II. TRADE POLICY REGIME: FRAMEWORK AND OBJECTIVES

(1) TRADE AND TRADE–RELATED POLICY

(i) Objectives

1. Export promotion continues to be a major thrust of India's trade policy; the objective is to make exports the engine of growth. Accordingly, policies have been aimed at creating a friendly environment by eliminating redundant procedures, increasing transparency by simplifying the processes involved in the export sector and moving away from quantitative restrictions, thereby improving the competitiveness of Indian industry and reducing the anti-export bias. Steps have also been taken to promote exports through multilateral and bilateral initiatives.[1]

2. India supports the multilateral trading system, favoring multilateralism over regionalism. Nevertheless, steps have been taken to strengthen the South Asian Association for Regional Cooperation (SAARC) with the aim of completing a free-trade area (SAFTA not later than 2005); a free-trade agreement has been signed with Sri Lanka, and India has initiated talks with other countries to deepen their bilateral trade ties.[2]

3. Recent trade and industrial policy reforms have focussed on the progressive elimination of quantitative restrictions; de-licensing of industries; the proposed replacement of the Monopolies and Restrictive Trade Practices (MRTP) Act by a new Competition Law, and removal of restrictions on investment by large firms; and privatization, labour reforms, and the further liberalization of foreign direct investment.

(ii) Institutional and legal framework

4. India's institutional and legal framework has remained mostly unchanged since 1998. The Executive is vested in the President and the Cabinet. The President, the head of the Executive, is aided by the Council of Ministers headed by the Prime Minister. The President is elected for five years by an electoral college comprising members of both houses of Parliament and the state legislatures. The President appoints the Prime Minister and, on the latter's recommendation, other ministers.[3]

5. Legislative power is vested in a bicameral Parliament and the President. The Council of States (Rajya Sabha) has 245 members: most are indirectly elected by the state assemblies for six years, with one third retiring every two years; the remainder are nominated by the President. The House of the People (Lok Sabha) has 543 members, directly elected by universal suffrage, serving for five years.[4]

6. The Cabinet initiates and formulates legislative proposals; these are discussed by the Ministry submitting the legislation and other concerned Ministries and then submitted to the Cabinet for consideration. If it is decided that the proposal is to be introduced in Parliament, a bill is drafted by the Ministry of Law and introduced to Parliament by the concerned Ministry.[5]

[1] Ministry of Commerce and Industry, Department of Commerce (2001a); and Ministry of Finance (2001a).
[2] Ministry of Commerce and Industry, Department of Commerce (2001a).
[3] Europe (2000).
[4] Europe (2000).
[5] WTO (1998).

7. The Constitution provides that bills, other than money bills and other financial bills, can be introduced in either House.[6] To become law, they must be passed by both Houses and receive the assent of the President. In financial affairs, the authority of the House of the People is final. Once a bill has been passed by both Houses, it must be signed by the President to become law. The President does not have veto power but can recommend amendments, except in the case of money bills. Parliament reconsiders the bill and resubmits it to the President for assent, with or without amendment. The President must then sign the bill.

8. During the recess periods of the two Houses, the President may promulgate ordinances. These have the same force as an Act of Parliament, but must be passed by the Houses within six weeks of their reassembly. If it is not passed during this period, the ordinance automatically lapses; