy Development Board; and fishing; advises the state governments/union territories in policy/programme formulation for animal husbandry, dairy development, and fisheries
Plant Quarantine Division (Ministry of Agriculture)	Implements the Plant Quarantine (Regulation of Import into India) Order 2003 through Directorate of Plant Protection, Quarantine and Storage; conducts pest risk analysis for imports and exports of agricultural commodities
Directorate of Vanaspati, Vegetable Oils, and Fats under the Department of Food and Public Distribution (Ministry of Consumer Affairs, Food, and Public Distribution)	Set up in 1977 for the coordinated management of distribution, pricing, internal trade and commerce, administration of industries, and policy matters for vegetable oils, oilcakes and meals
Directorate of Marketing and Inspection under the Department of Agriculture and Cooperation (Ministry of Agriculture)	Set up in 1935 to implement agricultural marketing programmes and to bring integrated development of marketing of agricultural and allied produce

Source: Government of India Web Directory online information. Viewed at: http://goidirectory.nic.in/index.php; and information provided by the Indian authorities.

12. India's agricultural policies are consistent with the Government's long-standing policies of protecting domestic producers from foreign competition and consumers from domestic and global price fluctuations for food staples such as wheat, rice, and vegetable oils. The Government uses tariffs and non-tariff measures (NTMs) in its domestic policies to meet these objectives. The tension between the desire to raise food prices for the benefit of farmers and to lower them for the benefit of consumers leads India to intervene heavily in the farm sector with multiple policy instruments.

[6] These objectives should be viewed in the context of the significant challenges faced by India including: a history of food shortages, a large segment of the population dependent on the agriculture sector for its livelihood, and hundreds of millions of poor Indians who spend most of their incomes on food. More than one third of the population, mostly rural Indians, still lives on less than US$1 per day. Indian farmers are a politically powerful voting bloc that has a major influence on Indian domestic and international trade policies.

13. Balancing these conflicting objectives presents a major problem; this has been especially the case in the last few years when world food prices have increased significantly. Farmers would gain from higher prices and, to the extent to which low profitability is the cause of inadequate investment, the favourable shift in prices could boost domestic production and rural incomes. However, consumers are hurt by higher prices, and since most of the poor in India are net purchasers of food the authorities deem it necessary to protect them from any undue increases in food prices.

(a) Measures affecting imports

14. India's tariff policy focuses on supporting domestic agricultural policy objectives. Hence, average tariff protection for agricultural products (WTO definition) in 2010/11 was 33.2%, considerably above that of manufactured products at 8.9%. Some 57% of agricultural goods bear tariffs of 30%, and 13% bear tariffs above 30%. This contrasts with trade liberalization in manufacturing, which has been more noteworthy, with the reduction of "peak tariff " rates to 10% (with some exceptions), and the elimination of quantitative restrictions.[7]

15. Certain agricultural products that were previously subject to quantitative restrictions are now considered sensitive products and bear above-average tariffs.[8] Others, such as sugar (HS 1701) and some cereals[9], are considered sensitive because of employment and food security concerns and also bear high average applied tariff rates.

16. Price stability considerations and the importance of some agricultural products to Indian consumers are factors that contribute to significant differences in applied tariff rates for specific agricultural products within product groups. For example, among vegetable fats and oils, the tariff rate on crude palm oil is at 100%, while the tariff rate on edible margarine of vegetable oil is 7.5% and that on crude soybean was reduced to zero in 2009/10. Similarly, vegetable oils (HS 1507-HS 1515) have traditionally been protected by high tariffs; however, to fight inflation, tariff rates on some of these products have been reduced to an average of 9.7%. The average tariff rate on animal products is 30.8%, with most products subject to a 30% tariff. However, imported fresh and frozen chicken cuts, which compete with the large domestic industry, are subject to a 100% applied tariff rate. Applied tariff rates on specific grains also vary widely. For example, tariff rates on oats and rye are zero, while rates on other cereals, such as some types of rice and wheat (of seed quality), which are important for maintaining food self-sufficiency, are 80% and 50%, respectively.

17. Bound tariff rates for agricultural products range from 10%-300% and are substantially higher than those for manufactured goods (0%-150%). For many agricultural products, there is a wide spread between bound (10%-300%) and applied tariff rates (0%-150%), which allows the Government to modify its tariffs substantially while complying with its WTO commitments. India tends to modify tariffs frequently on food staples, such as wheat, pulses, rice, sugar, and vegetable oils. This variability, as well as the complex process for the notification of tariff-rate changes, creates uncertainty and acts as an impediment to trade.

18. Subsequent to Article XXVIII renegotiations in 2003, India introduced in its Schedule tariff rate quotas for four product groups (19 tariff lines at the HS eight-digit level according to the authorities): milk and milk powder; maize (corn); rape, colza, and mustard oil; and crude sunflower seed and safflower oil.[10] As of 2008/09, tariff quotas for crude sunflower-seed oil or safflower oil

[7] Planning Commission (2008).
[8] Milk and milk products, fruits and vegetables, poultry, tea and coffee, spices, and some food grains.
[9] Durum wheat of seed quality (HS 1001.10.10): 50%; jawar, raji, and bajua (HS 1008.20): 70%; and broken rice (HS 1006.40): 80%.
[10] WTO document G/MA/TAR/RS/66, 1 May 2000.

have ceased to operate as the applied tariff on those products was reduced to 0% (Table III.6).[11] In 2009, India introduced a tariff quota for sugar (HS 1701.9100 or 1701.99.90) of 1 million tonnes with an in quota tariff rate of 0%.[12] Initially, sugar could only be imported through four companies but, according to the authorities, this restriction has been removed. In 2010, India increased the amount of milk that could be imported under the in-quota tariff rate from the original 10,000 tonnes to 30,000 tonnes, and introduced a tariff rate quota for butter (Table III.6). Imports under TRQs are allowed only through eligible entities or designated agencies. These entities and agencies need to apply to the DGFT prior or by 1 March of each financial year proceeding the quota year. The Exim Facilitation Committee in DGFT receives, evaluates and allots the TRQ. Imports have to be completed before 31 March of the financial year for which the quota is allocated.

19. According to India's latest notification to the WTO, submitted in January 2011, which covers the period up to 2007/08, tariff quotas continue to be allocated on a pro rata basis by the Directorate General Foreign Trade (DGFT), on request by designated agencies.[13] The authorities noted that the fill ratio of these quotas is low, apparently because of a lack of demand due to high international prices of these commodities (Table III.6).[14]

20. The authorities may impose import (and export) restrictions on security, self-sufficiency, and balance-of-payments reasons, and on health and moral grounds.[15] However, in practice, India links the use of import (and export) restrictions and licensing, and other non-tariff measures (NTMs) to domestic policies, for example, by relaxing NTMs when imports are required to alleviate food price inflation or food shortages. Import restrictions may also be imposed depending upon the import price. For instance in the case of betel nuts (whole, split, and ground) imports are restricted when the c.i.f. price is higher than a predetermined minimum price (Table III.10).[16]

21. Since the removal of most quantitative restrictions on imports in 2001, a mechanism has been set up to monitor imports of items considered to be sensitive. The number of sensitive items has increased since 2007, from 300 to some 415 items (Chapter III(2)(vi)). Monitored sensitive items include bamboos, cocoa, copra, cotton, milk and milk products, edible oils, food grains, fruits and vegetables, pulses, poultry, tea and coffee, spices, and sugar.[17]

[11] WTO document G/AG/N/IND/5, 7 March 2011.

[12] Customs Notification No. 84/2009, 31 July 2009. For Customs Notifications, see Central Board of Excise and Customs online information. Viewed at: http://cbec.gov.in/cae1-english.htm.

[13] The National Dairy Development Board (NDDB), the State Trading Corporation (STC), the National Cooperative Dairy Federation (NCDF), the National Agricultural Cooperative Marketing Federation of India Ltd. (NAFED), the Minerals and Metals Trading Corporation (MMTC), the Projects and Equipment Corporation of India Ltd. (PEC), the Spices Trading Corporation Ltd. (STCL), the National Agricultural Cooperative Marketing Federation of India Ltd., the State Trading Corporation of India Ltd., PEC Ltd., and the National Dairy Development Board (WTO document G/AG/N/IND/6, 7 March 2011).

[14] WTO document G/AG/N/IND/5, 7 March 2011.

[15] Section 3 of the Foreign Trade (Development and Regulation) Act 1992 and through the issue of notifications under Section 11 of the Customs Act 1962.

[16] Betel nuts (HS 0802.90.11, HS 0802.90.12, and HS 0802.90.13).

[17] Department of Commerce online information, "Trade Statistics: Imports of Sensitive Items". Viewed at: http://commerce.nic.in/tradestats/import.asp.

22. India maintains state trading for certain agricultural goods (some cereals, copra, and coconut oil) to ensure, *inter alia*, a "fair" return to farmers as well as food security and the supply of fertilizer to farmers (Table III.11).[18]

23. Imports of animal products into India require sanitary import permits issued by the Department of Animal Husbandry, Dairy and Fisheries; permits must be obtained prior to shipment from the country of origin. The Department approves or rejects the application based on an import risk analysis on a case-by-case basis. Sanitary import permits are not import licences, they are certificates verifying that India's sanitary requirements are fulfilled. Some imports of animal products also require an import licence issued by the Director General of Foreign Trade (Chapter III(2)(vi)(b)). Imports of animal and fish products are only allowed through designated ports where animal quarantine and certification services exist.

24. Imports of plants and plant material must be accompanied by a phytosanitary certificate issued by the national plant protection organization of the exporting country and an import permit issued by the officer in charge of the plant quarantine station. The Plant Quarantine (PQ) (Regulation of Import into India) Order 2003 lists in its Schedules the specific import requirements. Products listed in Schedule VII can be imported without import permit but may be required to fulfil other conditions such as fumigation. Other phytosanitary requirements covering some 980 products are listed in Schedules V, VI, and VII (Table III.14). Schedule IV lists all the plant species that are prohibited for importation on phytosanitary grounds. Imports of plant and plant products may only enter the Indian territory through designated ports.

(b) Measures affecting exports

25. The 11th Five Year Plan placed special emphasis on promoting production and exports of commercial crops and agri-based processed products. Plans to promote exports include, *inter alia*, the revitalization of plantations, and the provision of tax incentives.[19] However, this would require the adoption of a less controlled, more long-term and stable agriculture policy, instead of ad hoc reactions to short-term price fluctuations, such as export bans, which have often been at the cost of farmers. According to the authorities further development of India's new agricultural commodities futures markets would also allow for better transmission of price signals and management of risks.[20]

26. India imposes export restrictions and prohibitions mainly for environmental, food security, marketing, pricing, and domestic supply reasons, and to comply with international treaties. Since 2007, some agricultural products have been subject to export prohibitions, including non-basmati rice, wheat, pulses, edible oils, milk powder, casein and casein derivatives, and onions (Tables II.4 and AIII.5). Goods subject to export restrictions and quotas must also be accompanied by licences from the DGFT and, when necessary, by other permits. For instance exports of cotton require in addition to an export licence an export authorization registration certificate (EARC).[21] Export quotas apply to organic non-basmati rice and organic wheat. Export prohibitions and export quotas are notified annually; they are usually in place for a specific period, during which they may be subject to changes (Chapter III(3)(v)). These changes diminish the predictability of the regime. Minimum export prices

[18] Agricultural products subject to state trading are wheat, rye, oats, maize, rice, grain sorghum, buckwheat, millet, canary seed, jawar, bajra, ragi, other cereals, copra, crude oil (coconut oil and its fractions), and other (coconut oil and its fractions).

[19] Department of Commerce (2011); and Planning Commission (2008).

[20] Department of Commerce (2011); and Planning Commission (2008).

[21] EARCs are issued by the Textile Commissioner of India/Directorate General of Foreign Trade (as of December 2010) only when the domestic supply of cotton is ensured.

are also maintained under the Foreign Trade Policy 2009–14 to control prices and availability in the domestic market (Chapter III(3)(iv)).

27. In addition, to these measures, India imposes export taxes, which are used to, *inter alia*, ensure domestic supply of raw materials for higher-value-added industries; promote further processing of natural resources, ensure an "adequate" domestic price, and preserve natural resources. Export taxes are sometimes used in combination with other measures to attain short-term goals. For instance, in April 2010, India introduced export licensing/EARC requirements for six months on raw cotton and cotton waste, in addition to export taxes, with the purpose of ensuring adequate domestic supply and containing cotton price increases in the domestic market (Chapter III(3)(v)).

28. State trading is maintained on exports with the purpose of ensuring better marketing and prices of agricultural and minor forestry products grown by small farmers or poor tribes, as well as to prevent fluctuations in domestic prices. Since 2007, sugar under preferential quotas, and all varieties of onions have been exported through state trading, except during December 2010 to February 2011 when exports were prohibited.[22] Exports of sugar (by state trading enterprises), and wheat products (HS 1001) were subject to export quotas during the period under review; these were set by the DGFT.[23] Exports of onions by state trading enterprises are not subject to ceilings but to minimum export prices notified by the DGFT (Chapter III(3)(iv) and Tables II.4 and III.17).

29. India's last notification of export subsidies, made to the WTO in 2002, covered 1996 to 2001.[24]

30. In addition to the agri-export zones (AEZs) and the duty drawback system, India has a number of export incentive schemes, some of which are contingent on value addition and export obligation. The product coverage and the level of concessions of some of these schemes changed during the period under review. India's exports concession schemes include: (i) duty exemption schemes, which allow exporters to import inputs (including fuel and oil) duty free; (ii) duty remission schemes, entitling exporters to a refund of customs duty on the inputs used to produce exports (post-export replenishment/remission of duty paid on inputs); (iii) reward schemes granting exporters duty credits; (iv) Special Agricultural and Village Industry Scheme (Vishesh Krishi and Gram Udyog Yojana) to compensate freight cost and promote exports of agricultural and other forestry products; and (iv) an agri-infrastructure incentive scheme, whereby exporters are granted duty credits when importing, *inter alia*, storage, packing, and transportation equipment for exports of live animals and animal products, fats and oils, prepared foodstuffs, beverages, and tobacco (Table AIII.6).

(c) Internal measures

31. Agriculture is under the purview of the state governments in India. However, the Central Government supports the state governments in their efforts to increase agricultural production, enhance productivity, and explore the sector's untapped potential. This support is granted through the implementation of centrally funded general agricultural support schemes and programmes (Table IV.3). India also supports the farm sector through output price support programmes, input support programmes, and credit and insurance schemes. Output price support programmes consist of minimum support prices (MSPs) for certain staple crops produced in India. Input support programmes focus primarily on fertilizers, rates for irrigation water, electricity rates, diesel prices, and

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[22] Exports of onions were prohibited or restricted from 22 December 2010 to 18 February 2011 (Table II.4).

[23] Exports of wheat are at present prohibited. However, during July 2009 to March 2011 an export quota of 650,000 tonnes was established (information provided by the authorities).

[24] WTO document G/AG/N/IND/3, 1 March 2002.

seeds. Credit schemes comprise a number of government programmes to improve the flow of credit to agriculture and to lower the cost of borrowing for farmers (via below-market loan rates or debt write-offs).

Table IV.3
Agriculture sector schemes/programmes, 2011

Programme/Scheme	Budget allocation[a]	Purpose
National Mission for Sustainable Agriculture	No budget allocation[b]	Seeks to address issues of "sustainable agriculture" in the context of climate change by devising appropriate strategies for ensuring food security, enhancing livelihood opportunities, and contributing to economic stability at national level
Macro Management of Agriculture	Rs 55 billion	Launched in 2000-01: seeks to supplement and complement the efforts of the states towards enhancement of agricultural production and productivity (through soil nutrition, pest management, and watershed development); assistance provided in the form of grants to the states/union territories on 90:10 basis, except for the north-eastern states/union territories where the Central share is 100%
National Food Security Mission (NFSM)	Rs 48.2 billion	Launched in 2007-08: seeks to increase production of rice, wheat, and pulses by 10 million tonnes, 8 million tonnes, and 2 million tonnes, respectively, by the end of the 11th Five-Year Plan; assistance in the form of grants
Rashtriya Krishi Vikas Yojana (RKVY)	Rs 250 billion	Launched in 2007-08: seeks to promote public investment by the State as to achieve a 4% growth rate in agriculture and allied sectors during the 11th Five-Year Plan; assistance in the form of grants to the states
Mahatma Gandhi National Rural Employment Guarantee Act (MGNREGA)	Rs 14.7 trillion[c]	Implemented in 2006 to guarantee wage employment to rural households; the programme, stipulated in the Act, is being implemented in 625 rural districts
Integrated Scheme of Oilseeds, Pulses, Oil Palm, and Maize (ISOPOM)	Rs 1.5 billion	Launched in 2004-05: seeks to promote crop diversification; assistance provided for purchase of seeds, plant protection chemicals and equipment, and other materials
Drought management	Financed through the National Calamity Relief Fund[d]	Assistance provided in emergency situations such as droughts
Centrally sponsored National Mission on Micro Irrigation (NMMI)	Rs 34 billion	Launched in 2010/11: seeks to enhance efficient use of water through drip and sprinkler irrigation systems in all states and union territories for horticulture and agricultural crops

a Information provided by the Indian authorities.
b The programme has not been implemented.
c For the 11th Five-Year Plan 2007/12.
d Outlay from the 11th Five-Year Plan.

Source: Ministry of Finance (2011), *Economic Survey 2010-2011*. Viewed at: http://indiabudget.nic.in; and information provided by the Indian authorities.

32. India's latest notification to the WTO on domestic support commitments in 2011, covered 1998/99 to 2003/04.[25]

33. Direct or explicit subsidies to agriculture as reported in the Central Government's annual Budget amounted to Rs 1,413.5 billion (2.2% of GDP) in 2009/10, up from Rs 571.3 billion (1.3% of GDP) in 2006/07.

34. The bulk of India's explicit subsidies are aimed mainly at promoting food security and reducing poverty. As a result, most of the outlays are allocated to food and fertilizers (Chart III.6). Food subsidies are provided by the Department of Food and Public Distribution to meet the difference between actual prices and the central issue prices fixed under the Targeted Public Distribution System (TPDS) and other welfare schemes (Chapter III(4)(iv)). The Central Government also provides a

[25] WTO document G/AG/N/IND/7, 9 June 2011.

subsidy to the Food Corporation of India to keep buffer stocks of wheat and rice as a food security measure. "Other subsidies", which accounted for 3% of the total explicit subsidies in 2010/11, include market intervention and price support schemes for agricultural products.

35. The Government maintains minimum support prices (MSPs) for major agricultural commodities. MSP levels and the products subject to MSPs are reviewed annually. MSPs are announced prior to each planting season. In 2009/10, India maintained MSPs on 25 crops.[26] MSPs are fixed by the Government following the recommendations of the Commission for Agricultural Costs and Prices (CACP), which takes into takes into account several factors to fix them.[27] MSPs aim at covering the actual expenses incurred by the farmer in cash and kind, including rent paid for leased land and imputed value of wages of family labour, rent for owned land and interest on fixed capital. Despite differences in cost of production across states, MSPs are uniform throughout the country.

36. Farmers are guaranteed the MSP through the Price Support Scheme (PSS): when prices of the relevant commodities fall below the MSP, government-designated agencies intervene in the market to purchase at the MSP any amount of produce that farmers offer. Designated agencies under the PSS purchase specific products.[28] There is an additional scheme (the Market Intervention Scheme (MIS)) that covers perishables not under the MSPs. Under the MIS, the National Agricultural Cooperative Marketing Federation of India Ltd. (NAFED) and other State designated agencies purchase perishables at a market intervention price (MIP) when the prices decline because of a bumper crop, and distribute the products. [29]

37. In 2009, the statutory minimum price (SMP) for sugarcane was replaced by the fair and remunerative price (FRP)[30]; a minimum price set at the central level, below which no sugar mill may purchase sugarcane from a farmer.[31] State governments also set a state advisory price (SAP) for sugarcane. If the SAP is higher than the FRP, the state government bears the loss.[32] In addition to the price intervention, a quota of the sugar production (at present 10%), referred to as "levy sugar", is earmarked for distribution under the Targeted Public Distribution System (TPDS).[33] The remaining

[26] In 2009/10, India maintained MSPs on 25 crops, namely paddy, jowar, bajra, maize, ragi, arhar (tur), moong, urad, cotton, groundnut in shell, sunflower seed, soybean, sesamum, nigerseed, wheat, barley, gram, masur (lentils), rapeseed/mustard, safflower, toria, copra, de husked coconut, jute, and tobacco.

[27] These variables include: the cost of production, changes in input prices, trends in market prices, inter-crop price parity, effect on industrial cost structure, effect on cost of living, effect on general price level, international prices, and parity between prices paid and prices received by the farmers and the effect on issue prices and implications for subsidy.

[28] The Food Corporation of India (FCI) and the state agency under the TPDS are the designated agency to distribute wheat, rice and coarse grains, the National Agricultural Cooperative Marketing Federation of India (NAFED), Central Warehousing Corporation (CWC) and National Cooperative Consumer Federation of India Ltd. (NCCF) for pulses and oilseeds, the Cotton Corporation of India and NAFED for cotton, and the Jute Corporation of India for jute.

[29] Since the inception of the MIS there have been few interventions (Information provided by the authorities).

[30] Sugarcane Control (Amendment) Order 2009.

[31] Other factors taken into account to fix the FRP include: the cost of production of sugarcane; the return that growers would have if planting alternative crops; the general trend of prices of agricultural commodities; supply of sugar to consumers at a "fair" price; price of refined sugar (made with sugarcane) at the mill; earnings made from selling by products (e.g. molasses, bagasse, and pressed mud); and a "reasonable" profit margin for sugarcane producers to also account for risk.

[32] PRS Legislative Research (2009).

[33] Department of Food and Public Distribution online information, "Sugar: sugar and edible oil: intimation of levy sugar". Viewed at: http://fcamin.nic.in/dfpd/EventListing.asp?Section=Sugar and Edible Oil&id_pk=100&ParentID=0.

sugar may be sold under the monthly regulated release system. Exports of sugar are also controlled through a quota system.

38. Under the Targeted Public Distribution System (TPDS), which focuses on reducing poverty, the consumer price of some essential commodities, are controlled to subsidize consumers.[34] These products are distributed by the state governments/UTs through the fair price shops/kerosene oil depots. Even though the market price of wheat and rice has increased, the price for rice and wheat under the TPDS has not been revised since 2002.[35] As a result, the amount spent on subsidizing food has increased substantially from Rs 238 billion in 2006/07 to Rs 698 billion in 20010/11.[36]

39. India continues to subsidize indigenous and imported (urea) fertilizers through price controls. The scheme was introduced after the prices of phosphatic and potassic fertilizers were decontrolled, to keep the price of fertilizers low, and to give producers a "reasonable" return on investment. However, this policy has resulted in an excessive use of nitrogenous fertilizer which depletes the soil of other micronutrients reducing soil productivity over time.[37]

40. The New Price Scheme (NPS) for urea, in place since 2003, initially expected to be phased out by 31 March 2010, has been extended indefinitely.[38] Although the price of urea continues to be controlled, price controls on other fertilizers were eliminated in 2010 and replaced by a "nutrient-based subsidy policy", implemented as of 1 April 2010, which applies to phosphatic and potassic fertilizers for agricultural use including imports. Under this new scheme , manufacturers fix prices and the Government provides a fix annual subsidy. The subsidy granted to central public sector undertakings and to private firms producing fertilizers is equivalent.

41. In addition to the subsidy on fertilizer, India's farmers benefit from input support for irrigation water, electricity, diesel, and seeds. These subsidies are financed by the central and state governments (water and electricity). The diesel subsidy is financed mainly by the Central Government while the subsidy on seeds is shared by the central and state governments. In general, during the period under review, budgetary support to input subsidies has increased. Subsidies granted to marginal farmers in the form of, *inter alia*, price support and insurance support schemes have recorded the highest increase (Table IV.4 and Chart III.6).

42. Electricity subsidies for farmers are paid from the state budgets. Farmers pay a fixed charge for electricity, which in most states is a lump sum based on the declared horsepower of irrigation pumps. As this does not reflect the actual cost of electricity there is overuse of electricity.[39] No data are available on the actual amount of the electricity subsidy allocated to agriculture. Irrigation water subsidies are the third largest component of budgetary support for agriculture inputs.

[34] These commodities are: wheat, rice, coarse grains, sugar and kerosene.

[35] For wheat it remains at Rs 4.15/kg for consumers Below Poverty Line and Rs 2/kg for Antyodaya Anna Yojana (AAY) (i.e. the poorest of the poor); and for rice, it is Rs 5.65/kg for BPL and Rs 3/kg for AAY (Information provided by the authorities).

[36] Ministry of Finance (2011a).

[37] Planning Commission (2008).

[38] The New Price Scheme (NPS) replaced the Retentions Price Scheme (RPS) in 2003.

[39] OECD (2009a), Chapter 5: India.

Table IV.4
Subsidies in agriculture inputs, 2006-10
(Rs billion)

	2006/07	2007/08	2008/09	2009/10
Public investment in agriculture and allied sector	229.78	230.40	244.52	..
Total subsidies	**676.93**	**877.08**	**1,609.17**	**529.80**
Fertilizer	262.22	324.90	766.03	529.80
Electricity[a]	197.29	206.61	274.89	..
Irrigation	169.78	194.57	236.65	..
Other[b]	47.64	151.00	331.60	..

.. Not available.

a Includes all subsidies to electricity boards and corporations. Separate estimates of the electricity subsidy to the agriculture sector are not available.

b Subsidies to marginal farmers and to farmers' cooperative societies in the form of seeds, development of oilseeds, pulses, cotton, rice, maize, and crop insurance schemes, price support schemes, etc.

Source: Department of Agriculture and Cooperation (2010), *Agricultural Statistics At a Glance 2010*, 24 September. Viewed at: http://agricoop.nic.in/Agristatistics.htm; and information provided by the Indian authorities.

43. The Central Government has put in place programmes to address the use of low-quality seeds by farmers. These include the Indian Seed Programme and Central-sector Development and Strengthening of Infrastructure Facilities for Production and Distribution of Quality Seeds scheme, to supply quality seeds at "affordable prices". To promote seed production in the private sector, a credit-linked back-ended capital subsidy is granted to develop infrastructure to produce seeds. Under this subsidy if the developer has taken a loan, once the project is finished 25% of the project cost (subject to a maximum of Rs 2.5 million per unit) does not need to be repaid. Assistance is also provided to the states/UTs and state seeds corporations for creation and operation of seed-processing plants.

44. India sets targets for priority-sector lending to ensure that banks provide credit to specific priority sectors. Domestic and foreign commercial banks are required to reserve a percentage of their adjusted net bank credit (ANBC) or credit equivalent amount of off-balance-sheet exposure (OBSE), whichever is higher, for priority sectors. Domestic banks must reserve 40% of their ANBC/OBSE to lend to priority sectors, of which 18% must be channelled to agriculture, and foreign banks 32% of their ANBC/credit equivalent of OBSE to priority sectors, but with no requirement to lend to the agriculture sector (Table III.24).

45. In addition to credit set-asides, India has implemented programmes to ensure access to credit in agriculture and allied activities, including subsidizing commercial banks, including rural regional banks RBs, rehabilitation packages for distressed farmers (e.g. debt write-offs for farmers in distress and farmers in arrears), and a One Time Settlement (OTS) Scheme for small and marginal farmers and relief to farmers indebted to non-institutional lenders, such as money lenders.

46. Rural cooperative banks play an important role in channelling credit to the rural sector, and are considered by the Government to be a key instrument of financial inclusion in reaching out to the rural areas. Therefore, subsidies are provided to regional rural banks, cooperative banks, and public sector banks to provide short-term credit to farmers at preferential rates (section (3)(ii)(a)). For example, in 2009/10, the Central Government provided a subsidy of 2 percentage points on its own loans to public sector banks, to provide short-term production credit to farmers, of up to Rs 300,000 per farmer, at an interest rate of 7%.[40] If farmers reimbursed their loans within one year, an "additional subsidy" was granted to public banks so that they would reduce the interest rate by a

[40] The nominal prime lending rate was 11%-12% for 2009/10 (Chapter I) (Reserve Bank of India, 2010c).

further 1 percentage point, bringing the interest rate down to 6%. In 2010/11, this "additional subsidy" was increased to 2 percentage points, lowering the effectively paid interest rate by farmer to 5%.[41] Apart from this subsidy granted by the Central Government, farmers may benefit from other subsidized interest rate offered at the state level.

47. The National Bank for Agriculture and Rural Development (NABARD) has been designated as the implementing agency for the Short-term Rural Cooperative Credit Structure package. The purpose of the package is, *inter alia*, the recapitalization of the primary agricultural cooperative societies (PACS) and the central cooperative banks (CCBs). States are required to sign memorandums of understanding (MoUs) with the Government of India and NABARD, committing to implementation of the legal, institutional, and other reforms as envisaged in the package. To date, 25 states have signed such MoUs. As of March 2011, Rs 87 billion had been released by NABARD for recapitalization of 53,380 PACS.[42]

48. NABARD also administers funds that ensure the availability of credit to farmers. In 2010/11, NABARD disbursed Rs 120.6 billion through the Rural Infrastructure Development Fund (RIDF) to finance irrigation, rural roads and bridges, health and education, soil conservation, drinking water schemes, flood protection and forest management projects.[43] The RIDF was set up with contributions from commercial banks: commercial banks deposit the shortfall in agriculture/priority sector lending with NABARD as part of their contribution to the RIDF.[44]

49. In 2008, India implemented the Agricultural Debt Waiver and Debt Relief Scheme, under which some 36.9 million farmers have had their debts waived or have been granted some kind of relief.[45] According to the authorities this programme is not in force.

50. The Agriculture Insurance Company of India Ltd. (AICI) was established in 2002 to implement the Government's National Agriculture Insurance Scheme (NAIS).[46] The main objective of the NAIS is to protect farmers against crop losses due to natural calamities. NAIS has been in operation since 1999/00 and is being implemented by 23 states and 2 UTs. The scheme is available to farmers irrespective of the size of their holding. It covers all food crops, oilseeds, and annual commercial/horticultural crops in respect of which past yield data are available for at least ten years, since premiums are based on these data. Premium rates are high in the case of groundnut and cotton (risky crops) because of high variation in yield, whereas the rates for sugarcane and wheat are comparatively low since these are stable crops. The implementing agency must bear all normal losses for annual commercial/horticulture crops, i.e. claims up to 150% of premiums in the first three years and 200% of premiums thereafter. Small and marginal farmers are entitled to a subsidy of 50% of the premium charged. The scheme provides for compulsory coverage in respect of farmers that have taken loans, whereas farmers with no debts may opt for insurance cover on a voluntary basis. Other insurance schemes are under implementation, including the Pilot Modified NAIS (MNAIS), the Pilot Weather Based Crop Insurance Scheme (WBCIS), and the Pilot Coconut Palm, Insurance Scheme (CPIS).

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[41] Ministry of Finance (2009) and (2010c).

[42] Ministry of Finance (2011a).

[43] Information provided by the authorities.

[44] NABARD online information, "Credit Functions: Direct Credit". Viewed at: http://www.nabard.org/creditfunctions/directcredit.asp.

[45] Department of Agriculture (undated).

[46] The Agriculture Insurance Company of India Ltd. (AICI) is registered with the Insurance Regulatory and Development Authority (IRDA).

(3) SERVICES

(i) Overview

51. In 2009/10, the services sector accounted for about 56% of GDP, up from 53% in 2006/07. The sector grew at an average annual rate of 10% per year in 2006/07-2009/10, faster than average GDP growth, and contributed nearly 60% of the overall growth of the economy. The leading subsectors in terms of contribution to total value added in 2009/10 were financial services, commerce, and communications.

52. Inadequate infrastructure has become a critical constraint to India's development. To address this concern, the 11th Five-Year Plan outlined a comprehensive strategy to improve both rural and urban infrastructure, including electric power, roads, railways, ports, airports, telecommunications, irrigation, drinking water, sanitation, storage, and warehousing. However, public investment alone would probably be insufficient to address India's infrastructure needs, particularly considering India's quest for fiscal consolidation. Hence, an increase in private investment in infrastructure would be necessary to attain India's goal. Private sector investment, including from foreign sources, could play an important role not only in developing infrastructure India, but would also provide an opportunity for foreign investors and would result in more stable, less volatile, capital inflows.

53. Tourism is an important subsector, though this is not apparent from GDP figures. It has a good growth potential and, this through its backward and forward linkages can stimulate other economic sectors like agriculture, horticulture, handicrafts, transport, and construction.

54. During the period under review, India's exports of services grew at over 13.5% per annum. India is a net exporter of services (Chart IV.1); its services balance showed a surplus of US$35,726 million in 2009/10 (equivalent to 2.7% of GDP), US$6,257 million higher than in 2006/07. India is a leading exporter of computer and related services, including software installation and data processing, and a major supplier of back-office processing services, such as abstracting and indexing, data processing, legal transcription, telemarketing, and website design.

55. India took part in the negotiations on financial services and telecommunications and accepted the Fifth and Fourth Protocols to the GATS. India's Schedule of Specific Commitments under the GATS is limited to commitments in 6 of the 12 services categories. India accepted specific commitments in the areas of business services, communications services, construction-related and engineering services, financial services, health-related and social services, and tourism services.[47] As regards horizontal commitments, India introduced a series of requirements on entry and temporary stays of natural persons such as business visitors and intra-corporate transferees. India's Schedule of MFN horizontal exemptions include exemptions on telecommunications services affecting neighbouring countries indefinitely; audio-visual services; shipping; and recreational services.

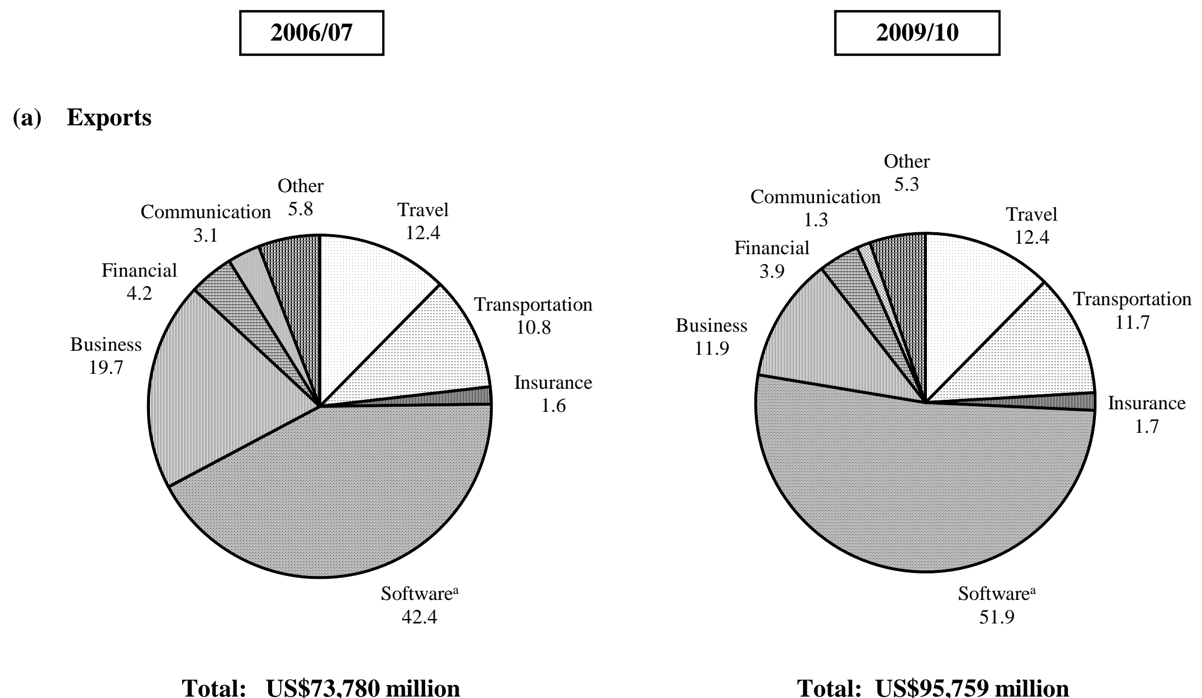
[47] WTO document S/DCS/W/IND, 2 April 2003.

Chart IV.1
Trade in services, 2006/07 and 2009/10

Per cent

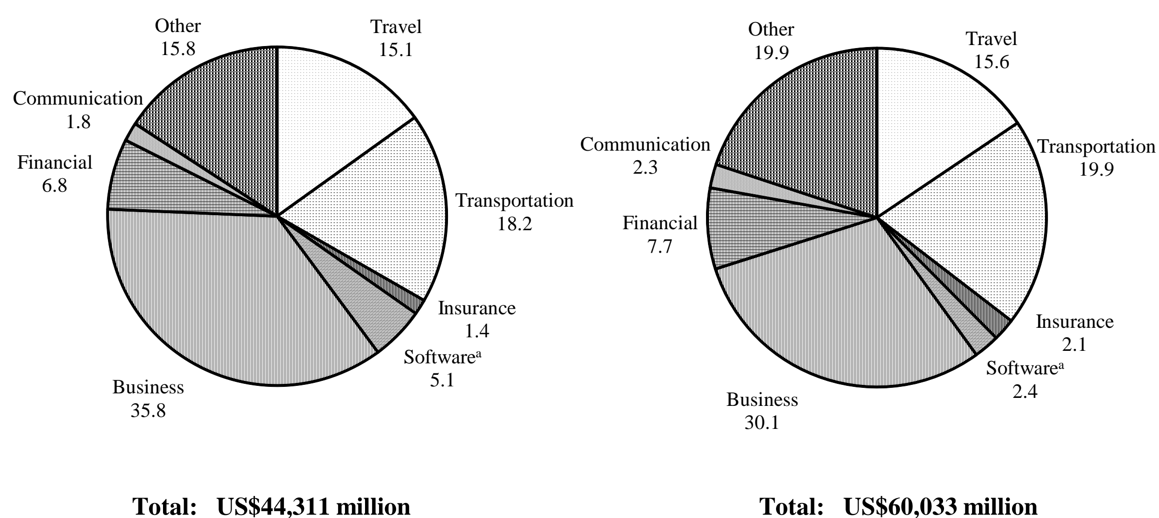
2006/07 **2009/10**

(a) Exports



Total: US$73,780 million **Total: US$95,759 million**

(b) Imports



Total: US$44,311 million **Total: US$60,033 million**

a **Software services include computer services and information technology enabled services (ITES)/ business process outsourcing (BPO).**

***Source*: Reserve Bank of India (2011), *Statistical Bulletin*, February. Viewed at: http://www.rbi.org.in/.**

(ii) Financial services

56. Financial services (including banking and insurance) accounted for 7.9% of GDP in 2009/10, up from 6.7% in 2006/07. In 2009/10, in contrast with previous fiscal years, India ran a trade deficit in financial services, as imports increased substantially faster than exports; exports totalled US$3.74 billion and imports US$4.64 billion. The authorities have noted that the increase in imports mainly reflects higher costs of imported financial services as a consequence of the global financial crisis.[48]

57. India's legal framework for the financial sector has been updated and strengthened since its last Review; however, part of this legislation has yet to enter into force. The sector is regulated by the Reserve Bank of India (RBI) (banks and related financial institutions), the Insurance Regulatory and Development Authority (IRDA) (insurance companies), and the Securities and Exchange Board of India (SEBI) (securities and stock exchange activities).

58. Financial services, particularly banking and insurance, continue to be dominated by state-owned companies. Measures have been adopted to encourage competition from the private sector, and restrictions on foreign banks' ownership and establishment conditions have been relaxed. Efforts have also been made to improve prudential regulations and, in general, banks are soundly capitalized. Plans to recapitalize rural regional banks have been devised, and their past poor performance has improved.

(a) Banking

Market structure and performance

59. India's banking sector comprises a relatively small number of commercial banks compared with other types of financial institution. Apart from commercial banks and cooperative credit institutions, the financial system consists of a wide variety of non-banking financial institutions (NBFIs). As at 31 March 2010, there were 81 scheduled commercial banks (excluding regional rural banks (RRBs)), 1,674 urban cooperative banks (UCBs), 5 development finance institutions (DFIs), 12,662 non-banking financial companies (NBFCs), and 18 primary dealers (PDs) (Table AIV.1).[49] All these institutions are supervised by the Reserve Bank of India (RBI), through the Board for Financial Supervision. In general, with the exception of primary dealers, there has been a consolidation of financial institutions since 2007, with fewer institutions in all categories. There are also 82 RRBs supervised by the National Bank for Agriculture and Rural Development (NABARD).[50]

60. India's banking sector continues to be dominated by public sector banks (PSBs), which account for approximately 73.7% of the sector's total assets. At end-March 2010, of the 81 scheduled commercial banks, there were 27 PSBs (19 nationalized banks, the State Bank of India (SBI), 6 SBI associate banks and the Industrial Development Bank of India (IDBI)), 22 private sector banks, and 32 foreign banks (Table AIV.1). An important issue during the period under review was the recapitalization of PSBs, for which the 2010/11 Budget provided Rs 165 billion to help banks maintain a Tier I capital adequacy ratio in excess of 8%. The authorities have noted that, though government shareholding in all public sector banks remained above 51% during 2009/10, and the

[48] The authorities have noted that, the rapid increase in imports of financial services in 2009/10 was particularly on account of higher payments for bank, collection and letter of credit charges, cancellation of forward contracts, commissions on financial leasing, brokerage fees, underwriting commissions, charges on operation and regulatory fees, custodial services, and depository services fees.

[49] Information provided by the Reserve Bank of India; and Reserve Bank of India (2010a).

[50] Reserve Bank of India (2006).

average was 58%, some PSBs had been very close to the 51% threshold.[51] This raises the issue of the trade-off between recapitalization of PSBs, in order to ensure continued credit creation by public sector banks, and maintaining the statutory floor of 51% for government ownership.

61. Foreign investment participation is allowed in both public and private sector banks, up to a threshold of 74% for all forms of foreign investment (i.e. FDI and FII) in private banks, and of 20% in public banks. In March 2010, 9 PSBs had foreign capital of up to 10%, and 11 had foreign capital between 10% and 20%. These public banks also have domestic private shareholding; for 11 of them, total private sector participation (foreign and domestic) was between 40% and 49%.[52]

62. Commercial banks (domestic and foreign) are required to allocate a certain percentage of net lending (40% for domestic banks and 32% for foreign banks) to priority sectors, including agriculture, micro and small enterprises, and exports (Table III.24). Of the 40% to be allocated by domestic banks, 18 percentage points must be allocated to agriculture; 10% of credit must be allocated to weaker sections.[53] For foreign banks, of the 32% to be allocated to priority sectors, at least 10% must be for small-scale industries, and 12% for exports. Although credit assignment to specified activities, as the authorities note, has social purposes and seeks financial inclusion, it may also have an impact on the overall cost of financial intermediation, as it reduces the amount of credit allocated to the more profitable sectors, and hence increases overall interest rates, as banks need to recover costs. The policy of credit allocation for specified purposes may also result in increased financial risk, and lead in some cases to difficulties in recovering assets.

63. During most of the period under review, and against the backdrop of fast economic growth, bank credit continued to expand rapidly; as a result, its share of GDP increased, a sign of a rising degree of financial intermediation. Bank credit more than doubled between 2005/06 and 2009/10 to reach Rs 35 trillion or 54.5% of GDP, up from 48% reported in the previous Review. The total deposits of scheduled commercial banks more than doubled, representing 74% of GDP in FY 2009/10. Credit to manufacturing accounted for 37.5% of total credit in 2009/10, followed by services (20.8%), real estate (16.6%), and agriculture (11.9%).

64. Scheduled commercial banks remained well capitalized in the midst of the financial crisis. The minimum capital to risk-weighted assets ratio (CRAR) requirement for banks regulated by the RBI is 9%. At end-March 2010, the average CRAR for commercial banks was 14.5%, higher than in March 2009 and March 2008. The quality of assets of Indian banks remained stable during the financial crisis and its aftermath. During the crisis year 2008-09, the gross non-performing assets (NPAs) ratio remained unchanged for scheduled commercial banks, at some 2.25%, increasing only slightly to 2.39% in 2009-10. The net NPAs ratio of scheduled commercial banks increased from 1.05% at end-March 2009 to 1.12% at end-March 2010 (Table IV.5).

65. The RBI has paid particular attention to fostering financial inclusion to overcome the still low levels of financial penetration and deepening in India. To this end, the RBI introduced a scheme to allow the opening of accounts with no pre-conditions and a low minimum balance requirement (no-frills accounts). Recent data show that progress has been made, and that the number of no-frills accounts opened has increased. Micro-finance has been an important component of the financial inclusion process in India. To this end, the RBI has promoted the Self-Help Group-Bank Linkage Programme (SBLP) as a source of micro-finance. Although ATM penetration remains low, the authorities noted that banks are seeking to increase their number.

[51] Reserve Bank of India (2010d).
[52] Reserve Bank of India (2010d).
[53] This 10% may be a part or not of the 40% allocated to priority sectors.

Table IV.5
Trends in the banking sector's gross loans and deposits and prudential indicators, 2006-10
(Rs million and %)

	2006	2007	2008	2009	2010
Assets	2,785,863	3,459,961	4,326,166	5,241,330	6,025,141
Return on assets (%)	1.01	1.05	1.12	1.13	1.05
CRAR (%)	12.32	12.28	13.01	13.98	14.58
Net NPA ratio (%)	1.22	1.02	1.00	1.05	1.12
Total loans	1,516,811	1,981,236	2,476,936	3,000,906	3,497,054
US$ equivalent (million)	33,479	47,915	56,935	61,996	76,478
Loans by economic sector (% of total loans)					
Agriculture	11.47	11.63	11.12	11.29	11.88
Industry	36.29	35.20	35.00	35.14	37.45
Services	21.11	21.24	22.33	21.55	20.76
Real estate	17.28	18.82	18.44	17.50	16.58
Total deposits	2,164,681	2,696,936	3,320,061	4,063,203	4,752,456
US$ equivalent (million)	45,778	65,224	76,314	83,942	103,933

Source: Information provided by the Indian authorities.

Legal and regulatory framework

Commercial banks

66. The Reserve Bank of India (RBI) regulates the banking sector, in accordance with the Reserve Bank of India Act 1934. The RBI performs its financial supervisory functions under the guidance of the Board for Financial Supervision (BFS), constituted in November 1994 as a committee of the Central Board of Directors and chaired by the RBI Governor. The BFS oversees the consolidated supervision of the financial sector, comprising commercial banks, financial institutions, and non-banking finance companies, and provides guidelines on regulatory and supervisory issues. The authorities have noted that the BFS' current focus is on strengthening the supervision of financial institutions, and improving consolidated accounting, the assessment of non-performing assets, and the use of supervisory rating model for banks.[54]

67. The banking sector legal framework comprises two "umbrella acts": the Reserve Bank of India Act 1934, and the Banking Regulation Act 1949. A number of other acts govern banking operations, specific functions, or individual financial institutions.[55]

68. In recent years, a number of regulatory changes and legislative amendments have been introduced, but are still awaiting enactment. In the latest Budget Speech, the Minister of Finance proposed to enact a number of these laws, including: the Banking Laws Amendment Bill 2011; the Bill on Factoring and Assignment of Receivables; and the State Bank of India (Subsidiary Banks Laws) Amendment Bill 2009, among others. In addition, as announced in the Budget 2010/11, the Government has set up a Financial Sector Legislative Reforms Commission to rewrite and streamline

[54] Reserve Bank of India online information, "About us". Viewed at: http://www.rbi.org.in/scripts/AboutusDisplay.aspx.

[55] Acts governing banking operations include: the Companies Act 1956; the Banking Companies (Acquisition and Transfer of Undertakings) Act 1970/1980; the Bankers' Books Evidence Act; and the Banking Secrecy Act. Acts governing specific functions, include: the Public Debt Act 1944/Government Securities Act (Proposed); the Securities Contract (Regulation) Act 1956; the Foreign Exchange Regulation Act 1973/Foreign Exchange Management Act 1999; and the Payment and Settlement Systems Act 2007. Specific legislation on individual institutions includes: the State Bank of India Act 1954; the Industrial Development Bank (Transfer of Undertaking and Repeal) Act 2003; the Industrial Finance Corporation (Transfer of Undertaking and Repeal) Act 1993; the National Bank for Agriculture and Rural Development Act; the National Housing Bank Act; and the Deposit Insurance and Credit Guarantee Corporation Act.

the financial sector laws, rules, and regulations. The Commission is expected to complete its work by 2013.

69. The RBI, as regulator and supervisor, prescribes broad parameters of banking operations within which India's banking system functions. The RBI also acts as banker to the Government and lender of last resort, performing merchant banking functions for the central and the state governments. The RBI has three fully owned subsidiaries: the National Housing Bank (NHB), the Deposit Insurance and Credit Guarantee Corporation of India (DICGC), and the Bharatiya Reserve Bank Note Mudran Private Ltd. (BRBNMPL). The RBI has a majority stake in the National Bank for Agriculture and Rural Development (NABARD); it has recently divested its stake in the State Bank of India.[56]

70. Indian and foreign banks require a licence from the RBI to undertake banking operations in India. An authorization is required for the opening of new branches by banks and for changes in the location of existing branches, in accordance with the Branch Authorization Policy. Since 1 December 2009 Indian banks no longer require a licence from the RBI to open a branch in areas with a population below 50,000, subject to reporting. The RBI also regulates mergers, amalgamation, and winding up of banks.

71. Scheduled commercial banks are required to maintain a certain portion of their net demand and time liabilities (NDTL) in the form of cash with the RBI, i.e. cash reserve ratio (CRR), and in the form of investment in approved securities, i.e. statutory liquidity ratio (SLR). The RBI monitors compliance with these requirements in the banks' day-to-day operations. The CRR is fixed by the RBI and used as a tool to inject/subtract excess liquidity. In the wake of the financial crisis, both the CRR and the SLR were lowered, but as monetary conditions changed, they were raised to 6% and 24%, respectively, and were still at this level in March 2011.[57]

72. Interest rates on most categories of deposits and lending transactions are largely determined by banks. However, the RBI regulates interest rates on savings accounts held at scheduled commercial banks, deposits of non-resident Indians (NRI), and a few categories of advances. During most of the period under review, the RBI used the benchmark prime lending rate (BPLR) system, introduced in 2003 to regulate interest rates. The BPLR was used as a benchmark rate for banks to price their loan products so as to reflect actual costs but banks were allowed to lend below the BPLR. This meant that it was difficult to assess the transmission of RBI policy rates to actual bank lending rates. Based on the recommendations of a working group, the RBI replaced the system by a base rate system in April 2010, which entered into effect on 1 July 2010. The base rate is the minimum rate for all loans. Banks are not allowed to lend below the base rate except for: (a) differential rate of interest (DRI) advances; (b) loans to banks' own employees; (c) loans to banks' depositors against their own deposits; and (d) restructured Working Capital Term Loans (WCTL), and Funded Interest Term Loans (FITL), granted for viability purposes. Subsidized interest rates on agricultural loans and for

[56] Reserve Bank of India (undated).

[57] In terms of Section 42 (1) of the Reserve Bank of India Act 1934, the RBI having regard to the needs of securing monetary stability, prescribes the CRR for scheduled commercial banks without any floor or ceiling rate. At present, the CRR is at 6% of a bank's total of net demand and time liabilities for SCBs. Between end-April and end-August 2008, the CRR was increased in stages from 7.75% to 9%; it was brought down in stages to 5% between then and January 2009 and raised in stages to the present rate effective 24 April 2010. In terms of Section 24 of the Banking Regulation Act 1949, the RBI can prescribe the SLR for SCBs in specified assets; this percentage must not exceed 40% of the bank's total demand and time liabilities in India. At present the SLR for scheduled commercial banks is 24% of their net demand and time liabilities NDTL.

some export credits in rupees can also be lower than the base rate.[58] The base rate system applies to all new loans and to existing loans that come up for renewal. Existing loans based on the BPLR system may run until their maturity. The RBI also deregulated interest rates on small loans of up to Rs 200,000 and export credits in rupees, with effect 1 July 2010, and stipulated that these rates may now be set at or above the base rate. The authorities expect the base rate system to facilitate better pricing of loans and enhance transparency in lending rates.[59]

73. The RBI requires that banks maintain a capital to risk-weighted assets ratio (CRAR) of 9%. This includes capital for credit risk, market risk, operational risk, and other risks. Also, in order to maintain the quality of loans and advances, the RBI requires banks to classify their loan assets as performing and non-performing assets (NPAs), primarily based on the record of recovery from the borrowers. NPAs are further categorized into sub-standard, doubtful, and loss assets, depending upon the age of the NPAs, and value of available securities. Banks are also required to make appropriate provisions against each category of NPA and to disclose their exposure to the 20 largest depositors/borrowers, apart from disclosing information on sector-wise NPAs (percentage of NPAs to total advances in that sector) and on the changes in NPAs. Banks are required to have exposure limits, to prevent credit concentration risk and to limit exposure to sensitive sectors such as capital markets and real estate. The RBI also requires banks to classify their investment portfolios into three categories for valuation purposes: held to maturity (HTM), available for sale (AFS), and held for trading (HFT).

74. During the period under review, and in the wake of the global financial crisis, the RBI stepped up its prudential regulations, mainly through the adoption of a roadmap for the implementation of the "advanced approaches" to evaluate risk under Basel II in July 2009.[60] This will require banks to upgrade their risk management framework, and undertake an internal assessment of their readiness to adopt the advanced approaches, in the light of the Basel II criteria. Banks require prior RBI approval to adopt any of the advanced approaches. In the meantime, the RBI issued guidelines in March 2010 on "Implementation of the Standardised Approach" (TSA) and "Alternative Standardised Approach" (ASA) for calculation of capital charges for operational risk, largely based on the Basel Committee on Banking Supervision (BCBS) guidelines.[61] Guidelines on the Internal

[58] In general, since the RBI deregulated the interest rate on rupee export credit, effective 1 July 2010, exporters must obtain export loans in rupees at the market-determined interest rates. The exceptions to this are pre- and post-shipment export credits extended between 1 April 2010 and 31 March 2011 for seven employment-oriented export sectors (handicrafts; carpets; handlooms; leather and leather manufactures, jute manufacturing; engineering goods; and textiles) and for small and medium enterprises. These credits have been granted with an interest rate subvention of 2 percentage points, subject to the condition that the interest rate, after subvention, does not fall below 7%, which is the rate applicable to the agriculture sector under priority sector lending.

[59] Reserve Bank of India (2010d).

[60] Basel II offers a choice between two broad methodologies in measuring risks for the purpose of capital adequacy: (i) a standardized approach, used by banks in India since 31 March 2008; and (ii) an advanced approach, by which banks device their own internal risk measurement models. In the latter case, credit risk may be calculated by using a foundation internal ratings based (IRB) approach, or an advanced IRB approach. The standardized approach sets out specific weights for certain types of credit risk. Under both of the advanced approaches, three risk parameters must be used: the probability of default (PD), the exposure at default (EAD), and the loss given default (LGD). Under the foundation IRB, banks estimate only the PD and use supervisory values for the other parameters, while under the advanced IRB, institutions estimate all parameters themselves. Guidelines on the Internal Models Approach for Market Risk were issued by the RBI in April 2010.

[61] Under Basel II, operational risk may be calculated using one of three approaches: (a) a basic indicator approach (BIA); (b) the standardized approach (TSA); and (c) an advanced measurement approach

Models Approach for Market Risk were issued in April 2010. As the Basel II recommendations are phased in by the banking industry, it is expected that banks will move from the standardized approach to advanced approaches for each risk category by each individual bank. In this respect, the RBI has a schedule for banks to phase in the Basel II recommendations.[62] The benefit for banks to develop their own risk measurement systems is that they will eventually be subject to lower risk capital requirements, and will no longer be forced to rely on the ratings generated by external agencies, as is the case with the standardized ratings approach.

75. The RBI has set up a Deposit Insurance and Credit Guarantee Corporation, which provides insurance cover to all eligible bank depositors up to Rs 100,000 per depositor per bank.

76. The RBI supervises banks in order to monitor and ensure their compliance with the regulatory policy framework through on-site inspection, off-site surveillance, and periodic meetings with the banks' top management. On-site inspection is undertaken annually to assess the banks' financial health and to evaluate their performance in terms of quality of management, capital adequacy, asset quality, earnings, liquidity position, as well as internal control systems. Based on the findings of the inspection, banks are assigned supervisory ratings and are required to address any weaknesses identified. The RBI also requires banks to submit detailed and structured information, periodically, under its Off Site Surveillance and Monitoring System (OSMOS). Banks are allowed to undertake non-traditional banking activities, also known as para-banking, which include asset management, mutual funds business, insurance business, merchant banking activities, factoring services, venture capital, card business, equity participation in venture funds, and leasing.

77. In February 2005, the RBI formulated a Roadmap for Presence of Foreign Banks in India and the Guidelines on Ownership and Governance in Private Banks. The Guidelines cover minimum capital requirements, provisions on ownership structure, procedures for acquisition and transfer of shares, and conditions for senior officials and large shareholders.[63] Private-sector banks must maintain minimum capital, initially of Rs 2 billion, to be increased to Rs 3 billion in three years, while net worth must be Rs 3 billion at all times. No entity may own or control more than 10% of the paid-up capital of a private sector bank.[64] In addition, the voting rights of any individual, irrespective of their shareholding, are capped at 10%. The roadmap was divided into two phases; the first phase was implemented between March 2005 and March 2009, and the second phase was scheduled to begin in April 2009 after a review of the experience gained in the first phase.

78. In the first phase, foreign banks willing to have a presence in India for the first time could choose to operate through branch or to set up a 100% wholly owned subsidiary (WOS).[65] Foreign banks already operating in India were also allowed to convert their existing branches to a WOS,

(AMA). Guidelines on the TSA and an Alternative Standardised Approach (ASA) for operational risk largely based on the Basel Committee on Banking Supervision guidelines were issued by the RBI in March 2010.

[62] The time schedule for the application to use the advance approaches is: (a) internal models approach (IMA) for market risk, 1 April 2010 (approval 31 March 2011); (b) TSA for operational risk, 1 April 2010 (30 September 2010); (c) advanced measurement approach (AMA) for operational risk, 1 April 2012 (31 March 2014); and (d) internal ratings based (IRB) approaches for credit risk (Foundation and Advanced IRB), 1 April 2012 (31 March 2014).

[63] The authorities indicate that ownership and governance of banks specified in the Banking Regulation Act 1949 are supplemented by RBI regulations from time to time.

[64] However, exceptions are allowed for the consolidation or restructuring of weak banks; RBI approval is required.

[65] Under India's GATS commitments, foreign banks were allowed to access the Indian market only through branches. Restrictions were also imposed on the number of banking licences (12 per year, both for new entrants and existing banks), and on the value of the banking system's assets in the hands of foreign banks (15% of total assets).

which would be treated as existing branches of foreign banks for branch expansion in India. However, during the first phase no foreign bank applied to establish itself as or to convert to a WOS. The initiation of the second phase in April 2009, during which foreign banks would be permitted to enter into mergers and acquisitions with any private bank in India, subject to an overall investment limit of 74%, coincided with the global financial crisis. The RBI decided to continue with the policy and procedures set out in the first phase, to review the roadmap, and to start the second phase when there was more clarity on stability and recovery of the global financial system. In January 2011, the RBI released the Discussion Paper on Presence of Foreign Banks in India[66], seeking feedback from all stakeholders and the general public with respect to the most convenient form of foreign bank presence in India.[67] The authorities noted that the guidelines delineating the roadmap would be finalized after taking into account the feedback/suggestions received. As at June 2011, all foreign banks in India are branches.

79. Banks operating in India (including public-sector banks, privately owned banks, and foreign-invested banks) authorized to deal with foreign exchange, are eligible to set up offshore banking units (OBUs) in special economic zones (SEZs). Eligible banks are allowed to establish only one OBU per SEZ, essentially for wholesale banking operations. As a start-up contribution, the parent bank should provide a minimum of US$10 million to the OBU. OBUs are exempt from the cash reserve requirement (CRR); and a statutory liquidity ratio (SLR) exemption may be considered for a specified period, on request. OBUs are expected to provide loans at international rates to companies located in SEZs; they are also permitted to lend to corporations in the domestic tariff area (DTA), under External Commercial Borrowing (ECB) guidelines and subject to the Foreign Exchange Management Act (FEMA) regulations. This latter type of lending may not exceed 25% of total liabilities. OBUs are not allowed to accept or solicit deposits or investments from Indian residents, or open accounts for them.

Cooperative banks

80. Urban cooperative banks (UCBs) play a significant role in providing banking services to middle and lower income groups in urban and semi-urban areas. UCBs, like other cooperative societies, are registered under the respective State Co-operative Societies Act or Multi-State Cooperative Societies Act 2002, and governed by the provisions of the respective acts for non-banking issues such as registration, management, administration, recruitment, and amalgamation and liquidation. However, for their banking-related activities, certain provisions of the Banking Regulation Act 1949 also apply. These banks are hence under the dual control of their respective state and the Central Government, and by the RBI.

81. At end-March 2010, there were 1,674 UCBs, of which only 53 were scheduled banks (Table AIV.1); 681 were unit banks (with no branches). UCBs are largely concentrated in a few states (Andhra Pradesh, Gujarat, Karnataka, Maharashtra, and Tamil Nadu). UCBs require a licence from the RBI for banking business, as well as prior authorization from the RBI to open a new place of business. UCBs that have applied for but not yet been granted a licence, may carry on banking business unless and until they are refused the licence. Once a licence has been refused or cancelled, they may no longer carry on banking activities. UCBs are subject to prudential norms relating to income recognition, asset classification, provisioning and capital adequacy ratio apply, as well as to on-site inspection and off-site surveillance. UCBs are awarded ratings by the RBI considering their performance under the CAMELS (Capital, Asset Quality, Management, Earnings, Liquidity and Systems and Control) model. All scheduled UCBs are inspected annually. Non-scheduled UCBs are

[66] Reserve Bank of India (2011a).
[67] Reserve Bank of India (2011a).

inspected every year or every two years based on the rating awarded to them under the CAMEL model.

82. Rural cooperative banks play an important role in channelling credit to the rural sector, and are considered by the Government to be a key instrument of financial inclusion in reaching out to the rural areas. Cooperative banks are registered under the respective State Co-operative Societies Act or under the Multi-State Cooperative Societies Act 2002. Short-term cooperative credit institutions (STCCIs) function at state, district, and village level and provide primarily short- and medium-term credit for production and marketing of agriculture products: they comprise state cooperative banks (StCBs), district central cooperative banks (DCCBs), and primary agricultural credit societies (PACS). Long-term cooperative credit institutions (LTCCIs) comprise state cooperative agriculture and rural development banks (SCARDBs), and primary cooperative agriculture and rural development banks (PCARDBs) (district or block level). At end-March 2009, there were 96,352 STCCIs, including 31 StCBs, 371 DCCBs, and 95,633 PACS. There were 717 LTCCIs, comprising 20 SCARDBs and 697 PCARDBs.

83. State cooperative banks and district central cooperative banks are ultimately regulated by the RBI, but their supervision is carried out by the National Bank for Agriculture and Rural Development (NABARD). The authorities have indicated that a large number of StCBs and DCCBs are unlicensed and are allowed to function as banks until they are either granted a licence or their application for licence is rejected.[68] The goal of the authorities is to ensure that only licensed cooperative banks operate; it has been recommended that banks that fail to obtain a licence by 2012, should not be allowed to operate, and a roadmap has been put in place to this end. At present, CRAR norms are not applicable to StCBs and DCCBs. However, since March 2008, they are required to disclose the level of CRAR annually.

Other financial institutions

84. The RBI also supervises the so-called "financial institutions", which provide medium- to long-term finance to specific sectors of the economy. In early 2011, there were four financial institutions under full regulation and supervision of the RBI: Exim Bank, the National Bank for Agriculture and Rural Development (NABARD), the National Housing Bank (NHB), and the Small Industries Development Bank of India (SIDBI). The same prudential norms that apply to commercial banks apply to these financial institutions, and they are subject to on-site inspection and off-site surveillance.

85. Regional rural banks (RRBs), local institutions established under the Regional Rural Banks Act 1976, are aimed at developing the rural economy by providing credit, particularly to small and marginal farmers, agricultural labourers, artisans, and small entrepreneurs. RRBs must have a "sponsor bank".[69] The equity of the RRBs is contributed by the Central Government (50%), the relevant state government (15%), and the sponsor bank (35%). In March 2011, there were 82 RRBs operating in 26 states and one union territory, with over 15,000 branches. RRBs are regulated by the RBI and the supervisory powers have been vested with NABARD.[70] RRBs must devote 60% of

[68] Reserve Bank of India (2010d).

[69] Under Section 3 of the RRBs Act 1976, RRBs are established in a State or union territory at the request of a sponsor bank, which is a stakeholder (35% of equity). Establishment is through a notification in the *Official Gazette*; this or a subsequent notification will specify the local limit within which the RRB will operate.

[70] NABARD has statutory responsibility for conducting inspections of the state cooperative banks (SCBs), district central cooperative banks (DCCBs), and regional rural banks (RRBs) under the provisions of the Banking Regulation Act 1949. In addition, NABARD conducts periodic inspections of state-level cooperative institutions. NABARD conducts periodic on-site inspections of 31 SCBs, 371 DCCBs,

outstanding advances to the private sector. CRAR norms are not applicable to RRBs; however, the RRBs are subject to the same income recognition, asset classification, and provisioning norms as commercial banks.

86. The financial situation of RRBs, reported as difficult in the last review, improved in 2009/10, partly as a result of their restructuring, amalgamation, and recapitalization, along with the application of the prudential regulatory requirements to RRBs. In 2009/10, 79 of the 82 RRBs posted profits. The process of amalgamation of RRBs, initiated in September 2005, brought their number down from 196 to 82. In September 2009, a Committee was established to assess the CRAR of RRBs and to suggest a roadmap for achieving a CRAR of 9% by March 2012. The Committee noted that to meet this goal, a recapitalization of Rs 22 billion was required for 40 of the 82 RRBs, and recommended that the amount be released in two instalments: Rs 13.38 billion in 2010/11 and Rs 8.63 billion in 2011/12; and an additional Rs 7 billion be kept to meet the additional capitalization needs of the weaker RRBs of the north-eastern and eastern regions.

87. The Local Area Bank scheme was introduced in 1996 to create institutions that would provide financial intermediation with a specialized local focus in rural and semi-urban areas. Four local area banks are functioning, although six licences have been granted. Their performance has been satisfactory, and their profitability is higher than that of scheduled commercial banks, but activity remains concentrated in one of the banks (Capital Local Area Bank), which accounts for over two thirds of total assets of these banks.

88. Non-banking financial companies (NBFCs), which engage in lending, investment in shares and securities, hire purchase, chit fund, insurance or collection of monies, are regulated by the RBI and are open to foreign investment up to 100% of their capital. NBFCs do not have any cap on exposure to the capital market. They are classified according to the operations they are allowed to undertake by the RBI. As at March 2010 (latest available figures), there were 12,662 NBFCs, of which 311 were permitted to accept deposits and were classified as NBFC-Ds; non-deposit taking companies are classified as NBFC-NDs.

89. The RBI issues directives for NBFC-Ds setting the amount of public deposits that may be accepted, and the maximum rate of interest payable on such deposits (currently 12.5%).[71] NBFC-Ds may only take time deposits ranging from 12 to 60 months; brokerage fees and other expenses may amount to a maximum of 2% and 0.5% of the deposits, respectively. NBFC-Ds are required to comply with all the prudential norms on income recognition, asset classification, accounting standards, provisioning for bad and doubtful debts, capital adequacy, and credit and investment concentration. Some limitations to investment apply: NBFC-Ds may invest only up to 10% of their owned funds in real estate, and up to 20% in unquoted shares, of other than group/subsidiary companies. NBFC-Ds are subject to a statutory liquidity ratio (SLR) of 15% of deposits, but not to any CRAR norms as they do not accept demand deposits.

90. Initially, NBFC-NDs were not subject to prudential norms for capital adequacy and exposures. However, their borrowings increase considerably, partly due to the entry of some large companies in the industry, and since December 2006, NBFCs with assets of Rs 1 billion or more are classified as Systemically Important and are required to comply with exposure and capital adequacy norms. Further, to avoid risks in the NBFC subsector affecting the banking sector, exposure of banks

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20 SCARDBs, and 82 RRBs (NABARD online information, "Supervisory Functions". Viewed at: http://www.nabard.org/rolefunctionssupervisory.asp.

[71] Currently (June 2011), an NBFC asset finance company (AFC), with minimum investment grade credit rating may accept deposits of up to four times its net owned funds (NOFs): an unrated AFC may accept deposits of up to 1.5 times its NOFs.

to the NBFCs, either in the form of credit facilities or of equity contribution, has been prudentially capped. The exposure of a bank to a single NBFC must not exceed 10% of the bank's capital funds (15% for infrastructure lending); the cap is 15% for NBFC-AFCs (20% for infrastructure lending). Currently, all NBFC-Ds and all large NBFC-NDs are subject to regular annual inspections to identify any possible concern.

91. Since their establishment in 1995, primary dealers (PDs) have played an active role in the government securities market by underwriting and bidding for new issuances and acting as market makers for these securities. Banks are allowed, since 2006/07, to undertake PD activities through specific departments, while stand-alone PDs are permitted to diversify into other business activities. As of 2010, there were 7 stand-alone PDs and 11 banks authorized to undertake PD business (Table AIV.1). Any change in the shareholding pattern or capital structure of a PD needs prior RBI approval. Although primarily regulated by the RBI, to which they must report periodically, PDs must register with and are regulated by the Securities and Exchange Board of India (SEBI) for their stock-exchange activities or any other activity regulated by SEBI. They must join the Primary Dealers Association of India (PDAI) and the Fixed Income Money Market and Derivatives Association (FIMMDA) and abide by their code of conduct.

92. The RBI also supervises conglomerates under the Consolidated Supervision and Financial Conglomerate (FC) Monitoring Mechanism, in place since June 2004. The FC monitoring framework has two main components: (i) off-site surveillance through quarterly reporting requirements; and (ii) half-yearly discussions with the CEOs of the major entities of the FCs in association with other regulators. A group is listed as an identified FC if it has significant presence in at least two financial market segments.

(b) Insurance

Market structure and performance

93. The insurance sector is regulated by the Insurance Regulatory and Development Authority (IRDA), established in 2000. Its functions include supervising the development of the sector, granting licences to insurance intermediaries, and specifying the percentage of insurance business to be undertaken in rural areas and the social sector.[72]

94. At end-December 2010, there were a total of 48 insurance companies, including 23 life insurance companies, 15 general private and four general public insurers, two specialized government insurers (ECGC and AIC), and a reinsurance company (Table IV.6).[73] Total equity in the industry reached Rs 293.9 billion, of which Rs 230.6 billion correspond to the life insurance business. Increased competition has resulted in rapid growth in the industry, and larger private sector participation. Foreign participation as at 31 December 2010 was 24.1% of total private equity, not far off the legal limit of 26%.

95. Despite the large number of private insurance companies, the insurance industry continues to be dominated by state-owned enterprises. The market share of Life Insurance Corporation (LIC) of India, although somewhat lower than reported in the last review (73.5%), was of 68.7% of the life insurance subsector in 2010/11, while the four non-specialized public non-life insurance companies

[72] The "social sector" includes the "unorganized" sector, informal sector, economically vulnerable or backward classes, and other categories of persons both in rural and urban areas.

[73] Under the provisions of the Insurance Act 1938, the General Insurance Corporation of India has been designated as the "Indian Reinsurer" which entitles it to receive obligatory cessions of 10% from all the direct non-life insurers.

(National, New India, Oriental, and United), accounted for 53.2% of gross premium income. The market share of private insurers increased from 26.5% in 2005/06 to 31.3% in 2010/11 for life insurers, and from 26.3% to 46.7% for general insurers. Competition in the industry is still constrained by the relatively high entry barriers: the minimum capital requirement to set up an insurance company is Rs 1 billion, and Rs 2 billion for a reinsurance company, and the share of foreign investment is restricted to a maximum of 26%. Competition is also constrained by requirements to place a certain percentage of policies with the rural and social sectors.

Table IV.6
Insurance and reinsurance market, end-December 2010

Insurer	Private		Public		Total		FDI (Rs billion)	% of FDI to total equity
	No.	Equity (Rs billion)	No.	Equity (Rs billion)	No.	Equity (Rs billion)		
Life	22	230.59	1	0.05	23	230.64	55.70	24.16
General	15	36.62	4	5.5	19	42.12	8.61	20.44
Special Govt insurance	0	0	2	11	2	11.00	0	--
Health insurer	3	5.86	0	0	3	5.86	1.41	24.08
Re-insurer	0	0	1	4.3	1	4.30	0	--
Total	40	273.07	8	20.85	48	293.92	65.72	22.36
Pending applications	3				3			

Source: Information provided by the Indian authorities.

96. Insurance companies must maintain a required solvency margin which, for life insurers, is the higher of Rs 500 million (Rs 1 billion for the reinsurer) or a sum based on a formula.[74] The required solvency margin for non-life insurers is the maximum of Rs 500 million (Rs 1 billion for the reinsurer), or 20% of net premium income, or 30% of net incurred claims. Insurance companies are required to maintain a solvency margin at a ratio of 1.5 (ratio of actual to the required solvency margin) at all times. At end-December 2010, all the 23 life insurance firms were in compliance with the requirement (including LIC). Among the 21 non-life insurers who were in operation during 2009/10, 19 insurers complied with the mandated solvency requirements, and two public-sector firms, did not comply.[75] The authorities indicated that the situation improved in 2010/11, when 23 out of 24 non-life insurers complied with the mandated solvency requirements.

97. During the period under review, the insurance penetration rate as a percentage of GDP increased substantially for life insurance rising from 2.5% in 2005 to 4.6% in 2009, while density increased from US$18 in 2005 to US$47 in 2009.[76] Growth in the general insurance sector has been more moderate; penetration has remained stable at around 0.6%, while density increased from US$4.4 in 2005 to US$6.7 in 2009. Penetration in rural areas has remained low. The Government is promoting rural insurance coverage through the use of micro-insurance schemes and quantitative targets for premiums to be directed to the rural and social sectors (see below). Other measures to increase rural insurance coverage include a National Agriculture Insurance Scheme, operated by the Agriculture Insurance Company of India (see section (2)).

[74] The formula is given in the IRDA (Assets, Liabilities and Solvency Margin of Insurers) Regulations 2000.

[75] The specialized insurers, AIC and ECGC reported solvency ratios of 2.07 and 14.17 respectively in March 2010, as against 4.58 and 16.42 on 31 March 2009. The national re-insurer, the General Insurance Corporation of India, reported a solvency ratio of 3.71, slightly above that reported in March 2010 (Insurance Regulatory and Development Authority, 2011).

[76] Insurance penetration is measured as the ratio of premiums (in US$) to GDP (also in US$). Insurance density is calculated by dividing total premiums (in US$) by total population.

98. The Micro Insurance Regulations 2005 were implemented to promote the use of insurance by people in the lower income brackets. As a result, premium income under micro-insurance has increased substantially, doubling to Rs 4 billion in 2009/10; some 28 micro-insurance products had been launched as at September 2010 and some 20 million individuals had been insured. The micro-insurance market is dominated by the LIC, which contributed 94% of total micro-insurance premiums in 2009/10. The development of the micro-insurance market has resulted in an increase in the number of micro insurance agents: there were 8,676 in March 2010.

Regulatory framework

99. Insurance and re-insurance in India are regulated by the Insurance Act 1938, as amended by the Insurance (Amendment) Act 2002; the Insurance Regulatory and Development Authority Act 1999, which amended the Insurance Act 1938; the Life Insurance Corporation Act 1956; and the General Insurance Business (Nationalisation) Act 1972. A number of bills were drafted during the period under review and are awaiting implementation, including the Insurance Laws (Amendment) Bill, 2008; the Life Insurance Corporation (Amendment) Bill 2009; and the Pension Fund Regulatory and Development Authority Bill, revised, and first introduced in 2005.

100. The IRDA, the sector's regulator, has the authority to specify the percentage of life insurance business and general insurance business to be undertaken by the insurer in the rural or social sectors.[77] The IRDA is also responsible for supervision of the Tariff Advisory Committee, the body responsible for setting premiums (see below).

101. In accordance with the 1938 Insurance Act, as amended, insurance services may only be carried on by an Indian insurance company, meaning any insurer formed and registered in India under the Companies Act 1956, whose sole purpose is to carry on life insurance business or general insurance business or re-insurance business. In 1999, the Insurance Regulatory and Development Act opened India's insurance market to private participation, including foreign capital, and thus changed the definition of an Indian insurance company. Under this law, foreign participation in the Indian insurance sector is allowed, but the aggregate holdings of equity shares by a foreign company, either by itself or through its subsidiary companies or its nominees, may not exceed 26% of paid-up equity capital. In recent years, the Government has attempted to raise the limit on foreign equity participation to 49%, but this has not yet happened.

102. The Tariff Advisory Committee (TAC) under the IRDA was, until 2007, in charge of determining premiums for fire, motor vehicle, engineering, and workmen's compensation insurance; the insurance companies themselves set premiums for all other general insurance categories. Tariff control for all classes of non-life insurance business, except motor third-party cover, was eliminated effective 1 January 2007 and, as consequence, the role of TAC has been diluted.[78] Proposed legislation included in the Insurance (Amendment) Bill 2009, envisages dissolving the TAC.

103. In accordance with the Insurance Regulatory and Development Authority (Obligations of Insurers to Rural Social Sectors) Regulations 2002, insurers must place a certain percentage of their policies with the rural and social sectors (Table IV.7).[79] The Regulations mandate that every insurer,

[77] Section 14 of IRDA Act 1999 lays down the duties, powers, and functions of the IRDA.

[78] For motor third party cover, which is a statutory insurance cover required under the provisions of Motor Vehicles Act the IRDA has retained the powers to determine the rates, terms and conditions.

[79] For the purpose of the Regulations, the rural sector is defined as any place with a population of less than 5,000, a density of population of less than 400/km^2, and where more than 25% of the male working population is engaged in agriculture. The social sector includes the unorganized sector (self-employed workers), the informal sector, economically vulnerable or backward classes (living below the poverty line), and persons with disabilities and who may not be gainfully employed, both in rural and urban areas.

beginning to carry on insurance business after the entry into force of the Insurance Regulatory and Development Authority Act 1999, underwrite with persons in the rural sector, 7% of total life insurance policies in the first financial year; 9% in the second financial year; 12% in the third financial year; 14% in the fourth financial year; and 16% in the fifth financial year. The Insurance Regulatory and Development Authority (Obligations of Insurers to Rural Social Sectors) (Amendment) Regulations 2005 and the Insurance Regulatory and Development Authority (Obligations of Insurers to Rural Social Sectors) (Third Amendment) Regulations 2008 extended these percentages to 18% in the sixth and seventh financial years, 19% in the eighth and ninth financial years, and 20% in the tenth financial year. Thus, 20% is set for 2010/11 and for the financial years thereafter. The percentages for general insurance are: 2% for the first year, 3% for the second year, and 5% thereafter; the latter percentage was changed in 2008, to 6% in the eighth year and 7% in the ninth and tenth years.

Table IV.7
Insurance set asides for social and rural sectors, 2011

Legislation	Rural sector		Social sector
	Life insurance	General insurance	Life and general insurance
Insurance Regulatory and Development Authority (Obligations of Insurers to Rural Social Sectors) Regulations 2002	7% in the 1st financial year (FY); 9% in the 2nd FY; 12% in the 3rd FY; 14% in the 4th FY; 16% in the 5th FY		
Insurance Regulatory and Development Authority (Obligations of Insurers to Rural Social Sectors) (Amendment) Regulations 2005 Insurance Regulatory and Development Authority (Obligations of Insurers to Rural Social Sectors) (Third Amendment) Regulations 2008	18% in the 6th and 7th FYs 19% in the 8th and 9th FYs; 20% in the 10th FY. Thus, 20% is the percentage for 2010/11	2% in the 1st year; 3% in the 2nd year; 5% in the 3rd-7th years; 6% in the 8th year; 7% in the 9th and 10th years	5,000 in the 1st FY; 7,000 in the 2nd FY; 10,000 in the 3rd FY; 15,000 in the 4th FY; 20,000 in the 5th-7th FYs; 35,000 in the 8th FY; 45,000 in the 9th FY; 55,000 in the 10th FY and thereafter

Source: Insurance Regulatory and Development Authority (Obligations of Insurers to Rural Social Sectors) Regulations 2002; Insurance Regulatory and Development Authority (Obligations of Insurers to Rural Social Sectors) (Amendment) Regulations 2005; and Insurance Regulatory and Development Authority (Obligations of Insurers to Rural Social Sectors) (Third Amendment) Regulations 2008.

104. The obligations of insurers in existence in 1999 were defined separately, and are, as of 2009-10, of 25% of premiums for the rural sector in the case of the Life Insurance Corporation (LIC) of India, and 7% for general insurers; these obligations are applicable also in the financial years thereafter. Non-compliance with these obligations may lead to penal action on the part of the IRDA, under Section 105B of the Insurance Act 1938.

105. According to an IRDA report, all 22 life insurance companies in the private sector fulfilled their rural sector obligations, while the LIC was also compliant with its obligations, underwriting a percentage of policies in the rural sector above its prescribed 25% for 2009/10. Out of 22 life insurance companies in the private sector, 21 fulfilled their social sector obligations during 2009/10, and the IRDA initiated penal action against the non-compliant insurer.[80] The LIC also complied with its social-sector requirements in 2009/10. All non-life private insurance companies and all except one public sector insurer complied with their rural and social sector obligations in 2009/10; the IRDA initiated penal action against the non-complier.

106. The Micro Insurance Regulations 2005 provide a platform to promote insurance penetration among the rural and urban populations. The Regulations define micro-insurance as policies of up to Rs 30,000 or Rs 50,000, depending on the type of insurance contract. The Regulations promote the

[80] Insurance Regulatory and Development Authority (2011).

creation of specific micro-insurance products and allow non-governmental organizations and self-help groups to act as agents to insurance companies in marketing these micro-insurance products. Agents may charge a commission of 10% of the premium for single-premium life insurance policies, and 20% for non-single-premium policies; for non-life insurance business, agents may charge a commission of 15% of the premium.

107. Grievances with respect to insurance issues may be addressed to the Insurance Ombudsman, established in 1998. There are 12 Ombudsmen across India. The Insurance Ombudsman may engage in conciliation, and award-making; the Ombudsman's powers are restricted to insurance contracts of a value not exceeding Rs 2 million. Insurance companies are required to honour awards passed by an Insurance Ombudsman within three months.

108. The authorities have indicated that a number of regulatory changes are in the pipeline, including (a) raising the foreign equity limit in an Indian insurance company from 26% to 49%; (b) allowing foreign re-insurers to open branches only for re-insurance business in India; (c) making the underwriting of third-party risks of motor vehicles obligatory; (d) shifting the responsibility of appointing insurance agents from the IRDA to the insurers; and (e) introducing flexibility to raise capital through other forms instead of through equity alone.

(c) Securities

109. The securities sector is regulated by the Securities and Exchange Board of India (SEBI) established in 1992, through the Securities and Exchange Board of India Act 1992, as amended. The SEBI's mandate is to regulate and promote the development of the securities market, and protect the interests of investors in securities. The other main laws that regulate the securities sector include the Securities Contract (Regulations) Act 1956, as amended, the Depositories Act 1996, and the relevant provisions of the Companies Act 1956. The Securities Contract (Regulations) Act 1956 was amended in 2007 to broaden its coverage to include mortgage debt, and added a section on the public issue and listing of these securities.[81]

110. The securities sector was developing fast until the global financial crisis, when it was severely hit by the developments in the rest of the world. As a result, capital raised in the primary securities market declined from US$72.7 billion in FY 2007/08, to US$59.2 billion in 2008/09 (Table IV.8). Moreover, the capitalization of the secondary securities market halved, and the equity market turnover declined by a third. However, the securities sector has been expanding again since 2009/10, largely due to the dynamism of the Indian economy.

111. At end-March 2011, there were 21 stock exchanges in India, all regulated by the SEBI under the Securities Contract (Regulation) Act 1956, and the SEBI Act 1992. Of these, two were dealing with derivatives and four with currency derivatives. The two largest stock exchanges are the National Stock Exchange (NSE), and the Bombay/Mumbai Stock Exchange (BSE). The NSE and the BSE operate electronic markets offering trading in equities, derivatives and currency derivatives (including equity-based derivatives), exchange traded funds (EFTs), currency futures and options, and government securities.[82] Almost all companies listed in the NSE are also listed in the BSE. In March 2011, there were 1,574 companies listed in the NSE and 5,067 in the BSE with a market capitalization of US$1.53 trillion (some 93% of GDP). Some 1,722 foreign institutional investors (FIIs, see below), had investments valued at US$245 billion, and there were 51 mutual funds.

[81] Securities and Exchange Board of India online information. Viewed at: http://www.sebi.gov.in.

[82] For further information on each stock exchange, see Bombay Stock Exchange Ltd. online information, "Introduction". Viewed at: http://bseindia.com/about/introbse.asp; and the National Stock Exchange of India Ltd. online information. Viewed at: http://www.nseindia.com/.

Table IV.8
Securities market, 2008-11

Registered market participants	2008[a]	2009[a]	2010[a]	2011[a]
Stock exchanges				
Cash market	19	20	20	19
Derivatives market	2	2	2	2
Currency derivatives	0	3	3	4
Foreign institutional investors	1,319	1,635	1,713	1,722
Custodians	15	16	17	17
Venture capital funds	106	132	158	184
Foreign venture capital investors	97	129	143	153
Mutual funds	40	44	47	51
	2007/08	**2008/09**	**2009/10**	**2010/11[b]**
Primary securities market				
Capital raised (US$ billion)				
Equity securities				
Public and rights issues	21.23	3.21	11.61	15.12
Qualified institutions placements (QIPs)	6.34	0.04	9.01	5.42
Preferential allotments	15.31	10.49	4.35	6.38
Debt securities				
Public issues	0.40	0.33	0.53	1.98
Private placements	29.44	45.12	44.84	45.86
Total	**72.72**	**59.19**	**70.34**	**47.84**
Secondary securities market				
Number of listed companies	4,887	4,929	4,975	5,067
Equity market capitalization (US$ billion)	1,284.99	605.77	1,366.04	1,530.00
Equity market turnover US($ billion) (NSE + BSE Ltd.)[c]	1,274.79	838.93	1,163.48	981.64
Number of trades (million) (NSE + BSE Ltd.)[c]	1,703	1,906	2,287	2,079
Daily average turnover (US$ billion) (NSE + BSE Ltd.)[c]	5.08	3.45	4.77	4.12
Derivatives market				
Turnover (US$ billion)				
Equity derivatives	3,313.21	2,400.74	3,725.29	6,543.00
Currency derivatives	n.a.	64.16	786.08	1,650.78
Interest rate futures	n.a.	n.a.	0.64	0.01
Average daily turnover (US$ billion)				
Equity derivatives	13.20	9.88	15.27	25.76
Currency derivatives	..	0.46	3.28	6.75
Investment by foreign institutional investors (FIIs)	..	..	..	..
Investment during the year (US$ billion)	16.44	-9.84	30.25	32.22
Cumulative net investment by the FIIs (US$ billion)	68.92	59.08	89.33	121.55
Market value of assets (US$ billion)	184.26	76.94	199.59	244.92[d]
% of equity market capitalization held by the FIIs	13.94	..	13.64	..
Investments by venture capital funds and foreign venture capital investors (cumulative investments (US$ billion))				
Venture capital funds	4.99	4.47	4.05	5.13[a]
Foreign venture capital investors	4.18	4.52	6.40	7.41[a]

.. Not available.
n.a. Not applicable.

a 31 March.
b Up to 28 February 2011.
c NSE: National Stock Exchange. BSE: Bombay/Mumbai Stock Exchange.
d On 31 December 2010.

Note: Financial year (April–March).

Source: Securities and Exchange Board of India; and information provided by the Indian authorities.

112. The authorities have noted that a policy initiative since India's last Review in 2007, and in particular in the wake of the global financial crisis, has been to promote the use of the Investor Protection and Education Fund (IPEF), created by a 1999 amendment to the Companies Act 1956 for

the promotion of investors' awareness and protection of the interests of investors. The Fund is financed by contributions from unpaid dividend accounts of companies, and the interest accrued on matured debentures and deposits.[83] Other policy initiatives include changes to the regulatory environment, such as a reduction of the timelines for public issue; simplified listing requirements for Indian depository receipts (IDRs) issued by companies from IOSCO MMoU signatories[84]; a liberalization of the overseas investment regime for mutual funds, and the abolition of an entry load for all mutual fund schemes; and promotion of an initiative to develop the still incipient Corporate Bond Market. In addition, the regulatory framework was modified to enable participation of FIIs and mutual funds in IDRs.

113. SEBI also issued notified regulations (SEBI (Issue of Capital and Disclosure Requirements) Regulations 2009 (ICDR Regulations)) to strengthen the enforceability of the regulatory framework relating to issue of capital by companies and to streamline the disclosures to be made by companies coming out with public offerings. The Securities and Exchange Board of India (Mutual Funds) (Amendment) Regulations 2008, introduced the concept of Real Estate Mutual Funds (REMFs), to which the same regulations are applied as to ordinary mutual funds.

114. An additional important regulatory step, has been the devising of a roadmap for the adoption of International Financial Reporting Standards (IFRS). In terms of this roadmap, India has adopted a convergence route for the adoption of IFRS-INDAS (Indian Accounting Standards), but the effective dates of implementation are yet to be announced, as the tax implications of adopting the IFRS need to be ironed out.[85]

115. Foreign investment is allowed, either under the FDI route or the portfolio investment scheme. Foreign investment under the latter is allowed subject to registration as a foreign institutional investors (FII) or its sub-account. Investments by individual FIIs or broad-based sub-accounts may not exceed 10% of the issued capital of a company. All FIIs and their sub-accounts taken together may not acquire more than 24% of the paid-up capital of an Indian company (Table IV.9). This restriction may be increased to the sectoral limit.[86] The combined limit for investment in the stock

[83] For more information, see Investor Education and Protection Fund online information. Viewed at: http://www.iepf.gov.in/faq.asp.

[84] The International Organization of Securities Commission's (IOSCO) Multilateral Memorandum of Understanding Concerning Consultation and Cooperation and the Exchange Of Information (MMoU) sets an international benchmark for cross-border cooperation to combat violations of securities and derivatives laws. Securities regulators may, under the MMoU, provide information and assistance. For the text of the MMoU, see IOSCO's online information, "IOSCO Public Documents". Viewed at: http://www.iosco.org/library/index.cfm?section=pubdocs&year=2002&publicDocID=126.

[85] In accordance with Phase I of the roadmap, companies that: are part of the NSE – Nifty 50; are part of BSE – Sensex 30; whose shares or other securities are listed on stock exchanges outside India; and whether listed or unlisted, whose net worth exceeds Rs 10 billion, would have adopted IFRS standards by 1 April 2011. Companies whether listed or unlisted whose net worth ranges from Rs 5 billion to Rs 10 billion, were to apply IFRS standards as of 1 April 2013 (Phase II), and listed companies with a maximum net worth of Rs 5 billion, as of 1 April 2014 (Phase III). IFRS standards would not apply to unlisted companies (in India and abroad) with maximum net worth of Rs 5 billion. These dates are now being reviewed.

[86] The sectoral limit is the aggregate amount of foreign investment (including FDI and FII) permitted in a particular sector, as specified in India's foreign investment policy. Under RBI regulations, FIIs are allowed to invest in the primary and secondary capital markets in India through the portfolio investment scheme, and may acquire shares/debentures of Indian companies through the stock exchanges in India. The ceiling for overall investment for FIIs is 24% of the paid-up capital of the Indian company and can be raised up to the sectoral cap/statutory ceiling, subject to RBI and company approval. In the case of investment in the stock exchange, the FII limit is actually 23%, since the combined limit of FDI (26%) and FII is 49%. The RBI monitors the ceilings on investments in Indian companies on a daily basis. The RBI has fixed cut-off points that are two percentage

exchange is 49%. Furthermore, FII investment in debt is limited to US$10 billion in government debt securities, of which US$5 billion must be invested in securities having a residual maturity of over five years. FII investment in corporate debt securities is limited to US$40 billion, of which US$25 billion must be invested in corporate bonds having a residual maturity of over five years issued by companies in the infrastructure sector. The Union Budget 2011/12 opened up the possibility for mutual funds to accept subscriptions from foreign investors in equity-oriented schemes, increasing investment possibilities for foreigners.

Table IV.9
Market-access and national-treatment conditions for foreign investment in the securities market, 2011

Sector/sub-sector	Limitation on market access	Limitation on national treatment
Venture capital	Domestic venture capital funds and foreign venture capital investors are regulated by SEBI. A venture capital fund may raise moneys from any investor, Indian, foreign or NRI, by way of issue of units.	Subject to SEBI regulations
Asset management (mutual funds)	Restriction on cross-border flows by RBI. Overseas investors may invest through offshore funds.	Subject to SEBI regulations and RBI norms
Portfolio management	FIIs and sub-accounts may avail portfolio management service. Portfolio management may offer advice to foreigners via a subsidiary opened in the jurisdiction.	Subject to SEBI regulations and RBI norms
Custodial, depository, and trust services	Foreign banks may carry out activities, subject to RBI approval and SEBI Regulations. Foreign banks are allowed to register as Custodian with SEBI.	Only banks are permitted subject to SEBI regulations
Participation in issues of all kinds of securities, including underwriting and placement as agent	Foreign entities may subscribe to issues as FIIs. Foreign companies may issue IDR to raise money. May act as intermediaries subject to setting up a company in India.	Subject to SEBI regulations
Investment in stock exchange	Composite ceiling of 49% for foreign investment (FDI 26% and FII 23%).	-

Source: Securities and Exchange Board of India.

116. The Securities Transaction Tax (STT), regulated by the Securities Transaction Act 2004 is applied on the sale and purchase of various securities. The present rates are 0.017%, 0.025%, 0.125%, and 0.25% of the value of the transaction, depending on its nature.

117. Takeovers in the securities sector are regulated by SEBI (Substantial Acquisition of Shares and Takeovers) Regulations 1997. The regulations provide for disclosure obligations for each acquisition that leads to the acquirer owning 5%, 10%, 14%, 54% or 74% of the shares of the company. An investor who owns between 15% and 55% of the shares, must disclose the purchase or sale of any further stock representing at least 2% of the total shares, and must submit yearly declarations stating the amount of ownership both in terms of number of shares and as a percentage of the total voting capital of the company. There are also regulations with respect to trigger points for making an open offer by an acquirer: acquirers who intend to acquire shares that, along with their existing shareholding, would entitle them to exercise 15% or more of the voting rights, may acquire such additional shares only after making a public announcement of an open offer to acquire at least an additional 20% of the voting capital of the target company from shareholders. Acquirers who hold between 15% and 55% of shares may not acquire more than 5% shares in any financial year without triggering an open offer. Acquirers holding 55% or more but less than 75%, may acquire up to 5% of

points lower than the actual FII ceilings, e.g., the cut-off limit for companies with a 24% FII ceiling is 22%. Once the aggregate net purchases of equity shares of the company by FIIs reach the cut-off point, the RBI cautions all designated bank branches so as not to purchase any more equity shares of the respective company on behalf of FIIs without prior RBI approval. Once the aggregate ceiling limit has been reached, the RBI advises all designated bank branches to stop purchases on behalf of their FIIs.

the voting rights in the target company via an open market transaction or as a passive increase pursuant to a buy-back offer by the target company without triggering an open offer.[87]

(iii) Telecommunications

118. The telecommunications sector is regulated by the Indian Telegraph Act 1885 (as amended), the Indian Wireless Telegraphy Act 1933, the Indian Telegraph Rules 1951 (as amended), the Telecom Regulatory Authority of India Act 1997, and the directions, orders and regulations issued by Telecom Regulatory Authority of India. The Indian Telegraph Rules 1951 were amended in 2008.[88]

119. The Department of Telecommunications (DoT), at the Ministry of Communications and Information Technology, is in charge of formulating the telecommunications policy and of granting licences. The DoT also controls four central public sector undertakings, including India's main fixed lines operators, Bharat Sanchar Nigam Ltd. (BSNL), and Mahanagar Telephone Nigam Ltd. (MTNL).[89] The Telecom Regulatory Authority of India (TRAI), created in 1997 as an independent body, regulates tariffs, inter-connectivity, and quality standards, and ensures that the universal service obligation is met. TRAI also makes recommendations regarding the procedures to grant licences. The Telecom Disputes Settlement and Appellate Tribunal (TDSAT) resolves disputes between the Government and licensees, service providers, and service providers and consumers; and deals with appeals against TRAI's decisions.[90] Court fees for filing petitions and appeals with TDSAT are set at Rs 5,000 and Rs 10,000, respectively.[91] Over 2007-10, 1,325 disputes and 46 appeals were filed.[92]

120. The New Telecom Policy 1999, the Broadband Policy 2004, and their amendments, continue to establish the main guidelines for the development of the telecom sector in India.[93] India is in the process of drafting the New Telecom Policy 2011.

121. Since 2007, development in the telecommunications market has been driven by an impressive growth in the wireless segment, which has led to a significant improvement in overall teledensity. However, major gaps remain between urban and rural teledensity (Table IV.10). In addition, the goals set in the Broadband Policy 2004 of reaching 40 million internet subscribers and 20 million broadband subscribers by 2010, have not been met (Table IV.10).[94] Constraints to the development of the broadband system include inadequate wireline infrastructure, power cuts, high cost of computers and low PC penetration, and high broadband tariffs.[95]

[87] Securities and Exchange Board of India (2010).

[88] Department of Telecommunications online information, "Telecom related Acts and Legislations in India". Viewed at: http://www.dot.gov.in/Acts/acts.htm.

[89] Department of Telecommunications (2010); and Telecom Regulatory Authority of India, Press Release No. 11/2011, 9 February 2011.

[90] ARCEP (2008); and KPMG (2010b).

[91] Department of Telecommunications (2010).

[92] Telecom Disputes Settlement and Appellate Tribunal online information, "Statement the showing the institution disposal and pendency of cases filed/reserved on transfer in TDSAT inception till 27 May 2011." Viewed at: http://www.tdsat.nic.in/Statement_of_Disposal.htm.

[93] Under the National Telecom Policy 1999, providers may share infrastructure in the same area of operation, and national and international long-distance services have been open to competition. The Broadband Policy 2004 allows providers to access mutually agreed commercial arrangements in order to use available copper-loop for the expansion of broadband. For details, see WTO (2002) and (2007); and Department of Telecommunications online information. Viewed at: http://www.dot.gov.in.

[94] Department of Telecommunications online information, "Licensing of Internet Services". Viewed at: http://www.dot.gov.in/internet%20services/internetservices.htm.

[95] KPMG (2010b).

Table IV.10
Selected telecom indicators, 2007-10
(Calendar year)

	2007	2008	2009	2010
Total telephone subscribers (million)	272.87	384.79	562.16	787.28
Fixed lines	39.25	37.90	37.06	35.09
Wireless	233.62	346.89	525.09	752.19
Teledensity	23.87	33.23	47.88	66.16
Urban	61.25	82.15	110.96	147.88
Rural	8.35	12.72	21.16	31.18
Internet subscribers (million)	10.36	12.85	15.24	18.69
Broadband subscribers (million)	3.13	5.52	7.82	10.99
Local fixed telephony providers	7	7	7	7
Mobile telephony providers	9	15	15	15
National long-distance telephony providers	20	26	29	30
International long-distance telephony providers	13	21	24	25
Internet service providers	128	164	162	164
Infrastructure service providers	175	236	288	351
Fixed telephony rates[a] (Rs)				
Cost of local call per minute	1	1	1	1
Cost of national long distance call per minute	1.2	1.2	1.2	1.2
Cost per minute of international long distance call to the United States	7.2	7.2	7.2	7.2
Mobile telephony rate[b] (Rs)				
Cost of local call per minute	1.2	1	1	1
Cost of national long distance call per minute	2.75	1.5	1.5	1.5
Cost per minute of international long distance call to the United States	6.4	6.4	6.4	6.4

a Per BSLN (leading fixed-line telephony provider) general plans.
b Per Airtel (leading service provider of mobile telephony) general plans.

Source: Telecom Authority of India (various issues), *The Indian Telecom Services Performance Indicators*, ending December. Viewed at: http://www.trai.gov.in/Reports_list_year.asp; Telecom Authority of India, Press Release No. 11/2011, 9 February 2011; and information provided by the Indian authorities.

122. The liberalization of India's fixed and mobile telecom markets started in 2000.[96] Telecom services operators may provide all telecommunications services. Private operators (mobile and fixed telephony) held 85% of the total telecom market in 2010. Despite competition, BSNL and MTNL still hold 83% of the fixed telephony market.[97] MTNL provides telecom services in Mumbai and Delhi, and BSNL covers the rest of India. In the mobile segment, 173 licences have been issued since 2004, including to BSNL and MTNL. However, in December 2010, four companies (three private plus BSNL) held 65% of the market.[98] Despite the market concentration, tariffs for telecom services decreased over 2000-09.[99] There are 164 internet service providers in India but BNSL and MTNL account for 70% of subscriptions (December 2010).[100]

[96] National and international long-distance services were opened to competition in 2000 and 2004, respectively (Department of Telecommunications, "Telecom at a glance". Viewed at: http://www.dot.gov.in).

[97] There are seven fixed-line telecom operators in India.

[98] The private operators are Reliance Telecommunications, Bharti, and Vodafone.

[99] The price of national long-distance calls decreased from US$0.67/minute to US$0.02/minute and international long-distance calls (to Canada, the United States, and the United Kingdom) decreased from US$1.36/minute to US$0.16. The price of local mobile calls decreased from US$0.36/minute in 1999 to US$0.04/minute in 2009 (Department of Telecommunications, "Telecom at a glance". Viewed at: http://www.dot.gov.in.).

[100] Telecom Regulatory Authority of India, Press Release No. 11/2011, 9 February 2011; Telecom Authority of India (2011); and Comptroller and Auditor General of India (2009).

123. Under the Telecom Regulatory Authority of India Act 1997, TRAI is in charge of setting tariffs for all telecom services.[101] TRAI consults with all stakeholders[102], including consumer associations on all issues related to the development of telecom regulations including tariffs.[103] The Telecommunications Tariff Order 1999, which, by February 2011, had been amended 49 times[104], stipulates that telecom service providers should charge all subscribers with a standard tariff package (i.e. monthly rental and call charges) but may offer an alternative tariff package to different subscribers on a non-discriminatory basis. Tariffs for the same service may vary according to area of service (i.e. rural and urban) and TRAI fixes floor and ceiling rates for both standard and alternative packages.[105]

124. Competition in the wireless market has increased the number of options and hence the number of tariffs offered (tariff plans).[106] Each operator is allowed to offer up to 25 different tariff plans per telecom service area, rendering the tariff structure complex and raising customers' concerns. As a result, since November 2010, TRAI has been holding consultations with all stakeholders to increase transparency in the provision of mobile telephony tariff plans.[107]

125. As present, India is divided into 22 telecom service areas, divided into four categories (metro, A, B, and C) according to demographic density. To deliver services in each telecom/internet area, domestic and foreign operators must be licensed by the Department of Telecommunications (Table AIV.2). To apply for a licence, operators must register as an Indian company under the Indian Companies Act 1956 and have a maximum of 74% of foreign equity (Table AII.4). No single company (or legal person) may have substantial equity (i.e. 10% or more equity) holdings in more than one licence company per service area for access services (i.e. basic, cellular and unified access service).[108]

126. India introduced the unified access service regime (UAS) to licence fixed and mobile telecom operators in 2003. Providers who were licensed for basic fixed telecom and cellular mobile telephone services prior to the introduction of the UAS, were invited to migrate to the new regime.

127. In 2007, India introduced new licensing guidelines for internet services, which led to the consolidation of two internet service areas, i.e. category A, which covers all of India, and category B, which would cover one or more of India's telecom service areas.[109] Internet services providers licensed for category C internet area prior to 2007, were invited to migrate to category A or B internet areas (Table AIV.2). According to the authorities, all "serious" telecom operators have migrated and

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[101] Fixed, mobile, and internet services, and radio paging services, leased circuit, integrated digital services network, value-added services, telex and telegraph services, and global mobile personal communication by satellite.

[102] To undertake these consultations TRAI holds public meetings or invites written comments.

[103] For details, see Telecom Regulatory Authority of India online information, "Consultation Papers". Viewed at: http://www.trai.gov.in/Default.asp.

[104] Five amendments were notified during the period under review. For details, see Telecom Regulatory of India online information, "Tariff Orders". Viewed at: http://www.trai.gov.in/Default.asp.

[105] Telecommunication Tariff Order 1999.

[106] Typical tariff plans have several components, e.g. rental and call charges, processing fee, talk time, and value-added services.

[107] Telecom Regulatory Authority of India online information, "Consultation Paper on Certain Issues relating to Telecom Tariffs", 13 October 2010. Viewed at: http://www.trai.gov.in/ConsultationPapers_list_year.asp?offset=0.

[108] Information provided by the authorities.

[109] Department of Telecommunications online information, "Information and Guidelines". Viewed at: http://www.dot.gov.in.

continued to provide services.[110] The operators that have not migrated may continue as per the existing licence until it expires.

128. Wireless spectrum fees range from 3% to 8% of the operator's adjusted gross revenue.[111] Spectrum availability is expected to improve with the allocation of 3G spectrum and spectrum for broadband wireless access (BWA). Both spectrums were auctioned during April-June 2010[112], subject to eligibility criteria and "reserve prices" (i.e. minimum prices) (Table AIV.3). Throughout India's telecom service areas, a total of 71 frequency blocks of 3G spectrum and 44 frequency blocks of BWA spectrum were auctioned.[113] Prior to the auction, one frequency block of each spectrum was reserved to MTNL in the Delhi and Mumbai telecom service areas, and to BSNL in the remaining areas to ensure prompt provision of these services in India. MTNL and BSNL launched 3G spectrum services in December 2008 and February 2009, respectively.[114] Although they did not participate in the auction, they were required to match the price determined at the auction. BWA spectrum has also been allotted to successful bidders and some of them have already started providing service. All 3G and BWA frequency blocks were sold.[115] The Government approved seven bidders (out of nine) for allocation of 3G spectrum and six bidders (out of eleven) for allocation of BWA spectrum.[116] Commercial use of 3G spectrum started in September 2010.[117]

129. TRAI issued the Mobile Number Portability Regulations 2009 to implement the Mobile Number Portability (MNP) Policy, which was launched on a trial basis only in one telecom service area in November 2010, and across India in January 2011.[118] India is divided into two areas for "clearing houses" to provide mobile number portability; one licence per area is awarded by the Department of Telecommunications, but clearing houses may bid to service both areas. Clearing houses must pay an entry fee (Rs 10 million) and deposit a financial guarantee and a performance bank guarantee, to bid for a licence. According to the authorities, licences, which were awarded in April 2009[119], have been operational since November 2010. Licences are granted for five years, subject to an annual fee (1% of the adjusted gross revenue). Over this five-year period, other operators may be licensed so that there is a backup if the primary licence holder fails to deliver MNP services.[120] Subscribers who swap network operators may face service disruption and will be charged Rs 19; however, the new operator may waive the fee or grant subscribers a discount. The procedure to switch from one operator to another may take up to seven days.[121]

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[110] Department of Telecommunications (2010).

[111] Wireless Planning and Coordination Wing, Order No. P-11014/18/2008-PP, 25 February 2010.

[112] Auctions were initially scheduled to start by January 2009, but were delayed upon stakeholders' request for more time to study the offers.

[113] Department of Telecommunications online information, "3G and BWA Auction". Viewed at: http://www.dot.gov.in/as/Auction%20of%20Spectrum%20for3G%20&%20BWA/new/index.htm.

[114] Department of Telecommunications, "Telecom at a glance". Viewed at: http://www.dot.gov.in.

[115] Department of Telecommunications online information, "3G and BWA Auction". Viewed at: http://www.dot.gov.in/as/Auction%20of%20Spectrum%20for3G%20&%20BWA/new/index.htm.

[116] Department of Telecommunications online information, "3G and BWA Auction". Viewed at: http://www.dot.gov.in/as/Auction%20of%20Spectrum%20for3G%20&%20BWA/new/index.htm.

[117] KPMG (2010b).

[118] Ministry of Finance (2011a).

[119] Department of Telecommunications (2010).

[120] Department of Telecommunications online information, "Mobile Number Portability (MNP) Service". Viewed at: http://www.dot.gov.in/as/MNP/MNPindex.htm.

[121] *Business Standard*, "PM flags off pan-India MNP rollout", 21 January 2011. Viewed at: http://www.business-standard.com/india/news/pm-flags-off-pan-india-mnp-rollout/422511/.

130. Development and maintenance of rural fixed-line and mobile telecom and broadband services are subsidized to allow affordable prices for customers.[122] All service providers, except providers of value-added services (e.g. internet, voice-mail, and e-mail services), are subject to a universal service levy of 5% of the adjusted gross revenue.[123] Funds from the USOF are allocated to "eligible operators" from the public and the private sectors[124], through a bidding process, for telecom and broadband infrastructure development projects in rural areas (e.g. provisions of village public telephones, household telephones, and infrastructure for mobile and broadband services).[125]

131. Until end-March 2008, a subsidy was also provided to BNSL (India's incumbent fixed-line operator) to compensate for the cost of maintaining fixed-line telecom services in rural areas and to provide telecom services at affordable prices to customers.[126] To finance this subsidy, private telecom operators had to pay an access deficit charge (ADC) to BSNL. The ADC was a fixed charge on incoming and outgoing international long-distance calls.[127] The ADC was not levied on revenue generated from rural wireline subscribers.[128] Based on TRAI recommendations, in 2008, the ADC was replaced by an annual subsidy.[129] The annual subsidy (Rs 20 billion) is in place for three years and may only be used to maintain the infrastructure to supply fixed-line services installed in households prior to April 2002. Consultations will be held in 2011 to assess the continuation of the subsidy.[130] The annual subsidy is paid to BSNL from the funds available with USOF, based on TRAI recommendations.[131]

132. It is reported that some 98% of Indian villages are covered by at least one operator via a public telephone.[132]

133. In addition to the Competition Act 2002, the Department of Telecommunications issued guidelines, in 2008, for mergers and acquisitions in the telecom subsector. Mergers and acquisitions are restricted to the same area of operation. They are not authorized if less than four providers operate per service area. Combined market shares of merged entities must not exceed 40%.[133]

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[122] Department of Telecommunications (2010).

[123] Department of Telecommunications, Notification No. 20-100/2007-AS-I, 1 October 2008.

[124] Basic service operators, cellular mobile service providers, and unified access services licence holders or any entities that may be specified by the Central Government from time to time (Indian Telegraph (Amendment) Rules 2004).

[125] Department of Telecommunications (2010); and Indian Telegraph (Amendment) Rules 2004.

[126] Telecom Regulatory Authority of India online information, "Consultation Paper on Access Deficit Charge", 21 January 2008. Viewed at: http://www.trai.gov.in/ConsultationPapers_list_year.asp?offset=0.

[127] In January 2008, the ADC amounted to Rs 1.60/minute on incoming international long-distance calls and Rs 0.80/minute on outgoing international long-distance calls.

[128] Telecom Regulatory Authority of India online information, "Consultation Paper on Access Deficit Charge", 21 January 2008. Viewed at: http://www.trai.gov.in/ConsultationPapers_list_year.asp?offset=0.

[129] Indian Telegraph (Amendment) Rules 2008.

[130] Information provided by the authorities.

[131] Department of Telecommunications (2009).

[132] Information provided by the authorities.

[133] Department of Telecommunications, "Access Services: Guidelines for Intra-service Area Merger of Cellular Mobile Telephone Service (CMTS)/Unified Access Services (UAS) Licences". Viewed at: http://dot.gov.in/as/asindex.htm.

(iv) Transport

(a) Maritime transport

Shipping

134. Some 95% of India's merchandise trade by volume and 65% in terms of value is transported by sea.[134] Over 110 domestic shipping companies are engaged in maritime trade.[135] India's fleet comprises 1,071 commercial Indian flag vessels with a gross tonnage of 10.5 million tonnes; around a third of the tonnage is held by the state-owned national flag-carrier, the Shipping Corporation of India (SCI) (March 2011).[136] However, India is short of vessels, and hence foreign-flag vessels dominate maritime transport, accounting for the transport (excluding coastal shipping) of 92% of India's merchandise trade. The dominance of foreign-flag vessel is even larger in foreign trade: Indian flag vessels carry only 4.8% of India's merchandise exports and 10.7% of merchandise imports (2008/09) (latest available data).[137] The Ministry of Shipping controls eight shipping enterprises, including the SCI. According to the authorities, there is no reservation policy for SCI. Bids are awarded to match the lowest price and the technical requirements. The Government also has a strong presence in ship building: it owns three shipyards[138] which hold approximately 10% of the commercial ship-building market.[139]

135. India started implementing the National Maritime Development Programme (NMDP) in 2005 to develop maritime and coastal shipping, and inland water transport system. The NMDP aims to expand India's fleet tonnage, train personnel[140], develop infrastructure for coastal and inland water transport, improve ports infrastructure, and modernize state-owned shipyards for the construction of new vessels, since Indian vessels average 18.3 years.[141] As a result of the NMDP, SCI's gross tonnage increased from 2.73 million in 2007 to 3.6 million tonnes at end 2010, shipbuilding facilities have improved and so has infrastructure for inland water transport.[142]

136. Several other guidelines and agendas have been drafted but not implemented. The Draft Policy (Revised) for the Maritime Sector 2005 outlined guidelines to develop maritime transport up to 2025.[143] This policy sought to modernize and develop ports; promote hinterland connectivity to ease transport; promote port specialization and inter-port complementarity; increase private (domestic and foreign) investment; and strengthen the shipbuilding sector. However, according to the Ministry of Shipping (for unspecified reasons), the Policy could not be implemented.[144] The Draft Policy was thereafter reshaped into the India Maritime Agenda 2010-20 issued by the Ministry of Shipping in

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[134] Ministry of Finance (2011a).

[135] Major players are the Shipping Corporation of India Ltd., Great Eastern Shipping Company Ltd., Essar Shipping and Logistics Ltd., Mercator Line Ltd., and Varun Shipping Company Ltd.

[136] Ministry of Shipping online information, "Statistics ". Viewed at: http://shipping.gov.in/ index1.asp?linkid=147&langid=1.

[137] KPMG (2008); Ministry of Finance (2011a); and information provided by the authorities.

[138] One was transferred to the Ministry of Defence.

[139] Ministry of Shipping (2010); and Ministry of Shipping online information, "Parliament Related Matter: Rajya Sabha Dated 24 Nov 2009". Viewed at: http://shipping.gov.in/index1.asp?linkid=175&langid =1.

[140] India is reported to be facing a shortage in qualified officers/crew. About two third of India's officers/crew serve on foreign-flag vessels due to better tax treatment. A shortage of 25,000 qualified officers is forecast by 2015 (KPMG, 2008).

[141] Ministry of Shipping (undated); and Ministry of Finance (2011a).

[142] Ministry of Shipping (2010).

[143] Department of Shipping (2005).

[144] Ministry of Shipping (2011).

2011.[145] This document proposes a series of policies and programmes that have to be considered by the different stakeholders prior to their implementation.

137. There appears to have been no major change in the legal framework for maritime transport since India's last TPR, as the Shipping Trade Practices Bill 2010 is still under discussion.[146] The Bill, if enacted, would regulate the provision of maritime transport services. Providers would be required to register with the Directorate General of Shipping (DGS) and notify their tariffs.[147]

138. The registration of Indian vessels is governed by the Merchant Shipping Act 1958 (Part V) and the Merchant Shipping (Registration of Ships) Rules 1960, as amended. Indian vessels must register at designated port registries, subject to fees.[148] A central register is kept by the DGS. Foreign ships may not be registered in India. Under the Act, vessels must be licensed by the DGS. The Director General of Shipping has been empowered to issue licences for Indian ships as well as for foreign ships. The DGS issues general licences (for Indian vessels and vessels chartered by a citizen of India or a company, or a cooperative society), licences for the whole or any part of the coastal trade, and licences for a specified period/voyage (i.e. specified period licence (SPL)), granted to foreign flag vessels for coastal trade subject to no objection certificate issued by the Indian National Shipowners' Association (INSA).[149] According to the authorities, the procedure for issuing licences is similar for Indian and foreign flag vessels, except that in the case of the latter a certificate of no objection from INSA is required and they are for a limited period – specific to the contract tenure involved.[150] In addition, there are some differences in the fee structure for licences granted to foreign and Indian flag vessels.[151]

139. The Merchant Shipping Act 1958 reserves cabotage to Indian flag vessels (Part XIV). However, foreign flag vessels may be chartered and granted an SPL if no suitable Indian flag vessel operates on the route. In that case, permission is granted by the DGS upon no objection from the Indian National Shipowners Association (INSA). According to the authorities, a foreign flag carrier is allowed to deliver cargo to several Indian ports.

140. Service tax (10%) is charged on the transport of goods on inland waterways and on coastal shipping.[152] The change in taxation introduced in 2005, through which shipping companies were

[145] Ministry of Shipping (2011).

[146] Ministry of Shipping online information, "Acts and Rules". Viewed at:http://shipping.gov.in/writereaddata/linkimages/shipping%20trade%20bill8312790621.pdf

[147] Ministry of Shipping online information, "Acts and Rules". Viewed at: http://shipping.gov.in/index1.asp?linkid=164&langid=1.

[148] Mumbai, Kolkatta, Chennai, Cochin, and Mormugao (Directorate General of Shipping online information, "Shipping Manual". Viewed at: http://www.dgshipping.com/). For fees, see the Merchant Shipping (Registration of Ships) Rules 1960, and the Merchant Shipping (Registration of Indian Ships) Amendment Rules 1994.

[149] These licences are granted under Sections 406 and 407 of the Merchant Shipping Act 1958 and are subject to the conditions specified by the Director General of Shipping, as per guidelines issued in Shipping Department Circular Nos. 2/2002 and 2/2007, as amended from time to time.

[150] Licences for foreign flag vessels are issued with a time limit taking into account statutory certificates such as Registry Certificate, International Load Line Certificate, International Oil Pollution Certificate and Cargo Sea Safety Construction Certificate (information provided by the authorities).

[151] Information provided by the authorities.

[152] An education cess (2%) and a secondary and higher education cess (1%) apply on the payable service tax. For details, see Central Board of Excise and Customs online information, "Service Tax: Service Profile". Viewed at: http://www.cbec.gov.in/cae1-english.htm.

given the option of applying a tax based on total tonnage (tonnage tax) instead of the corporate tax, is estimated to have reduced the tax burden on the shipping sector and encouraged investment.[153]

141. Imports of repair materials by ship-repair units registered with the DGS, are exempt from customs duties, and domestic goods are exempt from excise duties.[154] The recent Budget extended some of the incentives, including duty-free imports of spare parts and other items used for repairs, provided for ocean going vessels owned by ship-owners registered in India.[155]

142. In an attempt to develop coastal shipping, certain concessions are granted to operators, e.g. relaxation in customs procedures[156], and lower charges at ports.[157] Coastal vessels enjoy a 40% reductions on various tariffs and in cargo handling fees (except for vessels transporting thermal coal, crude oil, and petroleum/oil/lubricants).[158]

Ports

143. India has 189 ports.[159] The designated major ports (currently 13) handle some 70% of total cargo[160]; the rest is handled at 66 operating minor ports.[161] Bulk accounts for some 80% of the cargo at the major ports. The average pre-berthing waiting period, which decreased from 10.05 hours in 2006/07 to 9.55 hours in 2008/09, was estimated at over 11.50 hours in 2009/10[162]; there is also a substantial disparity in pre-berthing waiting periods between major ports.[163]

144. All ports are owned by the Government, but may be publicly or privately administered and operated. Foreign investment is allowed in port administration subject to conditions, which may be modified. The Government has announced guidelines to allow joint ventures[164]; and FDI is allowed up to 100% in construction and maintenance of infrastructure for water and maritime transports, as well as in construction of ports and harbours, under the automatic route.[165]

145. Major ports are administered by the Central Government through the Ministry of Shipping, Road Transport, and Highways and managed by "port trusts" under the Indian Ports Act 1908 and the Major Port Trust Act 1963. The exception, Ennore port, is managed under a "landlord" port model,

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[153] The Income Tax Act 1961, as amended on 1 April 2005.

[154] Press note 1990 series No. SY-22013/7/89-SBR, 10 October 1990.

[155] Ministry of Finance (2011b).

[156] Notification of 7 October 1997 and Public Notice No. 190/97 of 20 October 1997 exempt coastal ships from the provisions of Sections 92, 94, 97, and 98(1) of the Customs Act 1962. Hence coastal ships are not required to file a bill of entry when loading at ports or a bill of entry at discharge ports, or to obtain written permission before leaving a port.

[157] Planning Commission (2008).

[158] Information provided by the authorities.

[159] Ministry of Shipping (2011).

[160] Kolkata, Hadia, Paradip, Visakhapatnam, Ennore, Chennai, Tuticorin, Cochin, New Mangalore, Mormugao, Mumbai, Jawaharlal Nehru, and Kandla.

[161] A major port is any port the Central Government declares (by notification in the *Official Gazette*) or has declared (under any law in force), to be a major port (Indian Ports Act 1908).

[162] The authorities attribute this increase to a rise in the number of vessels, the weather, and breakdown and maintenance of equipment.

[163] Ministry of Finance (2010b) and (2011a).

[164] For details, see Indian Ports Association online information, "Private sector participation". Viewed at: http://www.ipa.nic.in/#.

[165] Department of Industrial Policy and Promotion, Circular No. 1 of 2011 (Consolidated FDI Policy (effective 1 April 2011)), paragraph 5.22, 31 March 2011.

which separates port ownership from port operations.[166] India is in the process of revising its ports regulatory framework. The Indian Ports (Consolidated) Act 2011 or Indian Ports Bill 2010, which is under discussion, should replace the Indian Port Act 1908, which currently governs ports, and the Major Trusts Act 1963. Under the proposed Act, which deals with the administration of ports, major and non-major ports are to be governed by Central Government and state governments, respectively, through port authorities. The Port Regulatory Authority Bill 2011, which deals with ports regulation, covers both types of ports. This Bill proposes a two tier "regulatory-cum-appellate model" with the Major Port Regulatory Authority (MPRA) covering major ports and the State Port Regulatory Authority the other ports in the respective states.

146. Tariffs for services and facilities at major ports are regulated by the Tariff Authority for Major Ports (TAMP)[167], constituted in April 1997 as an independent authority. However, the Government may invalidate TAMP tariff rulings, through a decision of a High Court.[168] The Ministry of Shipping drafted the Major Ports Regulatory Authority Bill 2011 to establish the Major Ports Regulatory Authority (MPRA). If this Bill is enacted, the MPRA will replace the TAMP, but not with regard to tariff fixation. The Bill proposes that tariff fixation would be undertaken by the respective port authorities under guidelines issued by MPRA. The MPRA would also be responsible for monitoring performance of port authorities/private operators, and resolving disputes between port authorities, private operators, and users.[169]

147. Minor ports are regulated by states' maritime boards/departments. Minor ports are allowed to fix their own tariffs, and in order to attract cargo from major ports, they often fix their tariffs at levels lower than the regulated tariffs.[170]

148. According to the authorities, port services, with the exception of pilotage," conservancy", and security, may be delivered by private companies, foreign or domestic.

149. The National Maritime Development Programme (NMDP) is aimed at modernizing infrastructure both at major and minor ports.[171] The NMDP is aimed at increasing overall capacity at major ports by 2012. The Government has subsidized up to 30% of the cost of one project per coastal State.[172] Infrastructure at major and minor ports is developed through public and private partnerships. Private (domestic) partners are fully exempt from income tax for ten years.

150. Despite the Government's efforts, port development continues to face two major challenges: insufficient hinterland connectivity, and shortage in inland cargo handling infrastructure. India's major ports are linked by rail and road to the hinterland. However, further capacity needs to be developed and the quality of roads and rail connectivity needs to be improved to enhance the flow of merchandise in the ports. Current developments in overland transport support this objective

[166] Ennore port is a corporatized port registered under the Companies Act 1956.

[167] The Major Ports Trust Act 1963 was amended by the Port Laws (Amendment) Act 1997 to constitute the TAMP (Tariff Authority for Major Ports online information. Viewed at: http://www.tariffauthority.gov.in/).

[168] Energy and Resources Institute (2009).

[169] Ministry of Shipping online information, "Act and Rules". Viewed at: http://shipping.gov.in.

[170] KPMG (2008).

[171] Ministry of Shipping online information, "Parliament Related Matter: Rajya Sabha Dated 7 Dec 2010". Viewed at: http://shipping.gov.in/index1.asp?linkid=175&langid=1; and Ministry of Shipping (undated).

[172] Ministry of Shipping (undated).

(section (c) below). The lack of adequate land for the construction of container freight stations in ports increases the cost of freight operations.[173]

151. The Policy for Preventing Private Sector Monopoly in Major Ports was issued in 2010 by the Ministry of Shipping. The policy aims at promoting competition in the award of contracts. Thus, if there is one private terminal/berth operator in a major port for a specific cargo, the operator is not allowed to bid for the next terminal/berth for handling the same cargo in the same port.[174]

(b) Air transport

152. The Ministry of Civil Aviation is in charge of policy formulation for and regulation of civil aviation in India. It supervises the Directorate General of Civil Aviation (DGCA) and the Bureau of Civil Aviation Security (BCAS). The DGCA regulates air transport services to/from India; enforces civil air regulations and standards; registers aircraft; and licenses pilots, air engineers, and traffic controllers.[175] The BCAS is in charge of formulating security standards. The Ministry controls Air India Ltd., which operates Air India flights[176]; the Airports Authority of India (AAI), which manages and operates some of India's civil airports (see below); and Pawan Hans Helicopters Ltd., which operates helicopter services for the oil and tourism industries.[177] The AAI surveys India's airspace.

153. The AAI manages 115 of India's 454 airports, including the 17 international airports.[178] The remaining airports are managed by private operators. At AAI-managed airports, the Authority is responsible for slot allocation. At private airports, slots are allocated in coordination with the AAI. All domestic airlines must file for slots with the DGCA and the respective airport operators. Slots are allocated twice a year, based on grandfathered rights or a "use it or lose it" rule.[179] After allocation of slots, new airlines are allotted 50% of the left-over slots. No charge is levied for peak and non-peak slots.[180]

154. Passenger and cargo traffic is operated by 12 scheduled and 127 non-scheduled airlines (January 2011).[181] Air India operates international flights through direct services or under code-share or joint-venture agreements to 57 destinations. Scheduled air services are available to/from 82 airports.[182] Permits to operate scheduled and non-scheduled flights are granted by the DGCA upon

[173] KPMG (2010c).

[174] Ministry of Shipping online information, "Policy". Viewed at: http://shipping.nic.in.

[175] For details, see Directorate General of Civil Aviation online information, "Licensing" and "Aircraft". Viewed at: http://www.dgca.gov.in/.

[176] Air India Ltd. (the National Aviation Company of India Ltd. until November 2010), owns Air India Charter Ltd., which operates low-cost Air India Express flights, Airline Allied Service Ltd., which operates Alliance Air flights, and Air India Transport Services Ltd., which operates ground handling services for Air India, Air India Express, and for some foreign airlines (Ministry of Civil Aviation, 2010a; and Ministry of Finance, 2011a).

[177] Business Portal of India, "Infrastructure: Aviation". Viewed at: http://business.gov.in/ infrastructure/aviation.php.

[178] Delhi, Mumbai, and Nagpur international airports are operated under joint ventures (Ministry of Civil Aviation, 2010a).

[179] Under grandfathered rights, slots revert to air carriers that made significant use of their allocations during the previous season. The "use it or lose it" rule applies to mergers. An airline that is merging with another airline, takes control of the slot rights of the latter. If the slots are not used, the airline loses its user rights.

[180] Kacker (undated).

[181] For details, see Directorate General of Civil Aviation online information, "Operators". Viewed at: http://www.dgca.gov.in/.

[182] Ministry of Civil Aviation (2010a).

a no objection certificate from the Ministry of Civil Aviation[183]; permits may be renewed within 60 days after expiry.[184] Under the Aircraft Rules 1937, passenger air carriers must publish airfares for customers' information. In order to increase transparency, since November 2010, carriers must notify their airfares to the DGCA on the first day of every month and any significant changes within 24 hours.[185] FDI is allowed in scheduled air transport services and domestic scheduled passenger airlines up to 49% (automatic route), and in non-scheduled air transport service, non-scheduled airlines, chartered airlines, and cargo airlines up to 74% (subject to governmental approval beyond 49%) (Table AII.4).

155. Average traffic over the review period was 1.1 million passengers and 1.7 million tonnes of cargo. A slowdown in air traffic was registered in 2008/09 due to the world economic downturn.[186] However, in 2010, 1.5 million passengers and 4.7 million tonnes of cargo were transported by air, 19% and 30% more than in 2009, respectively.[187]

156. In 2008, the Government promulgated a Policy for Greenfield Airports (e.g. new projects). To date, two have started operations, 14 projects have been given "in principle" approval, and construction work has started. Projects to upgrade and expand metro airports are scheduled to be completed by 2011 (Chennai and Kolkata), 2012 (Mumbai), and 2026 (Delhi).[188] The AAI in collaboration with private entities which hold 74% of the airports equity, are in charge of the renovations at the Delhi and Mumbai airports.[189] AAI is also in the process of upgrading 35 non-metro airports (12 have already been upgraded) under public private partnerships.[190]

157. FDI in airport projects is allowed up to 100% under the automatic route for Greenfield projects; and up to 100% for existing projects, subject to governmental approval beyond 74% and to sectoral regulations notified by the Ministry of Civil Aviation and Security clearance (Table AII.4). Private domestic partners in airport projects are granted full tax exemption for ten years.[191]

158. Civil aviation construction projects are subject to a 1% cess under the Building and Other Construction Workers' Welfare Cess Act 1996.

159. Tariffs on aeronautical services account for 70%-80% of Indian airports revenues.[192] Until 2008, the AAI operated airports and regulated tariffs for aeronautical services, which led to a conflict of interest, and users complained about the disparity between tariffs and services provided.[193] To address these concerns, the Airports Economic Regulatory Authority (AERA), an independent body, was created in 2009.[194] AERA, which started operations in September 2009, is in charge of regulating airports with annual traffic of at least 1.5 million passengers; 13 airports in India exceed

[183] For details, see DGCA Air Transport Circular No. 1 of 2009, 14 March 200 (Directorate General of Civil Aviation online information, "Rules: Circulars: Air Transport". Viewed at: http://www.dgca.gov.in/).

[184] DGCA Air Transport Circular No. 2 of 2009, 23 April 2009.

[185] DGCA Air Transport Circular No. 2 of 2010, 19 November 2010.

[186] Ministry of Civil Aviation (2010a).

[187] Ministry of Finance (2011a).

[188] The expansion of the Delhi international airport is a 20-year project aimed at serving a 100 million passengers by 2026 (Ministry of Civil Aviation, 2010a).

[189] Ministry of Civil Aviation (2010b).

[190] Ministry of Civil Aviation (2010a); and Ministry of Finance (2011a).

[191] Kacker (undated).

[192] Centre for Asia Pacific Aviation (2009).

[193] Government of India, Press Information Bureau, Press Release, "AERA Bill introduced in Parliament today", 5 September 2007.

[194] Airports Economic Regulatory Authority of India Act 2008.

this threshold and account for 85% of passenger traffic.[195] The Central Government is in charge of regulating airports with annual traffic less than 1.5 million passengers. The AERA is also responsible for, *inter alia*, fixing aeronautical services charges, the passenger service tax, and the airport and the user development fees for major airports; and monitoring the quality and reliability of services rendered at airports.[196] Airport operators collect the aeronautical charges and the taxes fixed by AERA.

160. Ground-handling services are open to FDI up to 74%, subject to sectoral regulations notified by the Ministry of Civil Aviation and to security clearance. However, FDI is only allowed up to 49% under the automatic route. Beyond 49%, approval from the Foreign Investment Promotion Board is required. In addition, non-resident Indians are allowed to invest up to 100% in ground-handling services (Table AII.4).

161. The foreign travel tax (FTT) is levied at approximately Rs 500 for international journeys and Rs 150 on journeys to Afghanistan, Bangladesh, Bhutan, Myanmar, Nepal, Pakistan, Sri Lanka, and the Maldives; the inland air travel tax (IATT), at 10% of the basic fare, is levied on domestic journeys. The IATT is levied if the airfare is paid in foreign currency.

162. A passenger service tax, charged on all air tickets, is set at 10% of the gross fare or Rs 100 per journey, whichever is less, for domestic flights (any class)[197]; and at 10% of the gross fare or Rs 500 per journey, whichever is less, for international economy class flights.[198] Since July 2010, passengers in transit in India or embarking/disembarking in the north-eastern region have been exempt from the service tax.[199]

163. Since 2008/09, an airport development fee and a user development fee have been levied at some of India's major airports on an ad hoc basis to finance projects for the construction and use of upgraded or new infrastructure (Greenfield airports included). This is a temporary measure while airports are being upgraded. Currently, the fees are levied at 13 major airports including Delhi. They are levied on all (international and domestic) departing flights and their rates vary from one airport to another.[200]

164. Aviation routes in India are divided into category I (metro), category II (north-eastern region, Jammu and Kashmir, Andaman and Nikobar and Lakshdeep Islands), and category III (other routes). To ensure at least minimum air service throughout India, air carriers operating a route in category I, are required to deploy at least 10% of their capacity in category II and 50% in category III.[201] India has signed bilateral air services agreements with 108 countries to enhance international air connectivity. There are 74 foreign airlines from 51 countries flying to/from India; and 1,486 weekly

[195] Centre for Asia Pacific Aviation (2009).

[196] Airports Economic Regulatory Authority of India Act 2008.

[197] Journeys to/from airports in the states of Assam, Meghalaya, Manipur, Mizoram, Tripura, Nagaland, Arunachal Pradesh, Sikkim and Bagdogra in West Bengal are exempt.

[198] An education cess (2%) and a secondary and higher education cess (1%) apply on the payable service tax. For details, see Central Board of Excise and Customs online information, "Service Tax: Service Profile". Viewed at: http://www.cbec.gov.in/cae1-english.htm. See also Department of Revenue, D.O.F. No. 334/03/2010-TRU, 1 July 2010.

[199] Service Tax Notification Nos. 25/2010, 22 June 2010; and 27/2010, 22 June 2010. For Service Tax Notifications, see Central Board of Excise and Customs online information. Viewed at: http://cbec.gov.in/cae1-english.htm.

[200] *Business Line*, "User development fee in Hyderabad airport hiked", 29 September 2010; and British Airways online information, "British Airways in India". Viewed at: http://www.britishairways.com/travel/lcinfo/public/en_in#4.

[201] Kacker (undated).

international flights are operated.[202] India maintains a limited open sky policy.[203] In 2008, in order to promote tourism, India liberalized the operation of charter flights to/from India allowing all "inclusive tour packages" and eliminating existing restrictions.[204]

165. India acceded to the ICAO 2001 Cape Town Convention and Protocol, and the 1999 Montreal Convention in 2009.[205]

(c) Overland transport

Road transport

166. Road transport remains the main means of transportation in India, accounting for 60% of freight traffic and 87% of passengers transported. National highways (2% of the network) continue to carry over 40% of the traffic. The Ministry of Road Transport and Highways (MRTH) is responsible for formulating and implementing road transport policies, and the construction and maintenance of national highways. Development of other roads is under the responsibility of the state or local authorities.[206]

167. Improving road infrastructure is one of India's challenges in its quest to sustained economic growth and development. India's roads are heavily congested and have maintenance problems.[207] Infrastructure deficiencies result in a loss of efficiency and higher costs. Annual revenue forgone due to trucks delayed at inter-state check points, is estimated to range from Rs 9 billion to Rs 23 billion.[208] India has been making efforts to improve its infrastructure through the formulation of policies, plans, and projects.[209] However, while some of these initiatives have not been implemented, and others have been delayed, India introduced a new national permit system in 2010 to render inter-state freight traffic more efficient. The permit, which may be obtained from the "home" state, upon payment of fees (i.e. Rs 15,000/per annum per truck and Rs 1,000 as a "home" state authorization fee), authorizes the holder to operate throughout the country.

168. The National Highways Authority of India (NHAI) is in charge of implementing the seven-phase National Highways Development Project (NHDP) launched in 1998. Around 55,000 km of national highways are to be upgraded/built at an estimated total cost of US$60 billion.[210] One of the NHDP's major goals is to improve access to India's major ports and thus ease freight traffic. The NHDP was scheduled to be completed by 2015 but there have been delays reportedly because of, *inter alia*, difficulties in acquiring land and contractors' poor performance.[211] As a response, the Government has taken measures to accelerate completion of the NHDP goals, including by regular monitoring of contracts and simplification of procedures for land acquisition. India is also implementing the National Highways Interconnectivity Improvement Programme, which seeks to

[202] Ministry of Civil Aviation (2010a).
[203] Ministry of Civil Aviation (2009).
[204] An inclusive tour package is a round trip for which a consolidated price is charged for airfare, hotel accommodation, and other ground arrangement services (Directorate General of Civil Aviation, Aeronautical Information Circular No. 12/2008, 6 October 2008).
[205] The Montreal Convention is incorporated into the Carriage by Air (Amendment) Act 2009 (Ministry of Civil Aviation, 2009).
[206] Ministry of Road Transport and Highways online information, "Roads and highways: an overview". Viewed at: http://www.morth.nic.in/writereaddata/sublinkimages/overview_NH3244795788.htm.
[207] Alexander (2008).
[208] Planning Commission (2008).
[209] Ministry of Road Transport and Highways (2009).
[210] National Highways Authority of India (2010).
[211] Ministry of Road Transport and Highways (2009).

improve the entire national highways network by upgrading it to a minimum two-lane standard by December 2014.[212] Several initiatives have been launched to improve the road system at the state level.[213]

169. The development of the road system in India is funded with public resources, the proceedings of the fuel cess, collection of tolls, loans from international institutions, and the private sector. The Government is counting on increased private sector participation in the funding: it expects public-private partnerships with private domestic and foreign investors to provide 60% of funds required to finance the projects envisaged under the NHDP.[214] FDI in road construction and maintenance is allowed up to 100% under the automatic route.

170. Domestic and foreign investors may bid for "concession contracts" (Table IV.11). Contractors must pay an annual nominal fee (Rs 1) to the NHAI throughout the concession period; they may benefit from a number of incentives (Table IV.12), and assistance is granted for, *inter alia*, acquiring land and obtaining clearances (e.g. environmental or pollution clearances).[215] Concessionaires recover the cost of projects by collecting tolls (see below). Private investors may also obtain engineering, procurement, and construction contracts. Foreign participation in contracts awarded under the NHDP is estimated at over US$2.4 billion.[216]

Table IV.11
Road concession contracts, 2011

Concession contracts	Description
Build, operate, and transfer (BOT)	
BOT toll	Concessionaires are required to meet the construction, maintenance, and operation costs. They recover all expenses by collecting toll revenues. Concessions are granted for 15 years to 30 years (not renewable) Concessions are granted through international competitive bidding (ICB), as per the rules established by the Government, with the bidder quoting the lowest VGF (Grant) winning the concession in BOT toll projects, or in BOT annuity projects, the bidder quoting the lowest annuity stream.
BOT annuity	Concessionaires bid for an annuity payment from NHAI that would cover construction, maintenance, and operation costs. The bidder quoting the lowest annuity is awarded the project. The annuities are paid semi-annually by NHAI and linked to performance requirements. Concessions are granted for 15 years to 30 years (not renewable).
Design, build, finance, and operate	Concessionaires are required to meet the cost of design, construction, and annual maintenance. They recover expenses along with the interest by collecting toll revenues. Concessions are granted through international competitive bidding as per the rules established the Government. The period of concession can extend up to 30 years in BOT toll projects, and is determined on the basis of feasibility study report (FSR), which includes a traffic survey. The period of concession is determined as the year in which the stretch of highway achieves the required capacity on the basis of (i) amount of traffic and (ii) 5% CAGR traffic growth. The toll rates or user fee charges are laid down in the statutory rules, which includes a provision for annual adjustment to offset the impact of inflation. A BOT annuity concession is usually limited to 17 years.
Operate, maintain, and transfer (OMT)	Under the OMT system concessionaires are granted the right to charge a toll on any given highway stretch and are responsible for the operation and maintenance of that stretch. Concessionaires must pay a monthly fixed concession fee to the Government. The concession is granted until the cost of operation and maintenance is recovered.

Table IV.11 (cont'd)

[212] Ministry of Finance (2011a).
[213] For example, the Special Accelerated Road Development Programme for the North Eastern Region; schemes for the development of interstate roads and roads of economic importance; and the Pradham Mantri Gram Sadak Yojna initiative, which seeks to expand all-weather rural roads (Ministry of Road Transport and Highways, 2009; and Ministry of Finance, 2011a).
[214] National Highways Authority of India (2010).
[215] National Highways Authority of India (2010).
[216] National Highways Authority of India (2010); and Ministry of Finance (2011a).

Concession contracts	Description
Special purpose vehicle	For port connectivity projects: NHAI finances up to 30% of the project; the remaining funds should come from the trust ports or state governments. Tolls are collected to repay any debts and to finance the operation and maintenance.

Source: National Highways Authority of India (2010), *Guidelines for Investment in Road Sector*, 22 July. Viewed at: http://www.nhai.org/doc/22July10/nhai.pdf; and Ministry of Road and Highways online information, "National Highways Development Projects (NHDP)". Viewed at: http://morth.nic.in/index3.asp?langid=2&sublink2id=173.

Table IV.12
Selected incentives to road concessionaires, 2011

Grants of up to 40% of the cost of the project (including for projects of high economic importance but not commercially viable)
100% tax holiday in any ten-year period out of 20 years in operation
Exemption from the service tax for certain activities related to road construction[a]
Exemption from import duties on imports of high capacity equipment to be used in the construction of roads
Basic customs duty of 0% for imports of goods to be used in specific projects

a Commercial or industrial construction services; site formation and clearance, excavation, earthmoving, and demolition services; work contract services; and management, maintenance, and repair services.

Source: National Highways Authority of India (2010), *Guidelines for Investment in Road Sector*, 22 July. Viewed at: http://www.nhai.org/doc/22July10/nhai.pdf; and Ministry of Road and Highways online information, "National ghways Development Projects (NHDP)". Viewed at: http://morth.nic.in/index3.asp?langid=2&sublink2id=173.

171. High speed diesel oil and petrol (i.e. motor spirits) are subject to a fuel cess (previously additional excise duty or road cess) at Rs 2 per litre, to finance the Central Road Fund. According to the authorities, this cess is charged as part of the additional duty (AD) on imports.

172. Construction projects, including road construction and maintenance, exceeding Rs 1 million are subject to a cess ranging from 1% to 2% of the road construction/maintenance cost.[217]

173. Goods transport agencies are liable for the service tax (10%).[218] However, road transport of fruits, vegetables, eggs, milk, food grains, and pulses is exempt.[219] Exemptions also apply to individual consignments not exceeding a value ranging from Rs 750 to Rs 1,500; and to specific taxable services when provided by a Goods Transport Agency (GTA).

Rail transport

174. India's railway network is managed and operated by Indian Railways, an enterprise fully owned by the Ministry of Railways. Indian Railways, the largest employer in India (1.4 million workers), controls 14 public sector undertakings (PSUs) that perform railway-related works and 5 production units.[220] Although the railways are still reserved for the public sector (Chapter II(4)), private domestic participation has been encouraged in non-core activities, e.g. wagon ownership/leasing, and infrastructure projects.[221]

[217] Building and Other Construction Workers' Welfare Cess Act 1996; and National Highways Authority of India, Policy Matter No. 11041/217/2007/Admn., 26 February 2009.

[218] An education cess (2%) and a secondary and higher education cess (1%) apply on the payable service tax. For details, see Central Board of Excise and Customs online information, "Service Tax: Service Profile". Viewed at: http://www.cbec.gov.in/cae1-english.htm.

[219] Service Tax Notifications Nos. 4/2010, 27 February 2010; and 33/2004, 3 December 2004.

[220] For details, see National Portal of India online information, "Sectors: transport: railways: public undertaking". Viewed at: http://india.gov.in/sectors/transport/index.php.

[221] Energy and Resources Institute (2009).

175. Passenger and freight traffic have increased since 2006/07. In 2009/10, 888 million tonnes of freight (up from 728 million tonnes) and 7.25 billion passengers (up from 6.3 billion) were moved by rail. Trains move over 35% of India's total freight. Rail is used mainly to transport bulk commodities including coal, grains, iron and steel, iron ore, cement, mineral oils (POL), fertilizers, and limestone, which accounted for 89% of the total volume and total value of rail freight in 2009/10. Some 58% of passenger and cargo use 16% of the existing routes; this has led to serious congestion.[222] Moreover, since passenger traffic is given priority over freight, this has implications for trade, as containers reportedly miss their vessels at ports.[223] As a result, Indian Railways is constructing dedicated freight corridors along the western and eastern trunk routes to create additional capacity.

176. To deal with the infrastructure bottleneck, in 2009, the Government launched Vision 2020 to expand and modernize fixed railway infrastructure and the rolling stock; improve freight and passenger services (e.g. dedicated freight corridors, and high-speed corridors); and enhance equipment reliability to achieve zero accidents and failure.[224] Vision 2020 is to be financed through public and private funds.[225] Indian Railways is expected to provide 64% of the total funds, supported by public private partnerships to build the fixed infrastructure. An Accelerated Rail Development Fund is being considered by the Government to fund the remaining 36%.[226] The Vision 2020 aims to improve the connection between the railway system and India's major ports, so that by 2020 some 50% of India's total freight will be transported by rail. This objective is also supported by the Railways Infrastructure for Industry Initiative Policy 2010 and the Railways Policy for Connectivity to Coal and Iron Ore Mines 2011, which are aimed at developing better rail connection to coal and iron ore mines.[227]

177. Rail freight tariffs in India are among the highest in the world.[228] In addition, a series of taxes are levied on rail freight traffic: a 5% surcharge tax (10% on coal); a 7% busy season charge (5% on coal and coke group); a 20% congestion charge on traffic to Bangladesh and Pakistan[229]; a 2% development charge; and a the terminal charge of Rs 40/tonne (Rs 20 for coal and grain, and Rs 45/tonne on iron ore).[230] Freight rebates are granted on certain commodities loaded in privately owned wagons[231], or under the Freight Incentives Schemes and the Special Freight Train Operators Scheme. Freight traffic of fruit, vegetables, and salt are subsidized to arrest inflation. The authorities noted that freight tariffs are kept high in order to subsidize the loss-making passenger segment.

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[222] Ministry of Railways (2009a).

[223] Ministry of Railways (2009b); and KPMG (2010c).

[224] Safety has improved during the review period (162 accidents in 2009/10 down from 195 in 2006/07) (Government of India, Press Information Bureau, Press Release, "Economic Editor's Conference 2010", 26-27 October 2010).

[225] Ministry of Railways (2009a).

[226] Ministry of Railways (2009a).

[227] Railway Board Circular No. 2008/PL/9/16, 20 July 2010; and Government of India, Press Information Bureau, Press Releases "Railways' New R3i policy aims at attracting private sector participation in rail connectivity", 30 August 2010; and "Railways Announce New Policy for Connectivity to Coal and Iron Ore Mines", 22 February 2011.

[228] For details, see Indian Railways online information, "Freight info: Freight Rates". Viewed at: http://www.indianrailways.gov.in/view_section.jsp?lang=0&id=0,6,338.

[229] This ranged from 21% to 100% for iron ore over 2006-08.

[230] Ministry of Railways (2009b).

[231] Caustic soda, alumina, furnace oil, ammonia, phosphoric acid, and bulk cement (Indian Railways, Freight Rate Circular Nos. 27 of 2010, 30 September 2010; and 60 of 2009, 29 October 2009. For Freight Rate Circulars, see Indian Railways online information, "Freight Info: Freight Rates: Freight Rate Circulars". Viewed at: http://www.indianrailways.gov.in/view_section.jsp?id=0,1,304,366,555).

178. To increase freight volume and revenue, Indian Railways launched the Policy Guidelines for Freight Incentives Schemes in 2006, which has been since modified. Incentives are in the form of tariff freight discounts under four schemes; discounts are based on the type of commodity, distance, volume or weight, according to the scheme.[232] These discounts may unintentionally result in incentives for the production and/or exportation of certain commodities. Bulk commodities (e.g. coal, coke, and iron ore) and containerized traffic are excluded from the schemes.[233]

179. Since 2007, India has allowed "eligible" operators to use the Indian Railways network to provide merchandise transport services. This is in accordance with the Indian Railways (permission for operators to move container trains on Indian Railways) Rules 2006, which allow licensed private operators to run container trains on the network for both domestic and import/export traffic. Operators must be registered as Indian companies under the Companies Act 1956 and have a minimum annual turnover (Rs 1 billion) prior to applying for a licence. For licensing purposes, rail corridors are divided into four categories based on the expected traffic volume; most operators hold a Category I licence, which covers all routes. Registration fees for licensing range from Rs 100 million to Rs 500 million. Licences are valid for 20 years, renewable for ten years. There are 16 container train operators in India; the state-owned Container Corporation of India held around 75% of the market share in 2009/10.[234] Containerized rail traffic has increased by more than 50% since private operators entered into the market.[235]

180. Private operators of containerized rail transport may carry all goods except for iron ore, minerals, coal, and coke, which are restricted commodities.[236] However, these commodities represent the bulk of freight moved by rail. Private operators are free to set tariffs, and face a number of charges by Indian Railways, including haulage charges for the use of infrastructure[237], a 2% development surcharge on haulage, daily parking and stabling charges, inspection/supervision fees for track maintenance at terminals, and maintenance charges for rolling stock.[238] Haulage charges are based on weight and distance and apply irrespective of the commodity transported, except for "notified" commodities.[239] Haulage charges for "notified commodities" range from Rs 2,553 to Rs 82,242 per container. These rates are valid from 1 March 2011 to 31 August 2011; a 15% concession rebate will apply as from 31 August 2011.[240] Private operators are allowed to handle

[232] The basis for determining the discount varies according to the incentive scheme: under the scheme for loading bagged consignments in open and flat wagons, the discount varies according to commodity; under the scheme for traditional empty flow direction, the discount is based on distance; under the scheme for freight forwarders, it is based on the number of commodities loaded per wagon; and under the scheme for incremental traffic, it is based on weight (for details, see Indian Railways, Freight Rate Circular No. 62 of 2009, 10 November 2009).

[233] Indian Railways, Rates Circular No. 62 of 2009, 10 November 2009.

[234] Despite investment in infrastructure, private operators do not yet compete efficiently against CONCOR's infrastructure (Gangwar and Raghuram, 2010).

[235] Ministry of Railways (2009a).

[236] These commodities should not be transported in containers because of their nature.

[237] Haulage charges are notified in Indian Railways Freight Rate Circulars: Freight Rate Circular No. 32 of 2010 (16 December 2010) set the haulage charges effective as from 1 January 2011.

[238] Gangwar and Raghuram (2010).

[239] Notified commodities are: cement (other than white cement), food grains (other than flours and pulses), chemical manures, iron and steel, bricks and stones (other than marble and ceramic tiles), sugar, oil cakes and seeds, alumina, and petroleum products and gases. For details, see Indian Railways, Freight Rate Circular No. 5 of 2011, 14 February 2011.

[240] For details, see Indian Railways, Freight Rate Circular No. 5 of 2011, 14 February 2011.

container trains at terminals owned by Indian Railways up to October 2011, subject to terminal access and ground usage charges.[241] The service tax (10%) is levied on goods transported by rail.[242]

181. India has continued to open up railways services sector to private investors. In 2010, the Ministry of Railways implemented the Private Freight Terminal Scheme, which allows private operators to build freight terminals and handle third-party cargo[243]; the Special Freight Train Operators Scheme, which allows private operators to run special freight trains for commodities requiring special wagons[244]; and Automobile Freight Train Operator Scheme to allow private operators to transport automobiles.[245]

(v) Tourism

182. In 2007/08, the tourism subsector accounted for 5.9% of GDP and provided direct and indirect employment to some 50 million people. In 2009, 5.1 million foreign tourists visited India, a slight increase over 2007 (5.08 million). Foreign arrivals fell by 3.3% in 2009, due to external shocks such as the 2008 terrorist attacks, the influenza pandemic, and the world economic crisis. Over 2007-09, domestic tourism increased significantly, from 526 million to 650 million visitors.[246]

183. There is no specific legislation to regulate the tourism sector and other related activities in India.

184. The Ministry of Tourism (MoT) is responsible for the development and promotion of tourism. In 2002, the MoT launched the National Tourism Policy to make tourism a major engine of economic growth. The key objectives of the policy are to increase India's competitiveness in the world tourism market; improve, expand, and market tourism products effectively; and develop world-class tourism infrastructure.[247] To support these objectives, the MoT launched 14 schemes, in particular the Product/Infrastructure Development for Destinations and Circuits, to develop tourism products and infrastructure for mega projects and rural tourism[248]; and the Market Development Assistance Scheme, to promote India as a tourism destination. These two schemes accounted for 76% of the Ministry's total outlays in 2010/11. Other schemes are aimed at capacity building in tourism-related activities (Table IV.13).[249]

[241] Indian Railways, Freight Rate Circular Nos. 59 of 2009, 23 October 2009; and 29 of 2010, 28 October 2010.

[242] An education cess (2%) and a secondary and higher education cess (1%) apply on the payable service tax. For details, see Central Board of Excise and Customs online information, "Service Tax: Service Profile". Viewed at: http://www.cbec.gov.in/cae1-english.htm.

[243] Coal, coke, and iron cargo are excluded.

[244] For example, bulk cement, bulk fertilizers, fly ash, selected chemicals/petrochemicals, bulk alumina, steel products, vegetable oil, molasses, and caustic soda (Government of India, Press Information Bureau, Press Releases, "Indian Railways Finalize Policy on Private Freight Terminal", 9 June 2010; and "Indian Railways Finalize Policy on Special Freight Train Operator Scheme", 10 June 2010).

[245] Government of India, Press Information Bureau, Press Release, "Railways' Policy on Automobile Freight Train Operator Scheme", 11 August 2010.

[246] Ministry of Tourism (2010a).

[247] Ministry of Tourism online information, "Policy and Schemes". Viewed at: http://tourism.gov.in/.

[248] Mega projects refer to "the development of destinations/circuits of national importance in a holistic and integrated manner" (Ministry of Tourism, 2010a).

[249] For details, see Ministry of Tourism online information, "Policy and Scheme". Viewed at: http://tourism.gov.in/. See also Ministry of Tourism (2010b).

Table IV.13
Selected support schemes for tourism, 2011
(Rs million)

Objective	Assistance	Outlay 2010/11
Scheme for Product/Infrastructure Development for Destinations and Circuits		
Major destinations and circuits development		
Develop new tourism products to the world standard	Ministry of Tourism bears 100% of the project cost or a maximum of Rs 250 million for destination development and Rs 500 million for circuit development	5,450
Rural Tourism Infrastructure Development		
Develop rural tourism[a]	Maximum of Rs 5 million	70
Scheme of Assistance for Large Revenue Generating Projects (revised)		
Large projects with a tourism impact[b]	Grant to prepare the detailed project report, up to 50% of the actual cost, subject to a maximum of Rs 2.5 million per project; Amount of subsidy for private sector/public private partnership projects determined through a competitive bidding process by the concerned state governments/union territory administrations; Subsidy capped at Rs 500 million, subject to a maximum of 25% of total project cost or 50% of equity contribution of the promoters, whichever is lower	150
Scheme for Support to Public Private Partnerships in Infrastructure (Viability Gap Funding)		
Promote public-private partnerships in infrastructure development, to deal with the lack of availability of physical infrastructure across different sectors, which is hindering economic development	Government support capped at 20% of total project cost; Rs 1 billion for each project may be sanctioned by the empowered institution, subject to budgetary ceilings indicated by the Finance Ministry; proposals up to Rs 2 billion may be sanctioned by the empowered committee; and amounts exceeding Rs 2 billion may be sanctioned by the empowered committee with the approval of Finance Minister	..
Market Development Assistance Scheme for Promotion of Domestic Tourism		
Unexploited potential for domestic tourists	Approved tourism service providers would be provided financial assistance on travel expenses by air only, subject to a ceiling of Rs 30,000 per trip. Trips must be with Air India or alliance partner	..
Financial Assistance to the IHM/FCIS/IITTM/ITIS/polytechnic institutes/universities/govt. colleges/govt. vocational schools/public sector undertakings[c]		
Create institutional infrastructure that may foster and facilitate professional education and training specific to tourism, travel, and hospitality industry	Assistance varies, according to project, from Rs 5 million (minor civil works at universities and other colleges, and polytechnics) to a maximum of Rs 20 million (expenditure on civil works, equipment, furniture, and fixtures in industrial training institutes)	95
Market Research: Professional Services		
Use of professional services from consultants/agencies for: tourism-related surveys, studies, plans, and market research for making available relevant data/information/report/inputs to the Ministry of Tourism for policy making and planning purposes; and feasibility studies and detailed project reports (DPRs) for specific tourism projects	Maximum assistance of Rs 1 million provided for preparation of feasibility studies and DPRs for projects under the Scheme of Product/Infrastructure Development for Destination and Circuits	5

.. Not available.

a The following activities may be taken up under the Scheme: improvement of village surroundings and access roads; illumination in villages; improvement in solid-waste management and sewerage management; procurement of equipment directly related to tourism (e.g. water sports, adventure sports, and eco-friendly modes of transport for moving within the tourism zone); refurbishment of the monuments; reception centres; and tourist accommodation.

b Tourist trains, cruise vessels, cruise terminals, convention centres, golf courses open for domestic and international tourists, health and rejuvenation facilities, last-mile connectivity to tourist destinations (air and cruise including heli-tourism) etc., would qualify for assistance.

c IHM: Institute of Hotel Management; FCIs: Food Craft Institutes; IITTM: Indian Institute of Tourism and Travel Management; and ITIs: Industrial Training Institutes.

Source: Ministry of Tourism online information, "Policy and Schemes". Viewed at: http://tourism.gov.in; and Ministry of Tourism (2010), *India Tourism Statistics 2009*, November. Viewed at: http://tourism.gov.in/.

185. In order to promote India as a tourism destination, the MoT has launched a series of overseas initiatives (e.g. the Incredible India and the Visit India 2009 campaigns), and has started to exploit India's potential in other types of tourism, e.g. rural, adventure, and healthcare tourism as well as eco-tourism.[250] India has emerged as a world destination for healthcare tourism.[251] In 2006, it started to deliver long-term tourist visa (for five years) with multi-entry facilities (for a minimum 90-day visit) for nationals of 18 countries.[252] In January 2009, India implemented the Visa-on-Arrival Scheme for nationals of 11 countries.[253] Also, new and revised air services agreements, and a new policy for foreign charter flights (section (iv)(b)) have boosted tourism. The Directorate General of Tourism, under the MoT, which has offices throughout India to assist tourists, has opened overseas offices to assist MoT in promoting India abroad.[254]

186. The MoT in cooperation with the UN Environment Programme and the UN World Tourism Organization, has developed and issued 37 quality standards to be applied by tourism operators in order to ensure sustainable development tourism.[255]

187. The MoT licenses travel agents, tour operators[256], and tourist transport operators, on a voluntary basis. To be licensed, operators must comply with a series of eligibility criteria stipulated by the MoT.[257] Licences are granted by the MoT upon recommendation of a committee comprising the regional tourism director and a member of the relevant business association.[258] In 2011 (May), there were 601 licensed operators, including 336 travel agents.[259] All types of licences are valid for five years (renewable) and fees amount to Rs 3,000. A foreigner may not operate as a travel agent, tour operator or tourist transport operator.[260] However, foreigners are allowed to provide interpretation services to tourists, within the annual limit of 500 interpreters.

188. The service tax (10%) is levied on travel agents, tour operators, and on tourist transport operators.[261]

189. There are regional, state, and local tourist guides in India. Regional guides are licensed by the MoT; state and local guides are licensed by the state and local tourism agencies.[262] Regional guides

[250] Ministry of Tourism (2010a).

[251] Swain and Sahu (2008).

[252] Argentina, Brazil, Chile, Belgium, Finland, France, Germany, Iceland, Japan, Korea (Rep. of), Luxembourg, Mexico, Netherlands, New Zealand, Norway, Spain, Switzerland, and Viet Nam (Ministry of Tourism, 2010a).

[253] Finland, Japan, Luxembourg, New Zealand, and Singapore (January 2010); and Cambodia, Indonesia, Laos, Myanmar, the Philippines, and Viet Nam (January 2011) (Ministry of Tourism online information, "Statistics". Viewed at: http://www.tourism.gov.in/). Visas are for a single entry and a maximum 30-day stay. They are delivered only at Delhi, Mumbai, Kolkata, and Chennai international airports, subject to a fee (US$60) (Incredible India online information, "Visa Info". Viewed at: http://www.incredibleindia.org/newsite/cms_page.asp?pageid=798).

[254] Ministry of Tourism (2010a).

[255] Ministry of Tourism (2010a).

[256] Inbound tour operators, adventure tour operators, and domestic tour operators.

[257] For details, please see Ministry of Tourism online information, "Guidelines: Travel Trade". Viewed at: http://tourism.gov.in/.

[258] Travel Agents Association of India, Indian Association of Tour Operators, Adventure Tour Operator Association, Association of Domestic Tour Operators of India, and Indian Tourist Transporters Association.

[259] Ministry of Tourism (2010a); and information provided by the authorities.

[260] Information provided by the authorities.

[261] In addition, an education cess (2%) and a secondary and higher education cess (1%) apply on the payable service tax. For details, see Central Board of Excise and Customs online information, "Service Tax: Service Tax Profiles ". Viewed at: http://www.cbec.gov.in/cae1-english.htm.

[262] Chowdhary and Prakash (2008).

must live in the region where they will provide services. Licences issued by the regional tourism offices, are valid for three years (renewable).[263] The Tourist Guide Federation of India fixes the prices charged by guides in consultation with the Indian Association of Tour Operators and the Travel Agents Association of India.[264] Foreigners may not register as regional/state/local guides. Tourist guides are exempt from the service tax.[265]

190. The MoT classifies accommodation establishments on a voluntary basis.[266] Classification is valid for five years (two years for B&Bs). Fees range from Rs 3,000 (silver category B&B) to Rs 25,000 (5-star deluxe hotel).[267] At end 2010, India had 2,483 hotels with 117,815 rooms.[268] Hotel accommodation is dominated by five Indian-owned chains. The state-owned India Tourism Development Corporation Ltd. runs a chain of hotels. Most major international hotel chains operate under management or franchise contracts.[269]

191. In 2010, India estimated a shortage of some 150,000 hotel rooms, in particular in the budget category.[270] As a result, the MoT has advised "land-owning agencies" and state governments to put land aside for the construction of hotels and to allow construction contracts on public-private partnerships or revenue-sharing basis. Since 2001, subsidized loans have been available for construction of budget accommodation hotels under the Incentive to Accommodation Infrastructure Scheme; in 2010-11, Rs 100 billion were allocated under the scheme.[271] Access to credit for the development of hotels has been increased and offered at reduced interest rates[272]; and the MoT has eased the procedure to obtain B&B classification to encourage applications.[273] Tax incentives are available for hotel development under the Income Tax Act: a five-year tax holiday is granted to new 2- to 4-star hotels located in the National Capital Territory of Delhi (and some neighbouring districts[274]) which started operations between 1 April 2007 and 1 July 2010[275]; and to 2- to 4-star hotels starting operation in UNESCO World Heritage sites[276] between 1 April 2008 and 31 March 2013.[277] In addition, as of 2010, capital expenditure in new hotels is fully deductable for income tax purposes.[278]

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[263] Ministry of Tourism online information, "Guidelines: Others". Viewed at: http://tourism.gov.in/.

[264] Chowdhary and Prakash (2008).

[265] Central Board of Excise and Customs online information, "Service Tax: Service Tax Profiles ". Viewed at: http://www.cbec.gov.in/cae1-english.htm.

[266] Hotels, B&Bs, guesthouses, resorts, and tented accommodation.

[267] Ministry of Tourism online information, "Guidelines: Accommodation". Viewed at: http://tourism.gov.in/.

[268] Ministry of Tourism (2010b).

[269] Investment Commission of India online information, "Services: Tourism". Viewed at: http://www.investmentcommission.in/tourism.htm.

[270] Ministry of Finance (2011a).

[271] Ministry of Tourism (2010b).

[272] Ministry of Tourism (2010a).

[273] Ministry of Tourism (2009).

[274] Faridabad, Gurgaon, Gautam Budh Nagar, and Ghaziabad (Ministry of Tourism, 2009).

[275] Originally the incentive was granted for hotels developed up to 31 March 2010. An extension to 31 July 2010 was granted to speed up the construction of the accommodation needed for the Commonwealth Games in October 2010 (*The Financial Express*, "Tourism ministry seeks 5-yrs tax holiday extension for Games hotels till July 31", 20 January 2010).

[276] Excluding Delhi and Mumbai districts.

[277] Ministry of Tourism (2010a).

[278] Ministry of Finance (2011a).

192. Foreign presence is not allowed in travel agencies, tour operator or tourist transport operator. FDI inflows remain low (1.81% of the overall FDI inflows over April 2000-December 2010[279]) due to, *inter alia*, multiple taxes on tourism services at central and state level[280]; and high service tax on tourism services providers (see above).[281]

193. India has signed 46 bilateral agreements on tourism cooperation.[282]

[279] Ministry of Commerce and Industry online information, "FDI in India Statistics". Viewed at: http://dipp.nic.in/fdi_statistics/india_fdi_index.htm.

[280] For instance, daily hotel rates of at least Rs 3,000 are subject to a 10% expenditure tax levied by the Government and a luxury tax of 5%-25% levied by state governments (Srinivas Subbarao, 2008).

[281] Srinivas Subbarao (2008).

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APPENDIX TABLES

Table AI.1
Merchandise exports, by group of products, 2006-10
(US$ and %)

	2006/07	2007/08	2008/09	2009/10
Total exports (US$ million)	**126,414.1**	**163,132.2**	**185,295.4**	**178,751.4**
		(% of total)		
Total primary products	33.9	37.3	31.6	33.0
Agriculture	10.6	11.9	10.0	10.4
Food	8.6	9.7	8.9	8.5
0423 Rice, milled, semi-milled	1.2	1.8	1.3	1.3
0813 Oil-cake, oilseed residues	1.0	1.2	1.2	0.9
Agricultural raw material	2.0	2.2	1.1	1.9
2631 Cotton (other than linters), not carded or combed	1.1	1.3	0.3	1.1
Mining	23.3	25.4	21.6	22.5
Ores and other minerals	5.0	5.2	3.8	4.6
2815 Iron ores and concentrates, not agglomerated	3.1	3.4	2.5	3.4
Non-ferrous metals	3.3	2.4	2.4	1.7
6821 Copper anodes; alloys; unwrought	1.5	1.0	0.5	0.7
Fuels	14.9	17.8	15.3	16.2
Manufactures	65.0	61.7	65.7	63.9
Iron and steel	5.6	5.6	5.6	3.5
Chemicals	11.4	11.0	10.6	11.2
5429 Medicaments, n.e.s.	1.7	1.6	1.7	2.0
5169 Organic chemicals, n.e.s.	1.5	1.3	1.3	1.2
5112 Cyclic hydrocarbons	1.0	0.9	0.7	0.6
Other semi-manufactures	14.2	14.1	13.4	14.6
6672 Diamonds (excl. industrial, sorted) not mounted/set	8.4	8.7	8.6	10.1
Machinery and transport equipment	11.1	11.7	15.3	13.4
Power generating machines	0.7	0.8	0.9	0.8
Other non-electrical machinery	3.2	3.4	3.4	3.0
Agricultural machinery and tractors	0.3	0.3	0.2	0.2
Office machines and telecommunication equipment	0.9	0.9	2.4	1.8
7643 Radio or television transmission apparatus	0.1	0.1	1.3	0.7
Other electrical machines	2.0	1.9	2.1	1.9
Automotive products	2.4	2.3	2.7	2.9
7812 Motor vehicles for the transport of persons, n.e.s.	0.9	0.8	1.3	1.8
7843 Other motor vehicle parts and accessories of 722, 781 to 783	1.0	0.9	0.8	0.7
Other transport equipment	1.9	2.4	3.8	3.0
7932 Ships, boats, etc. (excl. pleasure craft, tugs, etc.)	0.6	0.4	1.3	0.6
Textiles	7.1	6.2	5.2	5.7
6513 Cotton yarn, excluding thread	1.3	1.2	0.8	0.9
6531 Fabrics, woven, of synthetic filament yarn, excl. pile/chemille	0.4	0.5	0.6	0.8
6585 Curtains and other textile furnishing, n.e.s.	1.0	0.8	0.6	0.7
Clothing	7.5	6.3	6.3	6.4
8454 T-shirts, singlets and other vests, knitted or crocheted	1.2	1.0	1.0	0.9
8427 Blouses/shirts, womens/girls, not knitted/crocheted	0.9	0.7	0.7	0.8
Other consumer goods	8.0	6.8	9.1	9.1
8973 Jewellery of gold, silver or platinum metals (except watches)	3.9	3.0	5.6	5.5
8514 Other footwear, leather or composition leather uppers	0.6	0.6	0.6	0.7
Other	1.2	1.0	2.7	3.1

Source: WTO calculations, based on Department of Commerce online information, "Export Import Data Bank". Viewed at: http://commerce.nic.in/eidb/default.asp [24 February 2011].

Table AI.2
Merchandise imports, by group of products, 2006-10
(US$ million and %)

	2006/07	2007/08	2008/09	2009/10
Total imports (US$ million)	**185,735.2**	**251,654.0**	**303,696.3**	**288,372.9**
		(% of total)		
Total primary products	44.7	44.2	44.1	43.7
Agriculture	5.0	4.3	3.8	5.7
Food	3.3	2.7	2.4	4.1
4222 Palm oil, fractions	0.7	0.7	0.8	1.4
0542 Leguminous vegetables, dried, shelled	0.5	0.6	0.5	0.8
Agricultural raw material	1.7	1.6	1.4	1.6
2475 Wood, non-coniferous, in the rough, or roughly squared	0.5	0.5	0.4	0.5
Mining	39.8	39.9	40.3	38.0
Ores and other minerals	5.0	3.7	3.5	3.2
2831 Copper ores and concentrates	2.8	1.6	1.3	1.4
2823 Other ferrous waste and scrap	0.4	0.4	0.6	0.5
Non-ferrous metals	1.5	1.9	2.7	1.4
Fuels	33.3	34.3	34.2	33.4
3330 Crude oils of petroleum and bituminous minerals	25.3	25.5	25.5	26.9
3212 Other coal, whether or pulverized, not agglomerated	2.0	2.0	2.9	2.8
3431 Natural gas, liquefied	0.8	0.9	0.9	0.8
Manufactures	46.1	48.2	47.3	44.1
Iron and steel	3.4	3.4	3.1	2.8
Chemicals	9.0	9.0	11.1	10.0
5623 Mineral/chemical fertilizers (excl. crude natural potassium salts)	0.4	0.4	0.9	0.9
5629 Fertilizers, nes	0.5	0.6	2.3	0.8
5223 Inorganic acid and oxides	0.5	0.4	0.9	0.5
Other semi-manufactures	6.4	5.7	8.0	7.8
6672 Diamonds (excl. industrial, sorted) not mounted/set	3.9	3.1	5.4	5.5
Machinery and transport equipment	22.6	25.7	21.1	19.5
Power generating machines	0.8	0.9	0.8	0.9
Other non-electrical machinery	7.1	7.4	6.7	6.0
7284 Machinery and appliances for particular industries, n.e.s.	0.5	0.5	0.6	0.5
Agricultural machinery and tractors	0.0	0.0	0.0	0.1
Office machines and telecommunication equipment	7.0	6.5	6.3	5.8
7641 Electrical apparatus for line telephony/telegraphy	0.8	1.4	1.7	1.8
7643 Radio or television transmission apparatus	2.2	1.6	1.4	1.2
7599 Parts and accessories of 751.1, 751.2, 751.9 and 752	0.7	0.5	0.4	0.5
Other electrical machines	2.1	2.3	2.4	2.1
Automotive products	0.8	1.0	1.1	1.2
7843 Other motor vehicle parts and accessories of 722, 781 to 783	0.5	0.7	0.7	0.8
Other transport equipment	4.8	7.5	3.8	3.5
7923 Aeroplanes and other aircraft, mechanically-propelled (other than helicopters), of an unladen weight exceeding 2,000 kg but not exceeding 15,000 kg	0.2	4.2	1.2	1.2
Textiles	1.1	0.9	0.8	0.8
Clothing	0.1	0.1	0.1	0.1
Other consumer goods	3.5	3.4	3.1	3.1
8985 Other blank recording media (excl. of 882)	0.0	0.1	0.5	0.7
Other	9.1	7.6	8.6	12.2
Gold	7.8	6.6	7.0	10.0
9710 Gold, non-monetary (excl. gold ores and concentrates)	7.8	6.6	7.0	10.0

Source: WTO calculations, based on Department of Commerce online information, "Export Import Data Bank". Viewed at: http://commerce.nic.in/eidb/default.asp [24 February 2011].

Table AI.3
Merchandise exports, by destination, 2006-10
(US$ and %)

	2006/07	2007/08	2008/09	2009/10
Total exports (US$ million)	**126,414.1**	**163,132.2**	**185,295.4**	**178,751.4**
	(% of total)			
America	19.2	17.0	15.5	15.1
United States	14.9	12.7	11.5	11.0
Other America	4.3	4.3	4.1	4.1
Brazil	1.1	1.5	1.4	1.4
Europe	22.9	22.9	22.7	21.9
EU 27	21.2	21.2	21.2	20.5
Netherlands	2.1	3.2	3.4	3.6
United Kingdom	4.4	4.1	3.6	3.5
Germany	3.2	3.1	3.4	3.0
France	1.7	1.6	1.6	2.1
Belgium	2.8	2.6	2.4	2.1
Italy	2.8	2.4	2.1	1.9
Spain	1.5	1.4	1.4	1.1
EFTA	0.5	0.5	0.6	0.5
Other Europe	1.1	1.1	0.8	0.9
Commonwealth of Independent States	1.2	1.1	1.0	0.9
Africa	8.1	8.8	8.0	7.5
South Africa	1.8	1.6	1.1	1.2
Middle East	16.8	17.0	20.7	20.3
United Arab Emirates	9.5	9.6	13.2	13.4
Kingdom of Saudi Arabia	2.0	2.3	2.8	2.2
Israel	1.0	1.0	0.8	1.1
Asia	31.7	33.1	29.6	31.9
China	6.6	6.7	5.0	6.5
Japan	2.3	2.4	1.6	2.0
Six East Asian traders	13.4	13.9	14.0	14.2
Hong Kong, China	3.7	3.9	3.6	4.4
Singapore	4.8	4.5	4.6	4.2
Korea, Rep. of	2.0	1.8	2.1	1.9
Malaysia	1.0	1.6	1.8	1.6
Other Asia	9.4	10.2	9.0	9.2
Indonesia	1.6	1.3	1.4	1.7
Bangladesh	1.3	1.8	1.3	1.4
Sri Lanka	1.8	1.7	1.3	1.2
Other	0.2	0.2	2.4	2.3
Areas n.e.s	0.2	0.2	2.4	2.3
Memorandum:				
APEC	43.6	41.2	37.8	39.6
ASEAN	10.0	10.1	10.3	10.1

Source: WTO calculations, based on Department of Commerce online information, "Export Import Data Bank". Viewed at: http://commerce.nic.in/eidb/default.asp [24 February 2011].

Table AI.4
Merchandise imports, by origin, 2006/10
(US$ and %)

	2006/07	2007/08	2008/09	2009/10
Total imports (US$ million)	**185,735.2**	**251,654.0**	**303,696.3**	**288,372.9**
	(% of total)			
America	10.6	11.8	10.2	10.2
United States	6.3	8.4	6.1	5.9
Other America	4.3	3.4	4.1	4.3
Europe	21.6	20.5	18.9	19.3
EU 27	16.1	15.3	14.1	13.3
Germany	4.1	3.9	4.0	3.6
Belgium	2.2	1.7	1.9	2.1
United Kingdom	2.2	2.0	1.9	1.5
France	2.3	2.5	1.5	1.5
EFTA	5.3	4.5	4.3	5.4
Switzerland	4.9	3.9	3.9	5.1
Other Europe	0.2	0.7	0.5	0.6
Commonwealth of Independent States	2.1	1.5	2.2	2.1
Africa	7.9	8.1	8.1	8.9
Nigeria	3.8	3.0	2.9	2.5
South Africa	1.3	1.4	1.8	2.0
Angola	0.1	0.4	0.5	1.5
Middle East	25.7	26.4	27.8	26.5
United Arab Emirates	4.7	5.4	7.8	6.8
Kingdom of Saudi Arabia	7.2	7.7	6.6	5.9
Iran Islamic Rep.	4.1	4.3	4.1	4.0
Kuwait	3.2	3.1	3.2	2.9
Iraq	3.0	2.7	2.5	2.4
Qatar	1.1	1.0	1.2	1.6
Asia	31.7	31.0	32.4	32.6
China	9.4	10.8	10.7	10.7
Japan	2.5	2.5	2.6	2.3
Six East Asian traders	11.6	11.0	11.7	10.6
Korea, Rep. of	2.6	2.4	2.9	3.0
Singapore	3.0	3.2	2.5	2.2
Malaysia	2.8	2.4	2.4	1.8
Hong Kong, China	1.3	1.1	2.1	1.6
Other Asia	8.2	6.7	7.4	9.0
Australia	3.8	3.1	3.7	4.3
Indonesia	2.3	1.9	2.2	3.0
Other	0.4	0.7	0.5	0.3
Memorandum:				
APEC	40.2	41.1	40.9	40.2
ASEAN	9.7	9.0	8.6	8.9

Source: WTO calculations, based on Department of Commerce online information, "Export Import Data Bank". Viewed at: http://commerce.nic.in/eidb/default.asp [24 February 2011].

Table AII.1
Jurisdiction between central and state legislatures, 2011

Exclusive power of the Parliament
Entry into and implementation of treaties, agreements, and conventions with foreign countries
Railways
National highways
Shipping and navigation on inland national waterways as regards mechanically propelled vessels; and the rule of the road on waterways
Maritime shipping and navigation, including on tidal waters; provision of education and training for the mercantile marine and its subsequent regulation provided by states and other agencies
Lighthouses including lightships, beacons, and provisions for shipping and aircraft safety
Major ports, including delimitation, and constitution and power of port authorities
Port quarantine including hospitals connected therewith, and seamen's and marine hospitals
Airways; aircraft and air navigation; provision of aerodromes; regulation and organization of air traffic and aerodromes; provision for aeronautical education and training; and regulation of education and training provided by states and other agencies
Carriage of passengers and goods by railway, sea, or air; or by national waterways in mechanically propelled vessels
Posts and telegraphs, telephones, wireless, broadcasting, and other like forms of communication
Banking
Insurance
Industries, the control of which by the Union is declared by Parliament by law to be expedient in the public interest
Regulation and development of oilfields and mineral oil resources; petroleum and petroleum products; and other liquids and substances declared to be dangerously inflammable
Regulation of mines and mineral development declared to be expedient in the public interest
Trade and commerce with foreign countries; import and export across customs frontiers; and definition of customs frontiers
Inter-state trade and commerce
Establishment of quality standards for goods to be exported out of India or transported from one State to another
Establishment of weight and measure standards
Inter-state migration and inter-state quarantine
Taxes on income other than agricultural income
Customs duties including export duties
Excise duties on tobacco and other goods manufactured/produced in India, except alcoholic liquors for human consumption, opium, Indian hemp, and other narcotic drugs and narcotics, but including medicinal preparations containing alcohol, opium, Indian hemp, and other narcotic drugs and narcotics
Corporation tax
Taxes on the capital value of assets (exclusive of agricultural land, individuals, and companies) and taxes on the capital of companies
Duties in respect of succession to property other than agricultural land
Terminal taxes on goods or passengers carried by railway, sea or air; and taxes on railway fares and freights
Taxes other than stamp duties on transactions in stock exchanges and future markets
Stamp duty rate in respect of bills of exchange, cheques, promissory notes, bills of lading, letters of credit, insurance policies, transfer of shares, debentures, proxies, and receipts
Taxes on the sale or purchase of newspapers and on advertisements published therein
Taxes on the sale or purchase of goods other than newspapers when sale/purchase takes place in the course of inter-state trade or commerce
Taxes on goods consignments (whether the consignment is to the person making it or to any other person) when consignments take place in the course of inter-state trade or commerce
Taxes on services
States power
Agriculture, including agricultural education and research, protection against pests, and prevention of plant diseases
Taxes on agricultural income
Duties in respect of succession to agricultural land
Estate duty in respect of agricultural land
Taxes on lands and buildings
Taxes on mineral rights subject to limitations imposed by Parliament by law relating to mineral development

Table AII.1 (cont'd)

Excise duties on goods manufactured/produced in the State and countervailing duties (at the same or lower rates) on similar goods manufactured/produced elsewhere in India, except alcoholic liquors for human consumption, opium, Indian hemp, and other narcotic drugs and narcotics but not including medicinal preparations containing alcohol, opium, Indian hemp, and other narcotic drugs and narcotics
Taxes on the entry of goods into local area for consumption, use or sale therein
Taxes on electricity consumption or sale
Taxes on sale or purchase of goods other than newspapers
Taxes on advertisements other than advertisements published in newspapers and broadcast on radio and TV
Taxes on goods and passengers carried by road or on inland waterways
Taxes on vehicles whether mechanically propelled or not suitable for use on roads, including tramcars
Concurrent power
Economic and social planning
Commercial and industrial monopolies, combines, and trusts
Prevention of the extension from one state to another of infectious, contagious diseases or pests affecting men, animals or plants
Ports other than major ports
Trade and commerce in, and production, supply and distribution of: (i) products of any industry, the control of which by the Union is declared by Parliament by law to be expedient in the public interest, and imported goods of the same kind as such products; (ii) foodstuffs, including edible oilseeds and oils; (iii) cattle fodder, including oilcakes and other concentrates; (iv) raw cotton, whether ginned or unginned, and cotton seed; and (v) raw jute
Weights and measures, except establishment of standards
Price control
Electricity

Source: Ministry of Law and Justice online information, "The Constitution of India (as modified up to the 1 December 2007): Seventh Schedule". Viewed at: http://lawmin.nic.in/coi/coiason29july08.pdf.

Table AII.2
Notifications to the WTO, 1 January 2007-30 June 2011

WTO Agreement	Description	Document symbol (most recent notification)	Date
Agreement on Agriculture			
Article 18.2 (DS:1)	Domestic support	G/AG/N/IND/7	09/06/2011
Article 18.2 (MA:1)	Tariff and other quota commitments	G/AG/N/IND/6	07/03/2011
Article 18.2 (MA:2)	Tariff quotas	G/AG/N/IND/5	07/03/2011
Enabling clause			
GSP	Regional trade agreement (RTA): Brunei Darussalam, Cambodia, India, Indonesia, Malaysia, Myanmar, Philippines, Singapore, Thailand, and Viet Nam	WT/COMTD/N/35	23/08/2010
	RTA: India and Afghanistan	WT/COMTD/N/32	09/03/2010
Regional integration Paragraph 2(c)	RTA: India and Korea (Rep. of)	S/C/N/570 WT/COMTD/N/36	29/09/2010
	RTA: India and Nepal	WT/COMTD/N/34	03/08/2010
	RTA: Argentina, Brazil, Paraguay and Uruguay (States Parties to the MERCOSUR), and India	WT/COMTD/N/31	25/02/2010
	RTA: Chile and India	WT/COMTD/N/30	14/01/2009
	RTA: India and Bhutan	WT/COMTD/N/28	02/07/2008
General Agreement on Trade in Services			
Article III:3	Reference paper on basic telecommunications	S/C/N/543	08/04/2010
Article V:7(a)	RTA: India and Korea (Rep. of)	S/C/N/570 WT/COMTD/N/36	29/09/2009
	RTA: India and Singapore	S/C/N/393 WT/REG228/N/1	04/05/2007
GATT 1994			
Article XXVIII:5	Invocation of paragraph 5	G/MA/202	10/09/2008
Article XXIV:7(a)	RTA: India and Singapore	S/C/N/393 WT/REG228/N/1	04/05/2007
Article XXII:4(a)	State trading	G/STR/N/10/IND G/STR/N/11/IND G/STR/N/8/IND G/STR/N/9/IND	06/05/2010
Agreement on the Implementation of Article VI of the GATT 1994 (Anti-Dumping Agreement)			
Article 16.5	Competent authorities	G/ADP/N/14/Add.28 G/SCM/N/18/Add.28	14/10/2009
Article 16.4 – ad hoc	Reports	G/ADP/N/214	09/05/2011
Article 16.4	Semi-annual report	G/ADP/N/202/IND/Corr.1	03/05/2011
Agreement on Import Licensing			
Article 1.4(a)	Licensing procedures	G/LIC/N/1/IND/12	16/10/2009
Articles 5.1, 5.2, and 5.3	List and description of products subject to licensing	G/LIC/N/1/IND/11 G/LIC/N/2/IND/10	22/09/2008
Article 7.3	Replies to questionnaire	G/LIC/N/3/IND/11	27/07/2010
Agreement on Subsidies and Countervailing			
Article 25.1	New and full notification of subsidy programmes	G/SCM/N/123/IND/Suppl.1	01/02/2011
Article 25.11	Semi-annual report	G/SCM/N/219/Add.1	26/04/2011
Article 25.12	Competent authorities	G/ADP/N/14/Add.28 G/SCM/N/18/Add.28	14/10/2009
Agreement on Safeguards			
Article 12.4	Notification of termination	G/SG/N/7/IND/6/Suppl.1 G/SG/N/8/IND/17/Suppl.1 G/SG/N/9/IND/10	22/12/2009
Article 12.1(a)	Notification of initiation	G/SG/N/6/IND/28	07/01/2011

Table AII.2 (cont'd)

WTO Agreement	Description	Document symbol (most recent notification)	Date
Article 12.1(b) Article 12.1(c) Article 9.1 footnote 2	Notification of finding, decision, and serious injury and decision	G/SG/N/10/IND/12 G/SG/N/11/IND/7 G/SG/N/8/IND/21	20/06/2011
Agreement on Sanitary and Phytosanitary Measures			
Article 7 Annex B	Publication of regulations	G/SPS/N/IND/71	10/01/2011
Agreement on Trade-Related Aspects of Intellectual Property Rights			
Article 69	Contact points	IP/N/3/Rev.9/Add.3	16/02/2007

Source: WTO documents.

Table AII.3
Overview of India's preferential trade agreements, 2011

Asia Pacific Trade Agreement (APTA)	
Parties	Bangladesh, China, India, Korea (Rep. of), Lao People's Democratic Republic, and Sri Lanka
Date of signature/entry into force	31.07.1975/17.06.1976[a]
Transition for full implementation	Immediately on implementation
India's duty-free tariff lines (2009/10)	3.36% of the total[b]
Provisions concerning goods	Rules of origin, safeguards, balance-of-payment measures, and dispute settlement
Trade in goods	Tariff concessions apply to 570 HS six-digit tariff lines (margin of preferences: 5%-100%). Special concessions apply to 48 six-digit tariff lines (margin of preferences: 14%-100%) for LDC members. The fourth round of negotiations aimed at widening the coverage of preferences to at least 40% of the tariff lines of each member State at an average margin of preference of 40%, was scheduled to be completed in October 2009 but has not been concluded yet
India's merchandise trade (2009/10)	Imports from APTA: 13.9% of total; exports to APTA: 11% of total
of which preferential	Imports: ..
WTO document series	L/4418 (GATT), BISD 25S/L4635 (GATT), WT/COMTD/N/22, and WT/COMTD/62
South Asian Free-Trade Agreement (SAFTA)	
Parties	Afghanistan, Bangladesh, Bhutan, India, Maldives, Nepal, Pakistan, and Sri Lanka
Date of signature/entry into force	06.01.2004/01.06.2006
Transition for full implementation	2013
India's duty-free tariff lines (2009/10)	0.028% of the total[b]
Provisions concerning goods	Rules of origin, safeguards, balance-of-payment measures, general exceptions, and dispute settlement
Trade in goods	Tariff reduction to 20% for non-LDC members by 2008 (30% for LDC members), followed by a reduction to 0%-5% by 2013 (by 2014 for Sri Lanka and by 2018 for LDC members). Tariff reduction to 0%-5% on imports from LDC members by 2009. However, India granted duty-free access on imports from LDC members on 1 January 2008 (i.e. one year ahead of the tariff liberalization schedule). The base rate is the MFN tariff in force on 1 January 2006. India's sensitive list includes 744 products from LDC members and 865 products from non-LDC members[c]
India's merchandise trade (2009/10)	Imports from SAFTA: 0.5% of total; exports to SAFTA: 4.4% of total
of which preferential	Imports: ..
WTO document series	WT/COMTD/N/26
South Asian Preferential Trade Arrangement (SAPTA)[d]	
Parties	Bangladesh, Bhutan, India, Maldives, Nepal, Pakistan, and Sri Lanka
Date of signature/entry into force	11.04.1993/07.12.1995
Transition for full implementation	On implementation
India's duty-free tariff lines (2009/10)	0.028% of the total[b]
Provisions concerning goods	Balance-of-payment measures, dispute settlement, rules of origin, and safeguards
Trade in goods	Tariff concessions apply to 2,565 HS six-digit tariff lines (margin of preferences: 10%-90% for non-LDC members and 10%-100% for LDC members)
India's merchandise trade (2009/10)	Imports from SAPTA: 0.5% of total; exports to SAPTA: 4.4% of total
of which preferential	Imports: ..
WTO document series	WT/COMTD/10
Association of Southeast Asian Nations (ASEAN)	
Parties	India and Brunei Darussalam, Cambodia, Indonesia, Lao People's Democratic Republic, Malaysia, Myanmar, Philippines, Singapore, Thailand, and Viet Nam
Date of signature/entry into force	13.08.2009/01.01.2010[e]
Transition for full implementation	31.12.2019

Table AII.3 (cont'd)

India's duty-free tariff lines (2009/10)	1.13% of the total[b]
Provisions concerning goods	Rules of origin, dispute settlement, safeguards, balance-of-payment measures, customs-related measures, exceptions (general and for security), and dispute settlement
Trade in goods	Tariff concessions apply to 12,169 HS eight-digit tariff lines. For "normal track" products, applied MFN rates will be reduced and subsequently eliminated by end December 2013 (7,775 HS eight-digit tariff lines) and by end December 2016 (1,252 HS eight-digit tariff lines). For "sensitive track" products (1,805 HS eight-digit tariff lines), applied MFN rates higher than 5% will be reduced to 5% by end December 2016. For special products[f], applied MFN rates will be reduced from 70%-100% to 37.5%-50% by end December 2019. For "highly sensitive" products, MFN applied rates will be reduced to 50% for category I products (nine HS eight-digit tariff lines), 45% for category II products (30 HS eight-digit tariff lines), and 37.5% for category III products (one HS eight-digit tariff line) by end December 2019. The exclusion list (1,297 HS eight-digit tariff lines) must be reviewed annually
India's merchandise trade (2009/10)	Imports from ASEAN: 8.9% of total; exports to ASEAN: 10.1% of total
of which preferential	Imports: ..
WTO document series	WT/COMTD/N/35
MERCOSUR	
Parties	India and Argentina, Brazil, Paraguay, and Uruguay
Date of signature/entry into force	25.01.2004/01.06.2009
Transition for full implementation	Immediate on implementation
India's duty-free tariff lines (2009/10)	0.25% of the total[b]
Provisions concerning goods	Rules of origin, safeguards, and dispute settlement
Trade in goods	450 HS eight-digit tariff lines are granted tariff concessions (margin of preferences: 10%, 20% or 100%)
India's merchandise trade (2009/10)	Imports from MERCOSUR: 1.4% of total; exports to MERCOSUR: 1.5% of total
of which preferential	Imports: ..
WTO document series	WT/COMTD/N/31
India-Afghanistan	
Parties	India and Afghanistan
Date of signature/entry into force	06.03.2003/13.05.2003
Transition for full implementation	Immediately on implementation
India's duty-free tariff lines (2009/10)	Nil[b]
Provisions concerning goods	Rules of origin, safeguards, balance-of-payment measures, state trading, dispute settlement, general exceptions, safeguards, and national treatment
Trade in goods	Tariff reductions apply to 38 HS six-digit tariff lines. Margin of preferences is 50% or 100% of the MFN tariff in force as of 13 May 2003
India's merchandise trade (2009/10)	Imports from Afghanistan: 0.04% of total; exports to Afghanistan: 0.3% of total
of which preferential	Imports: ..
WTO document series	WT/COMTD/N/32
India-Bhutan	
Parties	India and Bhutan
Date of signature/entry into force	28.07.2006/29.07.2006
Transition for full implementation	Immediate
India's duty-free tariff lines (2009/10)	Negligible[b]
Provisions concerning goods	Safeguards and customs-related measures
Trade in goods	Tariff exemptions on all goods imported from Bhutan. No restrictions on Bhutan's trade with third countries. Non-tariff restrictions may be imposed on imports of third countries from Bhutan. Annual refund of excise duties. Bhutan-flagged vessels operating to and from Indian ports are given equal treatment than granted to vessels from other foreign country
India's merchandise trade (2009/10)	Imports from Bhutan: 0.1% of total; exports to Bhutan: 0.1% of total
of which preferential	Imports: ..
WTO document series	WT/COMTD/N/28

Table AII.3 (cont'd)

India-Chile	
Parties	India and Chile
Date of signature/entry into force	08.03.2006/17.08.2007[g]
Transition for full implementation	Immediately on implementation
India's duty-free tariff lines (2009/10)	0.004% of the total
Provisions concerning goods	Anti-dumping and countervailing measures, customs-related measures, dispute settlement, general exceptions, import/export restrictions, rules of origin, safeguards, sanitary and phytosanitary measures, national treatment, state trading, agriculture export subsidies, and technical barriers to trade
Trade in goods	Tariff preferences apply to 178 HS eight-digit tariff lines (margin of preferences: 10%-50%)
India's merchandise trade (2009/10)	Imports from Chile: 0.4% of total; exports to Chile: 0.2% of total
of which preferential	Imports: ..
WTO document series	WT/COMTD/N/30, WT/COMTD/RTA/M/3, and WT/COMTD/RTA/4
India-Korea (Rep. of)	
Parties	India and Korea (Rep. of)
Date of signature/entry into force	07.08.2009/01.01.2010
Transition for full implementation	2019
India's duty-free tariff lines (2009/10)	0.32% of the total[b]
Provisions concerning goods	Rules of origin, customs-related measures, anti-dumping and countervailing measures, safeguards, technical regulations, exceptions (general and for security), state trading, non-tariff measures, and sanitary and phytosanitary measures
Trade in goods	E-0 group of products (460 HS eight-digit tariff lines) have been free of duty since 1 January 2010. Phased elimination of duty for E-5 group of products (448 HS eight-digit tariff lines) by 2014. Phased elimination of duty for E-8 group of products (7,248 HS eight-digit tariff lines) by 2017. Phased reduction of duty to 0%-5% for RES products (941 HS eight-digit tariff lines) by 2017. Phased reduction of duty to 50% for SEN products (704 HS eight-digit tariff lines) by 2019. Exemption of tariff reduction or elimination applies to 1,895 HS eight-digit tariff lines. The base rate is the MFN duty in force as of 1 April 2006
Provision concerning services	Yes
India's merchandise trade (2009/10)	Imports from Korea: 3.0% of total; exports to Korea: 1.9% of total
of which preferential	Imports: ..
India's commercial services trade (2009/10)	..
WTO document series	WT/REG286/N/1 and S/C/N/558, and WT/COMTD/N/36 and S/C/N/570
India-Nepal	
Parties	India and Nepal
Date of signature/entry into force	27.10.2009/27.10.2009
Transition for full implementation	Immediate on implementation
India's duty-free tariff lines (2009/10)	0.002% of the total[b]
Provisions concerning goods	Rules of origin and safeguards
Trade in goods	Tariff exemptions for all goods. Imports of vegetable fats, copper products, acrylic yarn, and zinc oxide are subject to annual quotas. Imports of alcoholic liquors/beverages (except industrial spirits)[h], perfumes, and cosmetics with non-Nepalese/non-Indian brand names, and cigarettes and tobacco are not allowed preferential entry into India
India's merchandise trade (2009/10)	Imports from Nepal: 0.2% of total; exports to Nepal: 0.9% of total
of which preferential	Imports: ..
WTO document series	WT/COMTD/N/34
India-Singapore	
Parties	India and Singapore
Date of signature/entry into force	29.06.2005/01.08.2005
Transition for full implementation	01.12.2015

Table AII.3 (cont'd)

India's duty-free tariff lines (2009/10)	..
Provisions concerning goods	Rules of origin, customs-related measures, safeguards, standards and technical regulations, sanitary and phytosanitary measures, and dispute settlement
Trade in goods	506 HS eight-digit tariff lines have been granted duty-free access since 1 August 2005. Phased elimination of duty for 2,202 HS eight-digit tariff lines by 1 April 2009. Phased reduction of duty for 2,407 HS eight-digit tariff lines by 1 April 2009. Some 6,550 HS eight-digit tariff lines are excluded from duty reductions
Provision concerning services	Yes
Other provisions	Investment and government procurement
India's merchandise trade (2009/10)	Imports from Singapore: 2.2% of total; exports to Singapore: 4.2% of total
of which preferential	Imports: 0.58% of total during 2009-10
India's commercial services trade (2009/10)	..
WTO document series	WT/REG228/N/1 and S/C/N/393, WT/REG228/2, WT/REG228/1/Rev.1, WT/REG228/3, and WT/REG228/M/1
India-Sri Lanka	
Parties	India and Sri Lanka
Date of signature/entry into force	28.12.1998/15.12.2001
Transition for full implementation	18.03.2003
India's duty-free tariff lines (2009/10)	0.001% of the total[b]
Provisions concerning goods	General exceptions, national treatment, state trading, rules of origin, safeguards, balance-of-payment measures, disputes settlement, and rules of origin
Trade in goods	As of 18 March 2003, all tariff lines (except those in the negative list and those under tariff rate quotas) have been free of duty. India's negative list comprises 429 tariff lines. Tariff concessions on textiles are restricted to 25% below the MFN rate; although textiles under HS chapters 61-62 remain in India's negative list, an annual quota of 8 million pieces is offered a 75% tariff concession on a fixed basis[i]. Tariff quota also apply to tea: a 50% tariff concession on a fixed basis is offered, subject to an annual quota of 15 million kg
India's merchandise trade (2009/10)	Imports from Sri Lanka: 0.1% of total; exports to Sri Lanka: 1.2% of total
of which preferential	Imports: ..
WTO document series	WT/COMTD/N/16
India-Japan	
Date of signature/entry into force	16.02.2011/..
Transition for full implementation	Within ten years from the date of implementation
India's duty-free tariff lines (2009/10)	0.25% of the total[b]
Provisions concerning goods	Customs-related measures, export subsidies, import/export restrictions, safeguards, anti-dumping measures, balance-of-payment measures, and rules of origin
Trade in goods	For category A products (1,378 HS eight-digit tariff lines), customs duties are to be eliminated as from the date of entry into force of the agreement. For category B5 products (509 HS eight-digit tariff lines), customs duties are to be eliminated in six equal annual instalments from the base rate to free. For category B7 products (two HS eight-digit tariff lines), customs duties are to be eliminated in eight equal annual instalments from the base rate to free. For category B10 products (7,151 HS eight-digit tariff lines), customs duties are to be eliminated in 11 equal annual instalments from the base rate to free. For gear boxes and diesel engines of a capacity exceeding 250 cc (two HS eight-digit tariff lines), customs duties are to be reduced to 6.25% and 5%, respectively, by 1 January 2019. Category X products (1,535 HS eight-digit tariff lines) are to be excluded from any customs reduction or elimination
Provision concerning services	Yes
Other provisions	Investment, intellectual property, government procurement, and competition
India's merchandise trade (2009/10)	Imports from Japan: 2.3% of total; exports to Japan: 2% of total
of which preferential	Imports: ..
India's commercial services trade (2009/10)	..
WTO document series	Not notified to the WTO

Table AII.3 (cont'd)

India-Malaysia	
Parties	India and Malaysia
Date of signature/entry into force	18.02.2011/01.07.2011
Transition for full implementation	31.12.2019
India's duty-free tariff lines (2009/10)	0.25% of the total[b]
Provisions concerning goods	Rules of origin, sanitary and phytosanitary measures, technical barriers to trade, trade remedies, general exceptions, and customs-related measures
Trade in goods	For "normal track" products: (i) applied MFN rate will be reduced and subsequently eliminated for 7,747 HS eight-digit tariff lines by end September 2013 and for 1,270 HS eight-digit tariff lines by end June 2016; and (ii) tariff lines that bear a zero-rated duty cannot be changed (402 HS eight-digit tariff lines). For "sensitive track" products, applied MFN rates higher than 5% will be reduced to 5% by end June 2016. For special products[j], the applied MFN rates will be reduced from 80%-100% to 37.5%-50% by end December 2019. For "highly sensitive" products, MFN applied rates will be reduced to 50% and 45% for category I and II products, respectively, (42 HS eight-digit tariff lines) and to 37.5% for category III products (one HS eight-digit tariff line) by end December 2019. For "special track" products[k], the applied MFN rate will be reduced from 30% to 5%-10% by end December 2016. The exclusion list (1,224 HS eight-digit tariff lines) must be reviewed annually
Provision concerning services	Yes
Other provisions	Dispute settlement and investment
India's merchandise trade (2009/10)	Imports from Malaysia: 1.6% of total; exports to Malaysia: 1.8% of total
of which preferential	Imports: ..
India's commercial services trade (2009/10)	..
WTO document series	Not notified to the WTO
India-Thailand	
Parties	India and Thailand
Date of signature/entry into force	09.10.2003/01.09.2004
Transition for full implementation	17 rounds of negotiations have been held. The free-trade agreement is expected to be concluded during 2011
India's duty-free tariff lines (2009/10)	0.09% of the total[b]
Provisions concerning goods	Rules of origin, general exceptions, and dispute settlement
Trade in goods	Duty-free access for 82 HS six-digit tariff lines since March 2006
Provision concerning services	Yes
Other provisions	Investment, dispute settlement, and trade facilitation
India's merchandise trade (2009/10)	Imports from Thailand: 1.0% of total; exports to Thailand: 1.0% of total
of which preferential	Imports: ..
India's commercial services trade (2009/10)	..
WTO document series	Not notified to the WTO
GSTP	
Parties (as notified)	Algeria, Argentina, Bangladesh, Benin, Bolivarian Republic of Venezuela, Brazil, Cameroon, Chile, Colombia, Cuba, Democratic People's Republic of Korea, Ecuador, Egypt, Ghana, Guinea, Guyana, India, Indonesia, Iran (Islamic Rep. of), Iraq, Korea (Rep. of), Libyan Arab Jamahiriya, Macedonia (FYR), Malaysia, Mexico, Morocco, Mozambique, Myanmar, Nicaragua, Nigeria, Pakistan, Peru, Philippines, Plurinational State of Bolivia, Singapore, Sri Lanka, Sudan, Tanzania, Thailand, Trinidad and Tobago, Tunisia, Viet Nam, and Zimbabwe
Date of signature/entry into force	13.04.1988/19.04.1989
Transition for full implementation	On implementation
India's duty-free tariff lines (2009/10)	..
Provisions concerning goods	Rules of origin, balance-of-payment measures, safeguards, and dispute settlement

Table AII.3 (cont'd)

Trade in goods	Tariff concessions on 53 HS six-digit tariff lines (margin of preferences: 10%-30%). A 50% tariff concession applies to three tariff lines for imports from LDC members only (Bangladesh, Benin, Guinea, Haiti, Mozambique, Sudan, and Tanzania)
India's merchandise trade (2009/10)	Imports from GSTP: 26.5% of total; exports to GSTP: 23.4% of total
of which preferential	Imports: ..
WTO document series	L/6564 (GATT)

.. Not available.

a APTA was formerly known as the Bangkok Agreement. The amended agreement entered into force on 1 September 2006.
b Information provided by the Indian authorities.
c India has offered Bangladesh market access for 8 million pieces of garments, which are on India's sensitive list, without any sourcing condition.
d SAPTA was superseded by SAFTA. However, concessions granted under SAPTA remain in force for the contracting parties until the SAFTA trade liberalization programme is completed, by 2014 (SAFTA Agreement, Article 22).
e The agreement entered into force on 1 January 2010 for India, Malaysia, Singapore, and Thailand; and on 1 June 2010 for Myanmar and Viet Nam. For the rest of the parties, entry into force is in accordance with Article 23 of the Agreement (i.e. mutually agreed date).
f India's special products are crude and refined palm oil, coffee, black tea, and pepper.
g The Agreement effectively entered into force in India on 11 September 2007.
h Nepalese beers can be imported on payment of the applicable liquor excise duty equal to the effective excise duty as levied on Indian beers.
i Of which 6 million pieces will be extended the concession only if made of Indian fabric, provided that no category of garments exceeds 1.5 million pieces per year.
j India's special products are crude palm oil, refined palm oil, palm kernel oil, palm kernel oil and its fractions, margarine of vegetable origin, coffee, black tea, and pepper.
k India's "special track" products include pineapples and bird eggs (HS 0407.00.10, 0407.00.20, and 0407.00.90).

Source: WTO Regional Trade Agreements Information System online information. Viewed at: http://rtais.wto.org/; Department of Commerce online information, "International Trade: Trade Agreements". Viewed at: http://www.commerce.nic.in/trade/international_ta.asp?id=2&trade=i; Department of Commerce online information, "India's current engagements in RTAs". Viewed at: http://www.commerce.nic.in/india_rta.htm; Department of Commerce online information, "Export Import Data Bank". Viewed at: http://commerce.nic.in/eidb/default.asp; Department of Commerce online information, "What's new". Viewed at: http://commerce.nic.in/; South Asian Association for Regional Cooperation online information, "Agreement on South Asian Free-Trade Area (SAFTA)". Viewed at: http://www.saarc-sec.org/userfiles/saftaagreement.pdf; GSTP online information, "Tariff concessions". Viewed at : http://www.unctadxi.org/templates/Page____6206.aspx; and information provided by the Indian authorities.

Table AII.4
Policy on foreign direct investment, 2011

Sector/activity	Ceiling	Entry route	Other conditions
Agriculture			
Floriculture, horticulture, development and production of seeds, animal husbandry, fish farming, aqua-culture, cultivation of vegetables and mushrooms under controlled conditions, and services related to agro and allied sectors[a]	100%	Automatic	Companies dealing with transgenic seeds/vegetables must comply with the requirements stipulated under the Environment (Protection) Act and the conditions laid down in notifications issued under the Foreign Trade (Development and Regulation) Act 1992. Businesses intending to use genetically modified material need approvals for Genetic Engineering Approval Committee (GEAC) and the Review Committee on Genetic Manipulation (RCGM) to operate
Tea sector, including tea plantation[b]	100%	Foreign Investment Promotion Board (FIPB)	Compulsory divestment of 26% of the equity in favour of Indian partners within five years. Prior approval of the State government concerned in case of changes in land use
Mining			
Mining and exploration of metal and non-metal ores, including diamond, gold, silver, and precious stones	100%	Automatic	Subject to the Mines and Minerals (Development and Regulation) Act 1957
Coal and lignite mining for captive consumption by power projects; iron, steel, and cement production units; and other eligible activities under the Coal Mines (Nationalization) Act 1973	100%	Automatic	Subject to the Coal Mines (Nationalization) Act 1973
Setting up coal processing plants like washeries subject to the condition that the company shall not do coal mining nor sell washed or sized coal from its coal processing plants in open markets and shall supply the washed or sized coal to parties that supply raw coal to coal processing plants for washing and sizing	100%	Automatic	
Mining and mineral separation of titanium bearing minerals and ores, and its value-added and integrated activities[c]	100%	FIPB	Subject to sectoral regulations and to the Mines and Minerals (Development and Regulation) Act 1957. Subject to value addition facilities and transfer of technology set up in India; and disposal of tailing during mineral separation carried out in accordance with regulations framed by the Atomic Energy Regulatory Board
Manufacturing			
Medium and large enterprises manufacturing items reserved for the production in micro and small enterprises	100%	Automatic up to 24%, then FIPB	Subject to the obligation of exporting at least 50% of the annual production within three years
Defence	26%	FIPB	Subject to industrial licensing under the Industries (Development and Regulation) Act 1951. Licences are issued by the Department of Industrial Policy and Promotion in consultation with the Ministry of Defence. Applicants should be Indian companies/partnership firms
Power			
Power generation, transmission, distribution, and trading[d]	100%	Automatic	Subject to the Electricity Act 2003

Table AII.4 (cont'd)

Sector/activity	Ceiling	Entry route	Other conditions
Petroleum and natural gas			
Exploration activities, infrastructure related to marketing of petroleum products, actual trading and marketing of petroleum products, petroleum product pipelines, natural gas/LNG pipelines, market study and formulation, and petroleum refining by the private sector	100%	Automatic	Subject to sectoral policy and regulatory framework
Petroleum refining activities by public sector undertakings	49%	FIPB	
Financial services			
Asset reconstruction companies (ARCs) registered with the Reserve Bank of India under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act 2002	49%	FIPB	Investment is strictly in the nature of FDI. Individual investment exceeding 10% of the equity must comply with the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act 2002. FIIs are not allowed to invest in ARCs, except FIIs registered with the Securities and Exchange Board of India (SEBI) which are allowed to invest in security deposits issued by ARCs up to 49% (individual investment not exceeding 10%)
Banking (private sector)	74% (incl. FIIs)	Automatic up to 49%, then FIPB	
Banking (public sector)	20% (incl. portfolio investment)	FIPB and regulatory clearance of the Reserve Bank of India	Subject to the Banking Companies (Acquisition and Transfer of Undertakings) Acts 1970/80. The ceiling also applies to the State Bank of India and its associate banks
Commodity exchange	49% (incl. FIIs)	FIPB	FDI is limited to 26% and investment by FIIs to 23%. FIIs can invest only through purchases in the secondary market
Credit information companies (CICs)	49% (incl. FIIs)	FIPB	Subject to the Credit Information Companies (Regulation) Act 2005. Investment by FIIs is allowed up to 24% only in CICs listed at stock exchanges. Individual FII cannot hold more than 20%
Infrastructure company in the securities market	49% (incl. FIIs)	FIPB	FDI is limited to 26% and investment by FIIs to 23%
Insurance	26%	Automatic	Subject to licensing by the Insurance Regulatory and Development Authority
Non-banking finance companies	100%	Automatic	Subject to minimum capitalization
Civil aviation			Subject to the Aircraft Rules 1934, civil aviation requirements, and aeronautical information circulars notified by the Ministry of Civil Aviation
Airports			
Greenfield projects	100%	Automatic	
Existing projects	100%	Automatic up to 74%, then FIPB	
Air transport services			
Scheduled air transport services and domestic scheduled passenger airlines	49% (NRIs: 100%)	Automatic	
Non-scheduled air transport service and cargo airlines	74% (NRIs: 100%)	Automatic up to 49%, then FIPB	
Helicopter and seaplane services	100%	Automatic	

Table AII.4 (cont'd)

Sector/activity	Ceiling	Entry route	Other conditions
Other services			
Ground handling services	74% (NRIs: 100%)	Automatic up to 49%, then FIPB	Subject to sectoral regulations and security clearance
Maintenance and repair organizations; flying training institutes; and technical training institutions	100%	Automatic	
Telecom and postal services			
Telecom services (i.e. wireline and wireless services)	74% (incl. FIIs, NRIs, FCCBs, ADRs, and GDRs)	Automatic up to 49%, then FIPB	Indian shareholding shall not be less than 26%
Internet service provider (with or without gateways), radio-paging, and end-to-end bandwidth	74%	Automatic up to 49%, then FIPB	Subject to licensing and security requirements issued by the Department of Telecommunications
Infrastructure provider; and electronic mail and voice mail	100%	Automatic up to 49%, then FIPB	Compulsory disinvestment of 26% of the equity in favour of Indian entities within five years, if they are listed in other parts of the world
Courier services for carrying packages, parcels, and other items not covered under the Indian Post Office Act 1898	100%	FIPB	Subject to the Indian Post Office Act 1898. Activities related to letters distribution are excluded
Construction services			
Development of township, housing, built-up infrastructure, and construction-development projects[e]	100%	Automatic	Subject to minimum land/built-up areas and minimum capitalization. At least 50% of the project must be developed within five years from the date of obtaining statutory clearances[f]
Industrial parks (setting up and already established industrial parks)	100%	Automatic	Not subject to the above-mentioned conditions if industrial parks comprise a minimum of 10 units and no single unit occupies more than 50% of the area, and the minimum area allocated to industrial activity is not less than 66% of the total area
Broadcasting			
Terrestrial broadcasting (FM radio)	20% (incl. FIIs, PIO, and portfolio investment)	FIPB	Subject to the terms and conditions issued by the Ministry of Information and Broadcasting for grant of permission for setting up FM radio stations
Cable network	49% (incl. FIIs, PIO, and portfolio investment)	FIPB	Subject to the Cable Television Network Rules 1994 and conditions specified by the Ministry of Information and Broadcasting
Direct-to-home	49% (incl. FIIs, PIO, and portfolio investment)	FIPB	FDI not exceeding 20%. Subject to guidelines issued by the Ministry of Information and Broadcasting
Headend-in-the-sky broadcasting services	74% (incl. portfolio investment)	Automatic up to 49%, then FIPB	Subject to guidelines issued by the Ministry of Information and Broadcasting
Setting up hardware facilities			
Up-linking HUB/teleports	49% (incl. FIIs)	FIPB	Subject to compliance of the up-linking policy notified by the Ministry of Information and Broadcasting
Up-linking non-news and current affairs TV channels	100%	FIPB	Subject to compliance of the up-linking policy notified by the Ministry of Information and Broadcasting

Table AII.4 (cont'd)

Sector/activity	Ceiling	Entry route	Other conditions
Up-linking news and current affairs TV channels	26% (incl. FIIs)	FIPB	Subject to compliance of the up-linking policy notified by the Ministry of Information and Broadcasting
Satellites (establishment and operation)	74%	FIPB	Subject to sectoral guidelines issued by the Department of Space/Indian Space Research Organization
Print media			
Publishing of newspapers and periodicals	26% (incl. NRIs, PIO, and FIIs)	FIPB	
Publication of Indian editions of foreign magazines	26% (incl. NRIs, PIO, and FIIs)	FIPB	Subject to guidelines issued by the Ministry of Information and Broadcasting
Publishing/printing of scientific and technical magazines/periodicals	100%	FIPB	Subject to guidelines issued by the Ministry of Information and Broadcasting
Publication of facsimile edition of foreign newspapers	100%	FIPB	Investment should be made by the owner of the original foreign newspapers. Subject to guidelines issued by the Ministry of Information and Broadcasting
Trading			
Cash and carry wholesale trading/wholesale trading	100%	Automatic	Subject to the Guidelines for Cash and Carry Wholesale Trading/Wholesale Trading. Subject to restrictions on domestic trading
E-commerce activities	100%	Automatic	
Single brand product trading	51%	FIPB	Products should be of single brand only and should be sold under the same brand internationally. Single brand product-retailing cover products branded during manufacturing only
Test marketing	100%	FIPB	Test marketing will be for two years, and investment in setting up manufacturing facility begins with test marketing
Security agencies in the private sector	49%	FIPB	Subject to the Private Security Agencies (Regulation) Act 2005

a FDI is not allowed in any other agricultural sector/activity.
b FDI is not allowed in any other plantation sector/activity.
c FDI is not allowed in mining of prescribed substances listed in Notification No. S.O. 61(E) of 18 January 2006, issued by the Department of Atomic Energy (for details, please see Department of Atomic Energy online information, "Atomic Energy Act Rules and Notifications". Viewed at: http://www.dae.gov.in/rules/actindex.htm).
d Excluding generation, transmission, and distribution of electricity produced in atomic power plants, for which FDI is prohibited. Nuclear energy is reserved to the public sector (Chapter II(4)(i)(b)).
e FDI is not allowed in real estate business.
f These conditions do not apply to investment by NRIs, and to hotels and tourism, hospitals, and special economic zones.

Note: ADRs: American depositary receipts; FCCBs: foreign currency convertible bonds; FIIs: foreign institutional investors; GDRs: global depositary receipts; NRIs: non-resident Indians; and PIOs: persons of Indian origin. Foreign institutional investors are entities established outside India, which propose to invest in India and are registered as FIIs under the Securities and Exchange Board of India (Foreign Institutional Investors) Regulations 1995.

Source: Department of Industrial Policy and Promotion, Circular No. 1 of 2011 (Consolidated FDI Policy (effective from 1 April 2011), 31 March 2011.

Table AIII.1
IEC exemptions for imports and exports, 2011

Imports
Goods imported by the Government and state-owned undertakings for defence purposes
Goods imported by the Government, State governments, public entities or state-owned undertakings, through the Directorate General of Supplies and Disposals or the Indian supply missions in London and Washington D.C.
Goods imported by transhipment; or imported and bonded for re-export as ships' stores to any destination (except Nepal and Bhutan) or released for use of diplomatic/consular officers and UN officials
Goods imported and bonded for sale to passengers in duty-free shops
Goods in transit through India or redirected to any destination (except Nepal and Bhutan)
Goods imported for air shipment to Afghanistan or for land shipment to any destination (except Nepal and Bhutan) under claim for duty exemption or refund
Goods imported as passengers' baggage
Goods imported for personal use
Goods imported by diplomatic/consular officers and trade commissioners
Goods imported from countries exempt from customs duty on re-import
Goods previously exported but imported back for repair and re-export
Goods imported by UN officials or the Ford Foundation
Temporary imports of vehicles
Goods imported for use in fairs and exhibitions
Goods imported by the Government or State governments for repair and re-export to Indian embassies abroad
Food grains imported by the Food Corporation of India
Food products imported and supplied as gifts by UN accredited agencies
Goods imported by ministries and departments of the Government and State governments
Goods imported from Nepal, Myanmar (through the Indo-Myanmar border), and China (through Gunji, Namgaya Shipkila, and Nathula ports), provided the c.i.f. value of a single consignment does not exceed Rs 25,000 (Rs 100,000 for Nathula)
Exports
Goods exported by the Government
Goods (other than foodstuffs) constituting the stores of outgoing vessels
Goods constituting the bona fide personal baggage of any person
Goods exported by post or by air, under conditions specified by the postal authorities
Goods transhipped at Indian ports
Goods imported and bonded for re-export to any destination (except Nepal and Bhutan)
Goods in transit through India by post; or goods re-directed by post to any destination (except Nepal and Bhutan)
Goods imported with no valid import licence and exported following a Customs' order
Goods exported from export processing zones (EPZs) or export-oriented units (EOUs)
Exports of blood group Oh (Bombay phonotype) for scientific research or emergency medical treatment by the National Blood Group Reference Laboratory
Exports of samples of lubricating oil additives by Lubrizols India Ltd., Hindustan Petroleum Corporation Ltd., and Bharat Petroleum Corporation Ltd. to Lubrizol's laboratories in the United States and the United Kingdom for evaluation and testing purposes
Goods exported for personal use
Goods exported to Nepal, Myanmar (through the Indo-Myanmar border), and China (through Gunji, Namgaya Shipkila, and Nathula ports), provided the c.i.f. value of a single consignment does not exceed Rs 25,000 (Rs 100,000 for Nathula)

Source: Foreign Trade (Exemption from application of Rules in certain cases) Order 1993 (Clauses 3(1) and 3(2)) (CBEC online information, "Customs: Acts". Viewed at: http://www.cbec.gov.in/customs/cs-acts-botm.htm); and Department of Commerce (2010), *Handbook of Procedures*, Vol. 1, incorporating Annual Supplement, 23 August. Viewed at: http://dgft.gov.in.

Table AIII.2
Cesses and surcharges levied by the Central Government, 2011

Act	Levy	Levied/collected by	Maximum rate	Effective rate	Purpose
Beedi Workers Welfare Cess Act 1976					
	Cess on tobacco issued to any person from a warehouse for any purpose in connection with the manufacture of Beedi	Ministry of Labour/Department of Revenue	Rs 1/kg	Rs 0.25/kg	For the purposes of the Beedi Worker Welfare Fund Act 1976
	Beedis cess		Rs 0.50/thousand to Rs 5/thousand	Rs 5/thousand	
Finance Act 2004 (Sections 91-93)					
	Education cess on goods manufactured or produced in India	Department of Revenue/Department of Revenue	2% of the duty amount	2% of the duty amount	Providing and financing universal quality basic education
Finance Act 2007 (Sections 136-138)					
	Surcharge called secondary and higher education cess on goods manufactured or produced in India	Department of Revenue/Department of Revenue	1% of the duty amount	1% of the duty amount	Providing and financing secondary and higher education
Industries (Development and Regulation) Act 1951					
	Cess on automobiles	Department of Industrial Policy and Promotion/Department of Revenue	0.125% *ad valorem* of the value	0.125% *ad valorem* of the value	Promoting scientific and industrial research with reference to the scheduled industry or group of scheduled industry
	Cess on paper and paperboard (all sorts)		0.125% *ad valorem* of the value	0.125% *ad valorem* of the value	
	Cess on component parts and accessories of automobiles		0.125% *ad valorem* of the value	Nil	
	Cess on tractors	Department of Heavy Industry/Department of Revenue	0.125% *ad valorem* of the value	0.125% *ad valorem* of the value	Promoting scientific and industrial research with reference to the scheduled industry or group of scheduled industry
Iron Ore Mines, Manganese Ore Mines, and Chrome Ore Mines Labour Welfare Cess Act 1976					
	Cess on iron ore	Ministry of Labour/Department of Revenue	Rs 1/tonne	Rs 1/tonne	Financing the welfare of persons employed in the mines
	Cess on manganese ore		Rs 6/tonne	Rs 4/tonne	
	Cess on chrome ore		Rs 6/tonne	Rs 6/tonne	
Jute Manufactures Cess (Amendment) Act 2002					
	Cess on specified jute goods	Ministry of Textile/Department of Revenue	2% *ad valorem* of the value	1% *ad valorem* of the value	Developing the production of jute
Lime Stone and Dolomite Mines Labour Welfare Fund Act, 1972					
	Cess on lime stone and dolomite produced in any mine	Ministry of Labour/Department of Revenue	Rs 1/tonne	Rs 1/tonne	Financing the welfare of persons employed in the mines
Salt Cess Act 1953					
	Cess on salt	Ministry of Commerce/ Department of Revenue	Rs 0.14/40 kg	Rs 3.5/tonne[a]; Rs 1.75/tonne[b]; nil[c]	Establishing and maintaining research stations and model salt farms. Establishing, maintaining, and expanding salt factories

Table AIII.2 (cont'd)

Act	Levy	Levied/collected by	Maximum rate	Effective rate	Purpose
Sugar Cess Act 1982					
	Cess on sugar produced by any factory in India	Ministry of Public Distribution and Consumer Affairs/ Department of Revenue	Rs 25/quintal	Rs 24/quintal	For purposes of the Sugar Development Fund Act 1982
Tea Act 1953					
	Cess on tea produced in India	Ministry of Commerce/ Department of Revenue	Rs 0.50/kg	Rs 0.30/kg	For purposes of the Tea Fund
Textile Committee Act 1963					
	Cess on all textiles excluding textiles manufactured from out of the handloom or powerloom industries	Ministry of Commerce/Department of Revenue	1% ad valorem of the value	Nil	For purposes of the Textiles Fund
	Cess on all textile machinery		1% *ad valorem* of the value	Nil	

a Manufacturers holding over 100 acres.
b Manufacturers holding 10-100 acres.
c Manufacturers holding less than 10 acres.

Note: The above-mentioned cesses are charged on imports as part of the countervailing duty, with the exception of the education cess (Finance Act 2004) and the secondary and higher education cess (Finance Act 2007), which are charged in addition to the countervailing duty.

Source: Information provided by the Indian authorities.

Table AIII.3
Safeguard investigations, 2008-11

Commodity: tariff item	Date of initiation	Date of final findings	Main import partners[a]	Recommendation by the Director-General	Final decision
Cases initiated in 2008					
Phthalic anhydride: 291735	28.11.08	28.05.09	Korea (Rep. of) (40.5%), Israel (20.4%), and Chinese Taipei (11.8%)	Safeguard duty for three years: 25% (first year), 20% (second year), and 15% (third year)	Customs Notification No. 75/2009 of 30.06.09 Safeguard duty: 25% from 29.01.09-30.06.09, and 15% from 01.07.09-31.12.09
Linear alkyl benzene: 38170011	19.12.08	18.11.09	Qatar (37.5%), Iran (34.8%), and Kingdom of Saudi Arabia (23.4%)	No safeguard duty recommended	
Cases initiated in 2009					
Oxo alcohol: 2905	16.01.09	27.05.09	Saudi Arabia (36.5%), Iran (19.9%), and Kuwait (6.7%)	Safeguard duty for three years: 10% (first year), 7.5% (second year), and 5% (third year)	Rejected by Board on Safeguards
Soda ash: 283620	16.01.09	06.10.09	China (48.6%), Kenya (19.7%), and Bulgaria (7.0%)	20% for one year from the date of imposition of the provisional safeguard duty	Customs Notification No. 122/09 of 05.11.09 Safeguard duty: 20% for one year from date of provisional safeguard duty, up to 19.04.10
Dimethoate technical: 38089123	21.01.09	14.05.09	China (100.0%)	Safeguard duty for three years: 28% (first year), 23% (second year), and 18% (third year)	Customs Notification No. 87/09 of 27.08.09 Safeguard duty: 20% from 23.03.09-22.03.10, and 15% from 23.03.10-22.03.11
Aluminium flat rolled products: 7606	27.01.09	29.05.09	China (26.7%), Germany (23.6%), and Bahrain (13.6%)	Safeguard duty for four years (excluding certain items): 14% (first year), 12% (second year), 10% (third year), and 8% (fourth year)	Customs Notification No. 71/09 of 19.06.09 Safeguard duty (excluding certain items): 14% from 23.03.09-22.03.2010, and 12% from 23.03.10-22.03.11
Aluminium foil: 7607	27.01.09	29.05.09	China (32.1%), Korea (Rep. of) (21.7%), and Germany (10.4%)	Safeguard duty for four years (excluding certain items): 30% (first year), 25% (second year), 20% (third year), and 15% (fourth year)	Customs Notification No. 71/09 of 19.06.09 Safeguard duty (excluding certain items): 30% from 23.03.09-22.03.2010, and 25% from 23.03.10-22.03.11
Nylon tyre cord fabric: 5902.10	06.02.09	06.04.09	China (41.4%), Chinese Taipei (22.0%), and Thailand (12.9%)	Investigation terminated on withdrawal of application	
Front axle beam, steering knuckles, and crankshaft: 7326	02.04.09	23.09.09	Italy (32.3%), France (18.0%), and United States (7.3%)	No safeguard duty recommended	
Front axle beam, steering knuckles, and crankshaft: 8423	02.04.09	23.09.09	China (25.3%), Japan (22.9%), and Germany (22.8%)	No safeguard duty recommended	
Acrylic fibre: 5501	09.04.09	30.09.09	France (23.5%), Belarus (16.1%), and China (15.9%)	Investigation terminated on withdrawal of application	
Acrylic fibre: 5503	09.04.09	30.09.09	Thailand (23.3%), Malaysia (16.4%), and Japan (10.8%)	Investigation terminated on withdrawal of application	

Table AIII.3 (cont'd)

Commodity: tariff item	Date of initiation	Date of final findings	Main import partners[a]	Recommendation by the Director-General	Final decision
Acrylic fibre: 5506	09.04.09	30.09.09	Thailand (63.9%), China (14.7%), and Chinese Taipei	Investigation terminated on withdrawal of application	
Hot rolled steel products: 7208	09.04.09	08.12.09	Korea (Rep. of) (18.8%), China (15.1%), and Russian Federation (10.3%)	No safeguard duty recommended	
Coated paper and paper board: 4810	20.04.09	13.11.09	China (36.2%), Finland (11.6%), and United States (7.6%)	No safeguard duty recommended	
Uncoated paper and copy paper: 4802	20.04.09	06.11.09	United Kingdom (31.0%), Italy (16.2%), and Germany (16.0%)	No safeguard duty recommended	
Particle board: 4410	22.04.09	24.11.09	Thailand (32.3%), Malaysia (26.4%), and South Africa (10.0%)	No safeguard duty recommended	
Passenger car tyre: 4011.10	18.05.09	30.09.09	China (39.2%), Korea (Rep. of) (23.7%), and Thailand (10.8%)	Investigation terminated on withdrawal of application	
Unwrought aluminium: 7601	22.05.09	11.11.09	Australia (17.2%), South Africa (13.7%), and United Arab Emirates (13.4%)	Investigation terminated on withdrawal of application	
Unwrought aluminium: 7602	22.05.09	11.11.09	United Arab Emirates (18.1%), Kingdom of Saudi Arabia (12.3%), and United Kingdom (12.0%)	Investigation terminated on withdrawal of application	
Caustic soda: 2815.12	20.08.09	09.04.10	China (41.55%), Indonesia (26.43%), and Qatar (10.43%)	Safeguard duty: 15% from 04.12.2009-03.03.2010	Customs Notification No. 131/2009 of 04.12.2009 Provisional duty: 15%. No definitive safeguard duty levied
Cases initiated in 2010					
Soda ash (review proceedings): 2836.20	19.02.10	13.04.10	China specific	Safeguard duty: 16% from 20.04.2010-19.04.2011; and 14% from 20.04.2011-19.04.2012	Customs Notification No. 72/2010 of 28.16.2010 Definitive safeguard duty: 16% from 28.06.2010-19.04.2011
PX 13: 3812, 2934 and 2925	27.12.10	n.a.	Korea (Rep. of) (61.35%), United States (11.74%), and China (18.63%)	n.a.	n.a.
Cases initiated in 2011					
Aluminium FRP and aluminium foil (review proceedings): 7606 and 7607	14.02.11	n.a.	China specific	n.a.	n.a.

n.a. Not applicable.

a Data in brackets refer to share of total imports for the corresponding product. UNSD Comtrade data are used, except for items shown at eight-digit for which data are from the WTO Integrated Database.

Source: WTO Secretariat; Central Board of Excise and Customs online information, "Customs: Notifications". Viewed at: http://www.cbec.gov.in/cae1-english.htm; and information provided by the Indian authorities.

Table AIII.4
Other institutions responsible for standards formulation and enforcement, 2011

Institution	Field of action	Legislation
Atomic Energy Regulatory Board	Nuclear energy	Atomic Energy Act 1962
Automotive Research Association of India	Safety standards on automobiles	Societies Registration Act XXI 1860
Central Boilers Board	Boilers	Indian Boilers Act 1923; Indian Boilers Regulations 1949
Central Committee for Food Standards	Food products	Prevention of Food Adulteration Act 1954; Prevention of Food Adulteration Rules 1955
Central Electricity Authority	Supply of electricity to units owned by the central Government	Electricity Act 2003; Central Electricity Authority (Measures relating to Safety and Electric Supply) Regulations 2010
Central Silk Board	Natural raw silk and products	Central Silk Board (Amendment) Act 1982
Chief Controller of Explosives	Gas cylinders, pressure vessels and explosive materials, and flameproof electrical equipment for industries	Indian Explosives Act 1984; Gas Cylinders Rules 1981; Explosive Rules 1983; Static and Mobile Pressure Vessels (Unfired) Rules 1981; Acetylene Notification No. GSR.625(E), 7 August 1983; Carbide of Calcium Rules 1937
Coir Board	Coir products	Regulation Coir Industries Act 1953
Department of Fertilizer	Fertilizers	Fertilizer Control Order 1985
Telecommunication Engineering Centre, Department of Telecommunication	Telecom equipment	Indian Telegraph Act 1885; Indian Wireless Act 1933; Telecom Regulatory Authority of India (TRAI) Act 1997
Ministry of Road Transport and Highways	Road transport	Regulation of Motor Vehicles Act 1988; Carriage by Road Act 2007; Road Transport Corporation Act 1950
Directorate General Factory Advice Service and Labour Institutes	Safety in factories, and flameproof electrical equipment for industries	Factory Act 1948; Dock Workers (Safety, Health, and Welfare) Act 1986
Directorate General of Civil Aviation	Civil aviation	Aircraft Act 1934; Carriage by Air Act 1972; Airport Authority of India Act 1994; Airports Economic Regulatory Authority of India Act 2008
Directorate General of Mines Safety	Safety of mines and mining operations, and electric equipment for coal and oil mines	Indian Mines Act and Rules 1952
Directorate of Marketing and Inspection	Raw and semi-processed agricultural commodities, and meat and meat products	Agricultural Produce (Grading and Marketing) Act 1937; Meat Food Products Order 1973
Directorate of Standardization	Articles for defence use	..
Directorate of Vanaspati, Vegetable oil, and Fats	Hydrogenated vegetable oils (Vanaspati), vegetable oil, de-oiled meals, and edible flours	Vegetables Products Control Order 1947; Vegetable Oil Products (Standards of quality) Order 1975; Solvent Extracted oils, De-Oiled Meals and Edible Flour (Control Order) 1967
Directorate of Weights and Measures	Weight and measures used in commercial transactions	Standards of Weights and Measures Act 1976; Standards of Weights and Measures (Packages Commodities) Rules 1977; Standards of Weights and Measures (Enforcement) Act 1985; Standards of Weights and Measures (General) Rules 1987
Drugs Controller General of India	Cosmetics, Indian pharmacopoeia, and drugs specification	Drugs and Cosmetics Act 1945
Electronics Components Standardization Organization	Electronics components standardization	..
Indian Roads Congress	Technical specifications regarding roads and bridges	..
Jute Commissioner	Jute and jute products	Essential Commodities Act 1955; Jute (Licensing and Control) Order 1961

Table AIII.4 (cont'd)

Institution	Field of action	Legislation
Ministry of Environment and Forest	Tolerance limits for emulsion and effluents	Environment (Protection) Act 1986
Ministry of Food Processing Industries	Fruits and vegetable products, synthetic syrups, and aerated waters	Fruit Products Order 1955
Research and Design Standards Organization (RDSO)	Development of standardization of technical specifications for items used in railways	Indian Railway Act
Rural Electrification Corporation (REC)	Codes of practice and guide for rural electrification	..
Technology Application and Standard Unit, Central Public Works Department	Civil and electrical works	..
Steel Authority of India	Interplant standardization of consumable, replacement, and other items used in the steel industry	..
Standardization Testing and Quality Certification Directorate	Standardization of electronics technology	..
Textile Commissioner	Textile fibres, yarn, and fabrics (except handloom, silk, and jute fabrics), and textiles machinery (excluding jute machinery)	..

.. Not available.

Source: WTO Secretariat; and information provided by the Indian authorities.

Table AIII.5
Export prohibitions, 2011

Reason for prohibition	Description	Status since 2007
Protection of wildlife under the Wild Life (Protection) Act 1972	All wild animals, animal articles (including their products and derivatives), excluding those for which ownership certificates have been granted and those required for transactions for education, scientific research, and management under the Wild Life (Protection) Act 1972, including their parts and products	Unchanged
	Live exotic birds, excluding albino budgerigars, budgerigars, Bengali finches, white finches, and zebra finches, which may be exported subject to preshipment inspection; and java sparrows, which are subject to export licensing	Unchanged
	Marine species and their parts, products, and derivatives under the Wild Life (Protection) Act 1972	Added
	Bêche-de-mer (sea cucumber)	Added
Control of poaching and illegal trade in wildlife and its products	Peacock tail feathers, including handicrafts and articles of peacock tail feathers	Unchanged
	Shavings of shed antlers of Chital and Sambhar, including manufactured articles	Unchanged
	Sea shells, including polished sea shells and handicrafts made out of those species mentioned in the Wild Life (Protection) Act 1972	Added
Social and religious reasons	Beef of cows, oxen and calf	Unchanged
	Offal of cows, oxen, and calf	Unchanged
	Meat of buffalo, fresh, chilled or frozen	Added
	Tallow, fat and/or oils of any animal origin, excluding fish oil and lanolin	Unchanged
	Human skeletons	Unchanged
Ecological and environmental reasons	Undersized rock lobsters and sand lobsters	Unchanged
	Chemicals under the Montreal Protocol when exported to a country that is not party to the Protocol	Unchanged
	Plants and plant portions of wild species specified in the Wild Life (Protection) Act 1972 or the CITES Appendix I or in the Export Licensing Note 1[a]	Added
	Wood and wood products in forms of logs, timber, stumps, roots, barks, chips, powder, flakes, dust, pulp, and charcoal, other than sawn timber made exclusively out of imported logs/timber	Unchanged
	Fuel wood in logs, billets, twigs, faggots or similar forms; wood in chips or particles; and sawdust and wood waste and scrap, whether or not agglomerated in logs, briquettes, pellets or similar forms	Unchanged
	Wood charcoal whether or not agglomerated	Unchanged
	Wood sawn or chipped lengthwise, sliced or peeled, whether or not planed, sanded or end jointed, of a thickness exceeding 6 mm, other than sawn timber made exclusively out of imported logs/timber	Unchanged
	Sandalwood in any form, excluding finished handicraft products of sandalwood, machine finished sandalwood products, and sandalwood oil	Unchanged
	Red sanders wood in any form, whether raw, processed or unprocessed, excluding value-added products of red sanders wood (e.g. extracts, dyes, musical instruments, and parts of musical instruments made from red sanders wood procured from legal sources)	Unchanged
Natural resources conservation	Mechanical wood pulp	Unchanged
	Chemical wood pulp, dissolving grades	Unchanged
	Chemical wood pulp, soda or sulphate, other than dissolving grades	Unchanged
	Chemical wood pulp, sulphite, other than dissolving grade	Unchanged
	Semi-chemical wood pulp	Added
Family planning scheme	Condoms[b]	Unchanged
Ensuring domestic availability/food security	Non-basmati rice[c]	Added
	Wheat (including durum wheat) and meslin[d]	Added
	Dried leguminous vegetables, shelled, whether or not skinned or split, excluding kabuli chana (chickpea), and 10,000 tonnes of organic pulses during 2011/12[e]	Added
	All edible oil[f]	Added
	Milk powder (including whole milk powder, baby milk powder, dairy whitener), casein and casein derivatives	Added

Table AIII.5 (cont'd)

Reason for prohibition	Description	Status since 2007
Implementing the Chemical Weapons Convention	Toxic chemicals (Chemical Weapons Convention, Schedule 1)	Unchanged

a For Export Licensing Note 1, see the Export Policy Schedule (Chapter 12). Exemptions for research, education, and lifesaving drugs are granted by the DGFT, upon recommendations by the Ministry of Environment and Forests.

b Certain brands and those with certain markings/stamps (see the Export Policy Schedule (Chapter 40)).

c The prohibition does not apply to exports under food-aid programmes and the Indo-Maldives trade agreement. In addition, non-basmati rice may be exported, subject to export quotas, to Bangladesh, Bhutan, Cameroon, Comoros, Ghana, Madagascar, Mauritius, Nigeria, Senegal, Sierra Leone, 21 African countries, Nepal, and Sri Lanka. Exports are through central public sector enterprises (CPSEs). Non-basmati rice may also be exported by Venkatachalapathi Modern Rice Mills and Bharath Exporters, which are export-oriented units (EOUs), subject to export quotas. The prohibition does not apply to Sona Masuri, Ponni Samba, and Matta varieties, subject to export quotas.

d Exports to Bangladesh and Nepal are allowed, subject to export quotas. Exports are through CPSEs.

e Pulses may be exported to Sri Lanka, Bhutan, Mauritius, and the Maldives, subject to export quotas.

f Exemptions apply to: exports of castor oil; exports of coconut oil (through Kochi port); deemed exports of edible oils to EOUs, upon condition that the final product is non-edible; exports of oils produced out of minor forest produce, even if edible; and exports of edible oil from the domestic tariff area (DTA) to special economic zones (SEZs) for consumption by SEZ units in manufacture of processed food products.

Source: Department of Commerce (2010), Schedule 2: Export Policy, *Foreign Trade Policy 2009-14*, incorporating Annual Supplement, 23 August. Viewed at: http://dgft.gov.in; and DGFT online information, "Notifications". Viewed at: http://dgft.gov.in.

Table AIII.6
Export incentive schemes, 2007-11

Scheme	Description
Duty exemption schemes	
Advance Authorization Scheme (previously Advance Licence Scheme)	Manufacturers may import inputs (including fuel and oil) duty free to manufacture exports. Mandatory spare parts may also be imported duty free, up to a maximum of 10% of the c.i.f. value of the authorization. Inputs may also be procured from 100% export-oriented units (EOUs), electronic hardware technology parks, software technology parks, biotechnology parks, and special economic zones (SEZs); To qualify, exports must have a minimum value added of 15%, except for specified products, e.g. gems and jewellery (1.5%-5%), petroleum products and copper anode and cathode (8%), and tea (50%); Goods must be exported within 36 months from the date of issuance of the authorization, except for spices (90 days to12 months), drugs, penicillin, and tea (6 months), and coconut oil (90 days); Advance authorizations/imported inputs are non-transferable even after the export obligation is fulfilled.
Duty-Free Import Authorization (DFIA) Scheme	Manufacturers may import inputs (including fuel and oil) duty free to manufacture exports. Mandatory spare parts may also be imported duty free, up to a maximum of 10% of the c.i.f. value of the authorization. Inputs may also be procured from 100% EOUs, electronic hardware technology parks, software technology parks, biotechnology parks, and SEZs; To qualify, exports must have a minimum value added of 20%, except for specified products, e.g. gems and jewellery (1.5%-5%), petroleum products and copper anode and cathode (8%), and tea (50%); Goods must be exported within 36 months from the date of issuance of the authorization, except for spices (90 days to 12 months), drugs, penicillin, and tea (6 months), and coconut oil (90 days); DFIAs/imported inputs are freely transferable to domestic producers/traders once the export obligation is fulfilled. However, transfer of fuels is allowed only to enterprises authorized to market fuel by the Ministry of Petroleum and Natural Gas.
Duty remission scheme	
Duty Entitlement Passbook (DEPB) Scheme	The scheme is aimed at neutralizing the incidence of customs duty on imports of inputs for the manufacture of export products; Exporters are granted a duty credit for specific products equivalent to a percentage of the f.o.b. value of exports. This percentage is fixed by the Directorate General of Foreign Trade (DGFT) (1.5%-11.14% at end February 2011). Duty credits are available for about 2,200 export products notified by the DGFT; DFIAs/imported inputs are freely transferable to domestic producers/traders once the export obligation is fulfilled; The scheme is to be eliminated by 30 June 2011.
Reward schemes	
Served from India Scheme	The scheme is aimed at accelerating the growth in services exports; Indian service providers (companies with minimum investment of Rs 1 million in foreign currency or individuals with minimum investment of Rs 500,000 in foreign currency) are granted a duty credit equivalent to 10% of the total foreign exchange earned during a financial year. Duty credits may be used to import capital or other goods; Duty credits/imported goods are non-transferable, except within the same conglomerate.
Special Agricultural and Village Industry Scheme (Vishesh Krishi and Gram Udyog Yojana)	The scheme is aimed at compensating freight cost and promoting exports of agricultural and other products, forest-based products, Gram Udyog products[a], oleoresins[b], minor forest products, and value-added products; In general, exporters are granted a duty credit equivalent to 5% of the f.o.b. value of exports. However, a duty credit equivalent to a maximum 3% of the f.o.b. value of exports is granted to exporters who have benefited from "duty drawback" rates above 1% (Chapter III(3)(vii)(b)), duty credits under DEPB (see above) or duty-free imports under the duty exemption schemes (see above). Exporters of certain flowers, fruits and vegetables[b], marine products, and grapes are granted an additional duty credit equivalent to 2% of the f.o.b. value of exports; Duty credits are transferable to other domestic producers/traders once the export obligation is fulfilled.
Agri-Infrastructure Incentive Scheme[c]	The scheme is aimed at facilitating imports of storage, packing, and transport equipment for exports of live animals and animal products, fats and oils, and prepared foodstuffs, beverages, and tobacco; Exporters are granted a duty credit equivalent to 10% of the f.o.b. value of exports. Total support under this scheme should not exceed Rs 1 billion.
Focus Market Scheme	The scheme is aimed at compensating freight cost and other external costs for exports to 110 notified markets; Exporters are granted a duty credit equivalent to 3% of the f.o.b. value of exports. Some products do not qualify for duty credit[d]; Duty credits are transferable to other domestic producers/traders once the export obligation is fulfilled.

Table AIII.6 (cont'd)

Scheme	Description
Focus Product Scheme	The scheme is aimed at promoting notified products with high potential for exports and employment; Exporters of 429 notified products are granted a duty credit equivalent to 2% of the f.o.b. value of exports. Exporters of 114 notified products are granted a special duty credit equivalent to 5% of the f.o.b. value of exports. Exporters of 169 notified products are granted an additional duty credit equivalent to 2% of the f.o.b. value of exports, over and above the existing rates. In addition, exporters of 67 notified products are granted a duty credit equivalent to 2% of the f.o.b. value of exports when products are exported to specific markets.[e]
Status Holder Incentive Scheme	The scheme is aimed at promoting investment for technology upgrading in the leather, textile and jute, handicrafts, engineering, plastics, and basic chemical (excluding pharma) subsectors; Exporters are granted a duty credit equivalent to 1% of the f.o.b. value of exports over 2009-10. The duty credit has also been granted to exporters of additional subsectors in 2010-12[f]; Exporters who have benefited from the Technology Upgradation Fund Scheme of the Ministry of Textiles, are not eligible.
Export Promotion Capital Goods Scheme	
Zero-duty rate	Exporters of specific products[g] may import capital goods duty free to manufacture export products, subject to an export obligation of six times the amount of the duty saved, to be met within six years. Exporters who have benefited from the Status Holder Incentive Scheme (see above) or the Technology Upgradation Fund Scheme (of the Ministry of Textiles) are not eligible; The scheme is in place until 31 March 2012.
Concessional rate	Manufacturers of exports may import capital goods at a 3% duty rate, subject to an export obligation of: (i) eight times the amount of the duty saved, to be met within eight years; (ii) six times the amount of the duty saved for agri-units, to be met within 12 years ; and (iii) six times the amount of the duty saved for micro and small enterprises, to be met within eight years, and the c.i.f. value of imports should not exceed Rs 5 million and total investment after imports should not exceed the limits prescribed to maintain the micro and small enterprises status (Chapter II(4)(i)(c)). If the duty saved amounts to at least Rs 1 billion, the export obligation is to be met within 12 years for all manufacturers; Service providers certified as common service provider by the DGFT may also import capital goods to export services at a 3% duty rate. The export obligation is eight times the amount of the duty saved, to be met within eight years.
Schemes for gems and jewellery	
Replenishment authorization	Replenishment authorizations are granted against exports of gold, platinum, and silver jewellery and articles made of gold, platinum, and silver; To obtain a replenishment authorization, exporters must prove that the products have been exported (e.g. shipping bill). They must apply for a replenishment authorization within six months of exporting; Exporters are allowed to import: (i) inputs (e.g. gold, platinum, and silver,) duty free; (ii) empty jewellery boxes, up to 5% of the c.i.f. value of the authorization; and (iii) consumable products (e.g. tags and labels), up to 2% of the f.o.b. value of exports for precious metal jewellery (other than gold and platinum), 1% of the f.o.b. value of exports for gold/platinum jewellery and cut and polished diamonds, and 3% of the f.o.b. value of exports for rhodium finished silver jewellery; Duty-free imports of gold/platinum/silver may be procured through nominated agencies[h]; Export products must have minimum value added (1.5% -5%) and wastage norms (0.25%-7%). Exports are to be completed within the specified period; Replenishment authorizations are transferable to domestic producers/traders once the export obligation is fulfilled.
Advance Authorization Scheme for gems and jewellery	Exporters are granted duty-free imports of inputs (e.g. gold, platinum, and silver) to manufacture export products. Imports must be through nominated agencies[h]; Exports must have minimum value added (1.5%-5%) and wastage norms (0.25%-7%). Goods must be exported within 120 days (extendable to 180 days) from the date of issuance of authorization; Advance authorizations/imported inputs are non-transferable.
Export and Trading Houses Scheme	Export and trading houses are categorized into export house, star export house, trading house, star trading house, and premier trading house. Manufacturer and services exporters[i] are allocated a category depending on the total f.o.b. export performance over the last four years (including current year)[j]; Exporters are allowed, *inter alia*: to self-declare import and export customs clearance; exemption from compulsory negotiation of documents through banks; establishment of export warehouses; and to apply to the Customs accredited clients programme (Chapter III(2)(i)(a)), the Status Holder Incentive Scheme, and the Agri-Infrastructure Incentive Scheme (see above).

Table AIII.6 (cont'd)

Scheme	Description
Target Plus Scheme[k]	Exporters from star export houses are granted duty-free credits based on export growth; duty-free credits amount to 5% for growth of over 20%; Duty credits are non-transferable and must be used for the payment of customs duty on imported inputs.

a Gram Udyog products include vegetable plaiting materials of bamboos (HS 1401.10); other vegetable plaiting materials, excluding bamboo and rattan (HS 1401.90); palm fibre for brushes (HS 1403.00.10); Palmyra sugar (HS 1702.90.10), and traditional and homeopathic medicines (HS 3004.90.11, 3004.90.12, 3004.90.13, and 3004.90.14). Gram Udyog products are produced in units registered with the Khadi and Village Industries Commission (KVIC) or the Khadi and Village Industries Board (KVIB).

b Removed since 23 August 2010.

c Offshoot of the Special Agricultural and Village Industry Scheme (Vishesh Krishi and Gram Udyog Yojana).

d Supplies to units in special economic zones; diamonds and other precious/semi-precious stones; gold, silver, platinum, and other precious metals, including plain and studded jewellery; ores and concentrates (all types and forms); cereals (all types); sugar (all types and forms); crude/petroleum oil and crude/petroleum based products (all types and forms under HS 2709-2715); and milk and milk products (HS 0401-0406, 1901.10.01, 1901.10.10, 2105, and 3501). Exports of services are also prohibited.

e Algeria, Australia, Brazil, Cambodia, China, Egypt, EU, Kenya, Japan, Mexico, New Zealand, Nigeria, South Africa, Tanzania, Ukraine, United States, and Viet Nam.

f Chemical and allied products; rubber products; paints, varnishes, and allied products; glass and glassware; plywood and allied products; ceramics; paper, paper board, and paper products; books, publications, and printing; animal by-products; ossein and gelatine; graphite products; miscellaneous products (HS 3201, 3202.90.10, 3203.00.10, 3604, 3605, and 3802.10.00); electronics products; sports goods; engineering products from iron and steel).

g Engineering and electronic products, basic chemicals and pharmaceuticals, apparels and textiles, plastics, handicrafts, chemicals and allied products, leather and leather products, paper and paper board and articles thereof, ceramic products, refractories, glass and glassware, rubber and articles thereof, plywood and allied products, marine products, sports goods, and toys.

h MMTC Ltd, Handicraft and Handloom Export Corporation, State Trading Corporation, Project and Equipment Corporation of India Ltd, STCL Ltd, MSTC Ltd, Diamond India Ltd, Gems and Jewellery Export Promotion Council, star and premier trading houses, and agencies authorized by the Reserve Bank of India.

i Eligible manufacturers and service exporters are those from 100% export-oriented units, special economic zones, agri-export zones, electronic hardware technology parks, software technology parks, and bio-technology parks.

j The f.o.b. export performance is: Rs 200 million for export houses; Rs 1 billion for star export houses; Rs 5 billion for trading houses; Rs 25 billion for star trading houses; and Rs 75 billion for premier trading houses.

k The Duty-Free Credit Entitlement Scheme and the Duty-Free Replenishment Certification Scheme were replaced by the Target Plus Scheme in 2004, which was removed in April 2006. However, duty credits granted are still grandfathered.

Note: These schemes apply for exports made as from 27 August 2009.

Source: Department of Commerce (2010), *Foreign Trade Policy 2009-14*, incorporating annual supplement, 23 August. Viewed at: http://dgftcom.nic.in; Department of Commerce (2010), *Handbook of Procedures*, Vol. 1, incorporating annual supplement, 23 August. Viewed at: http://dgftcom.nic.in; Department of Commerce (2009), *Appendices and Aayat Niryat Forms*, 27 August. Viewed at: http://dgftcom.nic.in; Directorate General of Foreign Trade (2009), *DEPB Rates*, 27 August. Viewed at: http://dgftcom.nin.in; and information provided by the Indian authorities.

Table AIII.7
Amount forgone/disbursed on imports under export promotion schemes, 2007-10
(Rs million)

Scheme	Amount forgone/disbursed		
	2007/08	**2008/09**	**2009/10**
Advance Authorization Scheme (previously Advance Licence Scheme)	176,541	123,890	100,892
Duty-Free Import Authorization Scheme	13,591	12,676	13,986
Duty Entitlement Passbook Scheme	53,115	70,875	80,085
Served from India Scheme	6,417	5,305	5,149
Special Agricultural and Village Industry Scheme (Vishesh Krishi and Gram Udyog Yojana)	5,380	20,591	28,687
Agri-Infrastructure Incentive Scheme	..	..	..
Focus Market Scheme	83	2,641	4,324
Focus Product Scheme	328	1,441	3,962
Status Holder Incentive Scheme	..	..	..
Export Promotion Capital Goods Scheme	105,214	78,327	70,203
Schemes for gems and jewellery			
Replenishment certification	..	..	..
Advance authorization for gems and jewellery	..	..	..
Export and Trading Houses Scheme	..	..	..
Duty-Free Entitlement Credit Certificate Scheme	4,716	3,423	1,797
Duty-Free Service Entitlement Credit Certificate Scheme	2,679	754	541
Duty-Free Replenishment Certification Scheme	6,071	1,106	623
Target Plus Scheme	9,233	12,201	2,673
Total	**383,368**	**333,230**	**312,922**

.. Not available.

Source: Information provided by the Indian authorities.

Table AIII.8
Revenue forgone under the Income Tax Act 1961, 2006-11
(Rs million)

Incentive (section of the Income Tax Act 1961)	2006/07	2007/08	2008/09	2009/10	2010/11[a]
Deduction/weighted deduction for expenditure on scientific research (35(1), (2AA), and (2AB))	15,550	20,020	25,270	24,180	29,280
Deduction for expenditure on eligible projects or schemes for the social and economic uplift of the public (35AC)	440	500	970	8,980	1,590
Deduction in respect of expenditure on specified business (35AD)	..	..	..	..	..
Deduction on account of donations to charitable trusts and institutions (80G)	16,550	43,640	7,870	6,450	7,140
Deduction on account of donations for scientific research or rural development (80GGA)	50	140	240	10	10
Deduction on account of contributions to political parties (80GGB)	10	70	240	440	530
Deduction of profits of certain industrial undertakings or a ship or a hotel business (80-I)	-	-	-	-	-
Deduction of profits of undertakings engaged in development of infrastructure facilities (80-IA)	13,130	17,840	15,890	26,160	31,650
Deduction of profits of undertakings engaged in development of special economic zones (SEZs) and industrial parks (80-IA)	1,860	3,110	4,180	4,100	4,930
Deduction of profits of undertakings engaged in providing telecom services (80-IA)	50,540	54,730	43,600	35,110	42,520
Deduction of profits of undertakings engaged in power generation, transmission, and distribution(80-IA)	46,150	57,830	63,680	74,730	87,940
Deduction of profits of undertaking engaged in revival of power plant (80-IA)	2,730	660	1,220	2,170	2,620
Deduction of profits of undertakings engaged in development of SEZs in pursuance to the SEZ Act 2005 (80-IAB)	1,410	16,280	14,250	9,740	9,190
Deduction of profits of industrial undertakings operating in the small-scale sector (80-IB)	3,120	3,240	1,780	2,170	2,560
Deduction of profits of industrial undertakings located in Jammu and Kashmir (80-IB)	3,750	6,060	2,540	3,010	3,570
Deduction of profits of industrial undertakings located in industrially backward states other than Jammu and Kashmir (80-IB)	20,330	24,080	10,270	4,000	4,820
Deduction of profits of industrial undertakings located in backward districts (80-IB)	5,860	2,950	870	1,070	1,280
Deduction of profits of industrial undertakings derived from multiplex theatre and convention centre (80-IB)	130	160	180	30	30
Deduction of profits of industrial undertakings derived from development of scientific research (80-IB)	310	410	740	680	820
Deduction of profits of industrial undertakings derived from mineral oil production (80-IB)	52,510	28,130	9,510	10,560	12,790
Deduction of profits of industrial undertakings derived from housing projects (80-IB)	15,200	30,260	23,150	26,110	30,180
Deduction of profits of industrial undertakings derived from operating a cold chain facility (80-IB)	60	50	50	50	50
Deduction of profits of industrial undertakings derived from integrated business of handling, storage, and transportation of food grains (80-IB)	200	170	270	450	540
Deduction of profits of industrial undertakings derived from processing, preservation, and packaging of fruits and vegetables (80-IB)	230	310	710	780	940
Deduction of profits of industrial undertakings derived from hospital in rural area (80-IB)	20	20	10	30	40
Deduction of profits of undertakings set up in north eastern states (80-IC)	14,500	17,360	6,860	15,320	18,250
Deduction of profits of undertakings set up in Sikkim (80-IC)	100	390	830	3,840	4,400

Table AIII.8 (cont'd)

Incentive (section of the Income Tax Act 1961)	2006/07	2007/08	2008/09	2009/10	2010/11[a]
Deduction of profits of undertakings set up in Uttaranchal (80-IC)	5,820	13,390	17,460	24,520	29,470
Deduction of profits of undertakings set up in Himachal Pradesh (80-IC)	12,800	19,690	23,160	25,040	30,000
Deduction of profits from business of collecting and processing of bio-degradable waste (80JJA)	100	1,210	390	250	290
Deduction in respect of employment of new workmen (80JJA)	200	240	290	290	350
Deduction in respect of certain incomes of offshore banking units and international financial services centre (80LA)	2,860	5,160	3,660	4,620	180
Deduction of profits of cooperative societies (80P)	2,660	3,580	3,610	4,470	5,020
Total	**289,180**	**371,680**	**283,750**	**319,360**	**362,980**

- Nil.
.. Not available.

a Provisional.

Source: Ministry of Finance (2011), "Receipt Budget: Revenue Foregone under the Central Tax System", *Union Budget 2011-2012*. Viewed at: http://indiabudget.nic.in; and information provided by the Indian authorities.

Table AIII.9
Selected incentive schemes/programmes for MSMEs, 2011

Scheme/programme	Eligibility	Description	Introduction/ validity
Implemented by the Ministry of Micro, Small, and Medium Enterprises			
Entrepreneurship Development Institutions (EDIs) Scheme	EDIs[a]	Assistance is provided to create, strengthen or expand infrastructure (including opening of new branches) and to meet deficits. The subsidy amounts to 50% of the cost of building, training, and other support services, up to Rs 15 million.	2010/12
Rajiv Gandhi Udyami Mitra Yojana[b]	New micro and small entrepreneur	Financial assistance to Udyami Mitras[c] is provided by selected agencies[d]. It amounts to Rs 4,000/trainee for service enterprises and Rs 6,000/trainee for manufacturing enterprises (with investment in plants and machinery up to Rs 25,000). Trainees contribute to Rs 1,000 to the financial assistance (trainees of special categories are exempt).	2008/12
Implemented by the Development Commissioner			
Management Development Programme	Prospective/ existing MSMEs	The programme is aimed at training prospective/existing entrepreneurs by upgrading their managerial skills. No financial incentives are provided.	1952/ongoing
Credit Guarantee Fund Scheme for Micro and Small Enterprises	All MSEs, except retail trade	Credit is guaranteed by financial institutions[e]. The guarantees amount to: 75% of the credit for loans up to Rs 5 million; 85% of the credit for loans up to Rs 500,000 to micro enterprises; 75% of the credit for loans up to Rs 5 million to micro enterprises; and 80% of the credit for special categories, without any limit. For loans ranging from Rs 5 million to Rs 10 million, a 50% incremental increase on the amount of the guarantees applies.	2000/14
Credit Linked Capital Subsidy Scheme for technology upgradation	Manufacturing MSEs	The subsidy amounts to 15% of the capital acquired to upgrade technology, up to Rs 1.5 million.	2001/12
Integrated Infrastructure Development Scheme[f]	..	The subsidy amounts to 40% of the cost of the project, up to Rs 2 million (80% for projects set up in the north-eastern region or in the states of Jammu and Kashmir, Himachal Pradeshm, and Uttarakhand, up to Rs 4 million).	../2010
ISO 9000/14001 and HACCP Certification Reimbursement Scheme	All MSEs	75% of the quality management (ISO 9000), environment management (ISO 14001), and HACCP certification cost is reimbursed, up to Rs 75,000.	1994/12
Marketing Development Assistance Scheme	Exporting manufacturing MSMEs	MSMEs participating in international exhibitions/trade fairs, are reimbursed 75% of the economy air fare and 50% of the space rental charges (100% for special categories), up to Rs 125,000.	2000/12
Micro and Small Enterprises Cluster Development Programme[f]	All MSEs	The subsidy amounts to Rs 250,000 for conducting diagnostic studies; 80% of the cost of the project (90% for special categories) for projects up to Rs 150 million; and 75% of the cost of the project (90% for special categories) for projects up to Rs 2.5 million. For infrastructure development, the subsidy amounts to 60% of the cost of the project (80% for special categories) up to Rs 10 million.	2010/ongoing

Table AIII.9 (cont'd)

Scheme/programme	Eligibility	Description	Introduction/ validity
Mini Tool Rooms	Individual MSEs/MSE consortium	The subsidy amounts to 40% of the total cost for new projects managed by private partners, up to Rs 9 million; and 90% of total cost for new projects managed by private partners in cooperation with State governments/state government agencies, up to Rs 9 million. For existing projects to be upgraded by State governments/state government agencies, the subsidy amounts to 75% of the total cost of the project, up to Rs 7.5 million.	2008/12
Scheme for Micro Finance Programme	Micro finance institutions	The Government provides a Portfolio Risk Fund to the Small Industries Development Bank Of India (SIDBI). The Fund is used to guarantee loans taken by micro finance institutions or NGOs.	2003/ongoing
Implemented by the National Small Industries Corporation (NSIC)			
Government Stores Purchase Programme	MSEs registered with NSIC	MSEs are granted a 15% price preference for central government purchases, i.e. an MSE quoting up to 15% over the quote of a large-scale enterprise is eligible to get the order. Conditions of quality and terms of supply also apply. Price preferences are set up for each tender in consultation with the Ministry of Finance and should be mentioned in the tender notice. Other purchase facilities include tender documents free of cost and exemption of earnest money or security deposits. There are 358 items reserved for exclusive purchase by the Central Government from MSEs.	1960/ongoing
Marketing Assistance Scheme	All MSMEs	For the organization of exhibitions/trade fairs abroad, the subsidy amounts to 75% of the space rental fee (95% for special categories), 85% of the economy air fare (95% for special categories), and Rs 37,500 for freight charges; total subsidies are capped at Rs 240,000 (Rs 270,000 for special categories). For participation in exhibitions/trade fairs abroad, same as above except for freight charges (Rs 20,000); total subsidies are capped at Rs 175,000 (Rs 200,000 for special categories). For the organization of and participation in exhibitions/trade fairs in India, the subsidy amounts to 75% of the cost (95% for special categories), up to Rs 3 million for organizing costs and Rs 1 million for participating costs.	../2012
Performance and Credit Rating Scheme	All MSEs	MSEs may select a rating agency to obtain a credit rating. The subsidy amounts to 75% of the fee charged by the rating agency, up to Rs 40,000.	2005/12
Raw Materials Assistance Scheme	MSMEs	Short-term credit finance is available for 90 days at concessional interest rates. Concessions on the interest rate range from 0.5% to 1% depending upon the unit's credit rating.	2004/12
Implemented by the Khadi and Village Industries Commission (KVIC)			
Prime Minister's Employment Generation Programme[b]	New micro entrepreneurs	The subsidy amounts to 15% of the cost of establishing new micro enterprises in urban areas (25% for special categories); and 25% of the cost of establishing new micro enterprises in rural areas (35% for special categories). Maximum cost is Rs 2.5 million for setting up new manufacturing micro enterprises and Rs 1 million for setting up new micro enterprises engaged in services.	2008/12
Rural Employment Generation Programme[b]	Rural artisans/entrepreneurs, and cooperative societies	The subsidy amounts to 25% of the cost for projects up to Rs 1 million, and to 10% of the difference between Rs 2.5 million and Rs 1 million for projects up to Rs 2.5 million.	1995/08

Table AIII.9 (cont'd)

Scheme/programme	Eligibility	Description	Introduction/ validity
Implemented by the Coir Board			
Rejuvenation, Modernization, and Technological Upgradation of Coir Industry	Micro and small coir enterprises	The subsidy amounts to 40% of the cost of projects, up to Rs 80,000 for spinning/weaving enterprises and Rs 200,000 for tiny/household enterprises	2008/12

.. Not available.

a National Institute for Micro, Small and Medium Enterprises, National Institute for Entrepreneurship and Small Business Development, and Indian Institute of Entrepreneurship.
b The Rajiv Gandhi Udyami Mitra Yojana scheme and the Rural Employment Generation Programme were merged into the Prime Minister's Employment Generation Programme in August 2008.
c Selected lead agencies for rendering assistance and handholding support to potential first generation entrepreneurs.
d Entrepreneurship development institutions, the National Small Industries Corporation (NSIC), the Khadi and Village Industries Commission (KVIC), and the Coir Board.
e Public and private sector banks, regional rural banks, foreign banks, and other financial institutions.
f The Integrated Infrastructure Development Scheme was merged into the Micro and Small Enterprises Cluster Development Programme in February 2010. The level of financial assistance to infrastructure development projects was enhanced.

Note: "Special categories" refer to MSMEs operated/owned by women or scheduled castes/scheduled tribes or located in the north-eastern region.

Source: Ministry of Micro, Small, and Medium Enterprises online information, "Programmes and schemes". Viewed at: http://msme.gov.in/msme_schemes.htm; Development Commissioner online information, "Schemes". Viewed at: http://www.dcmsme.gov.in/schemes/sidoscheme.htm; National Small Industries Corporation online information, "Schemes". Viewed at: http://www.nsic.co.in/index.asp; National Portal of India online information, "Schemes". Viewed at: http://india.gov.in/govt/schemes.php; Credit Guarantee Trust Fund for Micro and Small Enterprises online information, "Schemes". Viewed at: http://www.cgtmse.in/schemes.aspx; Development Commissioner (2009), *Micro, Small, and Medium Enterprises in India: An Overview*. Viewed at: http://www.dcmsme.gov.in/ssiindia/MSME_OVERVIEW09.pdf; Development Commissioner (undated), *Guidelines for Implementation of the Scheme Setting up of New Mini Tool Rooms under Public Private Partnership Mode*. Viewed at: http://www.dcmsme.gov.in/schemes/MTRGudelines_New.pdf; India Development Gateway online information, "Prime Minister's Employment Generation Programme". Viewed at: http://www.indg.in/agriculture/rural-employment-schemes/pmegp/prime-minister2019s-employment-generation-programme-pmeg; former Ministry of Agro and Rural Industries online information, "Rural Employment Generation Programme". Viewed at: http://ari.nic.in/arischregp.htm; Ministry of Micro, Small, and Medium Enterprises (2009),*Rajiv Gandhi Udyami Mitra Yojana: Web Application User Manual*, August. Viewed at: http://rgumy.nic.in/RGUMY_User_Manual_UdyamiMitra_Ver3.pdf; and information provided by the Indian authorities.

Table AIII.10
Central public sector enterprises, 2011

Activity	Name	State ownership (%)
Agri-based industries	Andaman and Nicobar Islands Forest and Plantation Development Corporation Ltd.	100.00
	CREDA HPCL Biofuels Ltd.[a]	100.00
	HPCL Biofuels Ltd.[a]	100.00
	National Seeds Corporation Ltd.	100.00
	State Farms Corporation of India	100.00
Coal and lignite	Bharat Coking Coal Ltd.	100.00
	Central Coalfields Ltd.	100.00
	Coal India Ltd.	100.00
	Eastern Coalfields Ltd.	100.00
	Mahanadi Coalfields Ltd.	100.00
	MJSJ Coald Ltd.[a]	60.00
	Northern Coalfields Ltd.	100.00
	South Eastern Coalfields Ltd.	100.00
	Western Coalfields Ltd.	100.00
Iron and steel	Ferro Scrap Nigam Ltd.	100.00
	Maharashtra Electromelt Ltd.	99.13
	Mishra Dhatu Nigam Ltd.	100.00
	Rashtriya Ispat Nigam Ltd.	100.00
	Sponge Iron India Ltd.	98.73
	Steel Authority of India	85.52
Other minerals and metals	Bisra Stone Lime Company Ltd.	50.01
	Eastern Investment Ltd.	100.00
	FCI Aravali Gypum and Minerals India Ltd.	100.00
	Hindustan Copper Ltd.	99.59
	Indian Rare Earths Ltd.	100.00
	J&K Mineral Development Corporation Ltd.	83.54
	KIOLC Ltd.	99.00
	Manganese Ore (India) Ltd.	81.57
	National Aluminium Company Ltd.	87.15
	National Mineral Development Corporation Ltd.	90.00
	Orissa Mineral Development Company Ltd.	100.00
	Uranium Corporation of India Ltd.	100.00
Petroleum (refinery and marketing)	Bharat Petroleum Corporation Ltd.	54.93
	Brahmaputra Crackers and Polymer Ltd.[a]	70.00
	Chennai Petroleum Corporation Ltd.	51.86
	GAIL (India) Ltd.	57.35
	GAIL Gas Ltd.	100.00
	Hindustan Petroleum Corporation Ltd.	51.05
	Indian Oil Corporation Ltd.	78.92
	Mangalore Refinery and Petrochemicals Ltd.	71.77
	Numaligarh Refinery Ltd.	61.65
Crude oil	Bharat Petro Resources JPDA[a]	100.00
	Bharat Petro Resources Ltd.	100.00
	Oil and Natural Gas Corporation Ltd.	74.14
	Oil India Ltd.	78.44
	ONGC Videsh Ltd.	100.00

Table AIII.10 (cont'd)

Activity	Name	State ownership (%)
Fertilizers	Brahmaputra Valley Fertilizer Corporation Ltd.	100.00
	Fertilizer Corporation of India Ltd.	100.00
	Fertilizers and Chemicals (Travancore) Ltd.	98.56
	Hindustan Fertilizer Corporation Ltd.	100.00
	Madras Fertilizers Ltd.	59.12
	National Fertilizers Ltd.	97.64
	Rashtriya Chemicals and Fertilizers Ltd.	92.50
Chemicals and pharmaceuticals	Bengal Chemicals and Pharmaceuticals Ltd.	100.00
	Bharat Immunologicals and Biologicals Ltd.	59.26
	Bihar Drugs and Organic Chemicals Ltd.[a]	100.00
	Hindustan Antibiotics Ltd.	100.00
	Hindustan Fluorocarbons Ltd.	56.09
	Hindustan Insecticides Ltd.	100.00
	Hindustan Salts Ltd.	100.00
	Indian Drugs and Pharmaceuticals Ltd.	100.00
	Indian Medicines and Pharmaceuticals Corporation Ltd.	86.00
	Indian Vaccine Corporation Ltd.[a]	66.68
	Karnataka Antibiotics and Pharmaceuticals Ltd.	59.18
	Orissa Drugs and Chemicals Ltd.	50.76
	Rajasthan Drugs and Pharmaceuticals Ltd.	51.40
	Sambhar Salts Ltd.	60.00
Heavy engineering	Bharat Bhari Udyog Nigam Ltd.	100.00
	Bharat Heavy Electricals Ltd.	67.72
	Bharat Heavy Plate and Vessels Ltd.	100.00
	Bharat Wagon and Engineering Company Ltd.	100.00
	Braithwaite & Co. Ltd.	100.00
	Burn Standard Company Ltd.	100.00
	Heavy Engineering Corporation Ltd.	100.00
	Triveni Structurals Ltd.	100.00
	Tungabhadra Steel Products Ltd.	79.27
Medium and light engineering	Andrew Yule & Co. Ltd.	94.42
	Balmer Lawrie & Co. Ltd.	61.76
	BEL Optronics Devices Ltd.	92.79
	Bharat Dynamics Ltd.	100.00
	Bharat Electronics Ltd.	75.86
	Bharat Pumps and Compressors Ltd.	100.00
	Biecco Lawrie & Co. Ltd.	57.38
	Central Electronics Ltd.	100.00
	Electronics Corporation of India Ltd.	100.00
	Hindustan Cables Ltd.	99.60
	HMT Bearings Ltd.	99.36
	HMT Chinar Watches Ltd.	100.00
	HMT Ltd.	98.88
	HMT Machine Tools Ltd.	100.00
	HMT Watches Ltd.	100.00
	IDPL (Tamil Nadu) Ltd.	100.00
	Instrumentation Ltd.	100.00
	ITI Ltd.	96.512
	MNH Shakti Ltd.[a]	70.00

Table AIII.10 (cont'd)

Activity	Name	State ownership (%)
	Rajasthan Electronics and Instruments Ltd.	51.00
	Richardson and Cruddas (1972) Ltd.	100.00
	Vignyan Industries Ltd.	96.42
Consumer goods	Artificial Limbs Manufacturing Corporation of India	100.00
	Cement Corporation of India	100.00
	Hindustan Newsprint Ltd.	100.00
	Hindustan Paper Corporation Ltd.	100.00
	Hindustan Organic Chemicals Ltd.	91.78
	Hindustan Photo Films Manufacturing Company Ltd.	90.63
	Hindustan Vegetable Oils Corporation Ltd.	100.00
	HLL Lifecare Ltd.	100.00
	Hooghly Printing Company Ltd.	100.00
	Jagdishpur Paper Mills Ltd.[a]	100.00
	Nagaland Pulp and Paper Company Ltd.	94.76
	NEPA Ltd.	97.75
	Security Printing and Minting Corporation of India Ltd.	100.00
	Tyre Corporation of India Ltd.	100.00
Textiles	Birds, Jute, and Exports Ltd.	74.36
	British India Corporation Ltd.	100.00
	National Jute Manufacturers Corporation Ltd.	100.00
	National Textile Corporation Ltd.	99.76
Electricity	Bhartiya Nabhikiya Vidyut Nigam Ltd.[a]	100.00
	Bhartiya Rail Bijlee Company Ltd.[a]	100.00
	Bhopal Dhule Transmission Company Ltd.[a]	100.00
	Chhattishgarh Surguja Power Ltd.[a]	100.00
	Coastal Karnataka Power Ltd.[a]	100.00
	Coastal Maharashtra Mega Power Ltd.[a]	100.00
	Coastal Tamil Nadu Power Ltd.[a]	100.00
	Ghogarpalli Integrated Power Company Ltd.[a]	100.00
	Jabalpur Transmission Company Ltd.[a]	100.00
	Kanti Bijlee Utpadan Nigam Ltd.[a]	100.00
	Loktak Downstream Hydroelectric Corporation Ltd.[a]	74.00
	Narmada Hydroelectric Development Corporation Ltd.	51.08
	National Hydroelectric Power Corporation Ltd.	86.36
	Neyveli Lignite Corporation Ltd.	93.56
	NLC Tamil Nadu Power Ltd.[a]	89.00
	North Eastern Electric Power Corporation Ltd.	100.00
	NTPC Electric Supply Company Ltd.[a]	100.00
	NTPC Hydro Ltd.[a]	100.00
	NTPC Ltd.	84.50
	Nuclear Power Corporation of India Ltd.	100.00
	Orissa Integrated Power Ltd.[a]	100.00
	Power Grid Corporation of India	86.36
	Power System Operation Corporation Ltd.[a]	100.00
	Raichur Sholapur Transmission Company Ltd.[a]	100.00
	REC Power Distribution Company Ltd.	100.00
	REC Transmission Projects Company Ltd.	100.00
	Rural Electrification Corporation Ltd.	66.80
	Sakhigopal Integrated Power Company Ltd.[a]	100.00

Table AIII.10 (cont'd)

Activity	Name	State ownership (%)
	Satluj Jal Development Corporation Ltd.	75.00
	Tatiya Andhra Mega Power Ltd.[a]	100.00
	Tehri Hydro Development Corporation Ltd.	71.98
Trading and marketing services	Antrix Corporation Ltd.	100.00
	Central Cottage Industries Corporation	100.00
	Central Railside Warehousing Company Ltd.	100.00
	Central Warehousing Corporation	55.01
	Cotton Corporation of India Ltd.	100.00
	Food Corporation of India Ltd.	100.00
	Handicrafts and Handlooms Exports Corporation of India Ltd.	100.00
	HMT (International) Ltd.	100.00
	India Trade Promotion Organization	100.00
	Jute Corporation of India Ltd.	100.00
	Karnataka Trade Promotion Organization	51.00
	MMTC Ltd.	99.34
	MSTC Ltd.	90.00
	National Handlooms Development Corporation Ltd.	100.00
	North Eastern Regional Agriculture Marketing Corporation Ltd.	100.00
	North Eastern Handicrafts and Handlooms Corporation Ltd.	100.00
	NTPC Vidyut Vyapar Nigam Ltd.	100.00
	PEC Ltd.	100.00
	State Trading Corporation of India Ltd.	91.02
	STCL Ltd.	100.00
	Tamil Nadu Trade Promotion Organization	100.00
Construction services	BBJ Construction Company Ltd.	100.00
	Bridge and Roof Corporation (India) Ltd.	99.45
	Hindustan Prefab Ltd.	100.00
	Hindustan Steelworks Construction Ltd.	100.00
	IRCON (International) Ltd.	99.80
	IRCON Infrastructure and Services Ltd.[a]	100.00
	Konkan Railway Corporation Ltd.	91.37
	Mineral Exploration Corporation Ltd.	100.00
	Mumbai Railway Vikas Corporation Ltd.	51.00
	National Buildings Construction Corporation Ltd.	100.00
	National Projects Construction Corporation Ltd.	99.84
	Projects and Development India Ltd.	100.00
	Rail Vikas Nigam Ltd.	100.00
Transport equipment	Air India Engineering Services Ltd.[a]	100.00
	Bharat Earth Movers Ltd.	53.87
	Cochin Shipyard ltd.	100.00
	Garden Reach Shipbuilders and Engineers Ltd.	100.00
	Goa Shipyard Ltd.	51.10
	Hindustan Aeronautics Ltd.	100.00
	Hindustan Shipyard Ltd.	100.00
	Hooghly Dock and Port Engineers Ltd.	100.00
	Mazagon Dock Ltd.	100.00
	Scooters India Ltd.	95.37
	Sethusamudram Corporation Ltd.[a]	66.44

Table AIII.10 (cont'd)

Activity	Name	State ownership (%)
Transport services	Air India Air Transport Services Ltd.	100.00
	Air India Charters Ltd.	100.00
	Airlines Allied Services Ltd.	100.00
	Airports Authority of India	100.00
	Central Inland Water Transport Corporation Ltd.	99.89
	Container Corporation of India Ltd.	63.09
	Dedicated Freight Corridor Corporation of India Ltd.[a]	100.00
	Dredging Corporation of India Ltd.	78.57
	Ennore Port Ltd.	66.67
	Fresh and Healthy Enterprises Ltd.	100.00
	National Aviation Company of India Ltd.	100.00
	Pawan Hans Helicopters Ltd.	78.47
	Shipping Corporation of India Ltd.	80.13
Tourism	Assam Ashok Hotel Corporation Ltd.	51.00
	Donyl Polo Ashok Hotel Corporation Ltd.	51.00
	Hotel Corporation of India Ltd.	100.00
	India Tourism Development Corporation Ltd.	92.11
	Indian Railway Catering and Tourism Corporation Ltd.	100.00
	Kumarakuppa Frontier Hotels Ltd.	91.00
	Madhya Pradesh Ashok Hotel Corporation Ltd.	51.25
	Pondicherry Ashok Hotel Corporation Ltd.	51.67
	Punjab Ashok Hotel Company Ltd.[a]	51.20
	Ranchi Ashok Bihar Hotel Corporation Ltd.	51.39
	Utkal Ashok Hotel Corporation Ltd.	72.92
Telecom	Bharat Sanchar Nigam Ltd.	100.00
	Mahanagar Telephone Nigam Ltd.	56.25
	Millenium Telecom Ltd.	100.00
	Railtel Corporation India Ltd.	100.00
Insurance	Agricultural Insurance Company of India Ltd.	..
	General Insurance Corporation of India	..
	Life Insurance Corporation of India Ltd.	..
	National Insurance Company Ltd.	..
	New India Assurance Company Ltd.	..
	Oriental Insurance Company Ltd.	..
	United India Insurance Company Ltd.	..
Industrial development and technology consultancy	Broadcast Engineering Consultants India Ltd.	100.00
	Central Mine Planning and Design Institute Ltd.	100.00
	Certification Engineers International Ltd.	100.00
	Ed.CIL (India) Ltd.	100.00
	Engineering Projects (India) Ltd.	99.97
	Engineers India Ltd.	90.40
	HSCC (India) Ltd.	100.00
	MECON Ltd.	100.00
	National Informatics Centre Services Inc.	100.00
	National Research Development Corporation Ltd.	100.00
	National Small Industries Corporation Ltd.	100.00
	PFC Consulting Ltd.	100.00
	RITES Ltd.	100.00

Table AIII.10 (cont'd)

Activity	Name	State ownership (%)
	Telecommunications Consultants India Ltd.	100.00
	Water and Power Consultancy Services (India) Ltd.	100.00
Financial services	Balmer Lawrie Investments Ltd.	59.68
	Export Credit Guarantee Corporation of India Ltd.	100.00
	Housing and Urban Development Corporation Ltd.	100.00
	India Infrastructure Finance Company Ltd.	100.00
	Indian Railways Finance Corporation Ltd.	100.00
	Indian Renewable Energy Development Agency Ltd.	100.00
	National Backward Classes Finance and Development Corporation	100.00
	National Film Development Corporation of India Ltd.	100.00
	National Handicapped Finance and Development Corporation	100.00
	National Minorities Development and Finance Corporation	81.62
	National Safai Karamcharis Finance and Development Corporation	100.00
	National Scheduled Castes Finance and Development Corporation	100.00
	National Scheduled Tribes Finance and Development Corporation	100.00
	Power Finance Corporation Ltd.	89.78

.. Not available.

a Enterprise under construction.

Source: Department of Public Enterprises (2010), *Public Enterprises Survey 2008-2009*, February. Viewed at: http://dpe.nic.in/newsite/survey0809/pesurvey.html; and information provided by the Indian authorities.

Table AIV.1
India's banking system, 2007 and 2010

Financial institutions	Number		Definition, function, and laws by which they are governed	Requirements for establishment (if applicable)	
	2007	2010		Nationals	Foreigners
Scheduled commercial banks[a]	82	81	Banks included in the Second Schedule of the Reserve Bank of India 1934	-	-
State bank of India (SBI) and associates	8	8[b]	Governed by the State Bank of India Act 1955. The associates are governed by the State Bank of India (Subsidiary Banks) Act 1959[c]; SBI and associates also governed by the Reserve Bank of India (RBI) Act 1934 and the Banking Regulation Act 1949	Parliamentary approval required; Central Government shareholding cannot be less than 51%	FDI and portfolio subject to overall statutory limits of 20%
Nationalized banks	19	19	Governed by the Banking Companies (Acquisition and Transfer of Undertakings) Act 1970 (14 banks) and the Banking Companies (Acquisition and Transfer of Undertakings) Act 1980 (five banks); also regulated by the RBI Act 1934 and the Banking Regulation Act 1949	Parliamentary approval required; Central Government shareholding cannot be less than 51%	FDI and portfolio subject to overall statutory limits of 20%
Foreign banks	29	32	Governed by the RBI Act 1934, the Banking Regulation Act 1949, the Companies Act 1956, and other acts not inconsistent with the Banking Regulation Act 1949	Set up by foreign parent banks	Bank branches of parent banks
Private sector banks	26	22	Companies incorporated under the Companies Act 1956 and licensed under the Banking Regulation Act 1949 (Section 22), to carry on banking business[d]; engaged in activities stipulated in the Banking Regulation Act 1949 (Section 6); governed by the RBI Act 1934, the Banking Regulation Act 1949, the Companies Act 1956, and other acts not inconsistent with the Banking Regulation Act 1949	Guidelines for licensing issued in 1993 (ten banks licensed); revised guidelines issued in 2001 (two banks licensed)	74% is the maximum aggregate of foreign investment from all sources[e]; 26% of paid-up capital must be held by resident Indians
State cooperative banks	31	31	Principal cooperative society in a State; main objective is to finance other state's cooperative societies as stipulated in the National Bank for Agriculture and Rural Development (NABARD) Act 1981 (Section 2(u)); also governed by the RBI Act 1934, the Banking Regulation Act 1949 (as applicable to cooperative societies) and the relevant State's Cooperative Societies Act	Established as per the relevant State's Cooperative Societies Act; licensed by the RBI under the Banking Regulation Act 1949 (Section 22)	FDI not allowed
Urban cooperative banks	1,770	1,674	Cooperative societies established and registered under the respective States' Cooperative Societies Act; they are present in 28 states/union territories; under the RBI regulation and supervision since 1 March 1966 when the Banking Regulation Act 1949 applied to them for banking-related functions; other aspects governed by the respective State's Cooperative Societies Act	Set up by their members who are Indian nationals	FDI not allowed

Table IV.1 (cont'd)

Financial institutions	Number		Definition, function, and laws by which they are governed	Requirements for establishment (if applicable)	
	2007	2010		Nationals	Foreigners
Central cooperative banks	367	371	Governed by the RBI Act 1934, the Banking Regulation Act 1949 (as applicable to cooperative societies), the NABARD Act 1981, and the relevant State's Co-operative Societies Act, under which the bank is established	Established as per the relevant State's Cooperative Societies Act; licensed by the RBI under the Banking Regulation Act 1949 (Section 22)	FDI not allowed
Regional rural banks	96	82	Governed by the Regional Rural Banks (RRBs) Act 1976, the RBI Act 1934, and the Banking Regulation Act 1949; established to develop the rural economy by providing credit and other facilities, in particular to small and marginal farmers, agricultural labourers, artisans, and small entrepreneurs	Under RRBs Act 1976, Central Government may, if requested by a sponsor bank, by notification in the *Official Gazette*, establish one or more RRBs in a State or union territory, and specify the local limits for operation	FDI not allowed
Other institutions					
Development finance institutions	7	5	Promoted or assisted by the Government to provide development finance to one or more sectors or subsectors of the economy; classified as term-lending institutions, refinancing institutions, and sector specific institutions; governed by the RBI Act 1934 and the respective acts enacted by Parliament (the National Housing Bank Act, the Exim Bank Act, the NABARD Act, and the Small Industries Development Bank of India Act)	Only nationals (Government of India/RBI)	FDI not allowed
Non-banking financial companies (NBFCs)	12,968	12,662	Registered under the Companies Act 1956 to provide loans and advances, acquisition of shares/stock/bonds/debentures/securities issued by the Government or local authorities or other securities of like marketable nature, leasing, hire-purchase, insurance business, and chit business[f]; non-banking institutions whose main business is to receive deposits defined as NBFCs (residuary non-banking company); NBFCs are governed by the RBI Act 1934 (with the RBI as regulator); NBFCs classified as assent finance companies (AFCs)[g], investment companies, loan companies, and infrastructure finance companies (IFCs)[h]	Under RBI Act 1934 (Section 45-IA), must register with the RBI to start or carry on any business of NBFC as defined in the RBI Act 1934 (Section 45-I, clause (a)), and must have minimum net owned fund of Rs 20 million; to prevent dual regulation, certain NBFCs categories, regulated by other regulators, are exempt from the registration requirement[i]	FDI allowed up to 100% of the paid-up capital, subject to minimum capitalization norms : (i) foreign equity ≤ 51%, US$500,000 minimum capitalization requirement; (ii) foreign equity > 51% but ≤ 75%, it is US$5 million; (iii) foreign equity > 75%, it is US$50 million; and (iv) 100% foreign-owned NBFCs act as holding companies and specific activities undertaken by step-down subsidiaries with minimum 25% domestic equity

Table IV.1 (cont'd)

Financial institutions	Number		Definition, function, and laws by which they are governed	Requirements for establishment (if applicable)	
	2007	2010		Nationals	Foreigners
Primary dealers (PDs)	17[j]	18[k]	System of PDs in Government securities (G-Sec) market, comprising independent entities undertaking PD activity; expected to play an active role in the G-Sec market (primary and secondary market segments); required to support auctions for issue of Government dated securities and treasury bills as per the minimum norms prescribed by the RBI from time to time; stand-alone PDs registered as NBFCs under the RBI Act 1934 (Section 45-IA); their operations regulated by RBI guidelines issued from time to time; banks' PD activities governed by guidelines issued by the RBI	Non-bank applicant must have net owned funds (NOFs) of at least Rs 1.5 billion; a PD undertaking other permissible activities must have NOFs of at least Rs 2.5 billion; banks may undertake PD business departmentally subject to: (i) minimum NOF of Rs 10 billion; (ii) minimum CRAR of 9%; and (iii) net NPAs of less than 3% and a profit-making record for the last three years	Subsidiaries or joint-ventures set up by entities incorporated abroad need approval of the Foreign Investment Promotion Board for PD activities

a Includes the State bank of India and associates, nationalized banks, foreign banks, and private sector banks.
b Including six associates.
c The State Bank of Hyderabad is governed by the State Bank of Hyderabad Act 1956.
d Accepting deposits for the purpose of lending or investment of deposits of money from the public, repayable on demand and withdrawable by cheque, draft or order.
e FDI, foreign institutional investors, and non-resident Indians.
f NBFCs do not include institutions whose principal business is that of agriculture or industrial activities, and sale/purchase/construction of immovable property.
g AFCs are financial institutions. Their principal business is the financing of physical assets supporting productive/economic activity (e.g. automobiles, tractors, later machines, generator sets, earth-moving, and material handling equipment) moving on own power and general purpose is defined as aggregate of financing real/physical assets supporting economic activity and income arising therefrom is not less than 60% of total assets and total income, respectively.
h IFCs are non-deposit-taking NBFCs that fulfil the following criteria: (i) at least 75% of the total assets should be deployed in infrastructure loans, as stipulated in the Non-Banking Financial (Non-Deposit Accepting or Holding) Companies Prudential Norms (Reserve Bank) Directions 2007 (Para 2(viii)); (ii) minimum net owned funds of Rs 3 billion; (iii) minimum credit rating "A" or equivalent of CRISIL, FITCH, CARE, ICRA or equivalent rating by other accrediting rating agencies; and (iv) CRAR of 15% (with minimum tier I capital of 10%).
i Venture capital fund, merchant banking companies, stock-broking companies registered with the Securities and Exchange Board of India, insurance companies holding a valid certificate of registration issued by IRDA, Nidhi companies as notified under the Companies Act 1956 (Section 60A), chit companies as defined under the Chit Funds Act 1982 (Section 2, clause (b)) or housing finance companies regulated by the National Housing Bank.
j Of which, 8 stand-alone PDs and 9 bank PDs.
k Of which, 7 stand-alone PDs and 11 bank PDs.

Source: Information provided by the authorities.

Table AIV.2
Telecom licensing regimes, 2011

Financial requirement	Obligation	Fee	Validity
Unified access service (UAS) for fixed and mobile telephony			
Financial bank guarantee (Rs 50-500 million) and performance bank guarantee (Rs 20-200 million)	Minimum 10% coverage during the first year and 50% within three years in urban areas[a]; and interconnection to national long-distance service providers	Application processing fee (Rs 15,000), one-time entry fee (Rs 10 million-Rs 2.33 billion), and annual fee (6%-10% of adjusted gross revenue)[b]	20 years, renewable for 10 years
National long-distance			
Financial bank guarantee (Rs 200 million); no dues certificate in respect of outstanding amount against any licence granted to the applicant; and minimum net worth and paid-up equity capital (Rs 25 million)	Interconnection to international long-distance service providers	Application processing fee (Rs 15,000), one-time entry fee (Rs 25 million), and annual fee (6% of the adjusted gross revenue)	20 years, renewable for 10 years
International long-distance			
Financial bank guarantee (Rs 200 million); no dues certificate in respect of outstanding amount against any licence granted to the applicant; and minimum networth and paid-up equity capital (Rs 25 million)	Interconnection to national long-distance service provider	Application processing fee (Rs 50,000), one-time entry fee (Rs 25 million), and annual fee (6% of adjusted gross revenue)	20 years, renewable for 5 years
Internet service providers[c]			
Category A			
Financial bank guarantee (Rs 1 million) and performance bank guarantee (Rs 20 million)	n.a.	Application processing fee (Rs 15,000), one-time entry fee (Rs 3 million), and annual fee (6% of adjusted gross revenue, subject to a minimum of Rs 50,000); renewals subject to an additional entry fee (Rs 1 million)	20 years, renewable for 5 years
Category B			
Financial bank guarantee (Rs 100,000) and performance bank guarantee (Rs 2 million)	n.a.	Application processing fee (Rs 15,000), one-time entry fee[c] (Rs 1.5 million), and annual fee (6% of adjusted gross revenue, subject to a minimum of Rs 10,000); renewals subject to an additional entry fee (Rs 500,000)	20 years, renewable for 5 years
Infrastructure providers			
Category I[d]			
n.a.	n.a.	Application processing fee (Rs 5,000)	20 years, renewable for 10 years
Category II[e]			
n.a.	n.a.	n.a.	20 years, renewable for 10 years

n.a. Not applicable.

a No coverage requirement in rural areas.
b Since 1 October 2008, operators providing fixed telecom services in rural areas are exempt from the annual fee.
c Internet service providers with net worth of Rs 1 billion are allowed to provide internet protocol television service (at present, two providers).
d Lease/rent out/sell dark fibre, right of way, duct space, and tower to telecom service providers.
e Lease/rent out/sell end-to-end bandwidth, i.e. digital transmission capacity capable of carrying a message, to telecom service providers.

Note: The financial bank guarantee ensures the payment of charges/fees by the Government, e.g. spectrum charges and licensing fees. The performance bank guarantee ensures that providers meet their roll-out obligations.

Source: Department of Telecommunications online information, "Information and Guidelines". Viewed at: http://www.dot.gov.in; Department of Telecommunications, Notification No. 20 100/2007 AS I, 1 October 2008; Department of Telecommunications (2010), *Annual Report 2009-2010*. Viewed at: http://www.dot.gov.in/annualreport/2010/final.pdf; and information provided by the Indian authorities.

Table AIV.3
Auctioning of 3G and BWA spectrums, 2010

Eligibility	Reserve price (category of telecom services area)	Coverage obligation and penalty	Annual fee	Validity
3G spectrum				
Telecom service providers; Any person with experience in 3G telecom services and committed to obtain a UAS licence	Rs 3.2 billion (category A, Delhi, and Mumbai); Rs 1.2 billion (category B and Kolkata); Rs 300 million (category C)	Within five years: 90% coverage in metro areas; and 50% coverage in district cities (categories A, B, and C), of which 15% coverage must be rural short-distance charging areas. For non-compliance, licence holder is allowed an extra year, subject to a penalty; if coverage obligation not met after extended period, spectrum allocation withdrawn	3%-8% of adjusted gross revenue	20 years
BWA spectrum				
Telecom service providers; Internet service providers (category A or B)	Rs 1.6 billion (category A, Delhi, and Mumbai); Rs 600 million (category B and Kolkata); Rs 150 million (category C)	Within five years: 90% coverage in metro category; and at least 50% coverage in rural short-distance charging areas. Spectrum allocation withdrawn in case of non-compliance	First year: no fee; 1% of adjusted gross revenue	20 years

Source: Department of Telecommunications(2010), *Auction of 3G and BWA Spectrum: Notice Inviting Applications*, 25 February. Viewed at: http://dot.gov.in/as/Auction%20of%20Spectrum%20for3G%20&%20BWA/new/index.htm; and information provided by the Indian authorities.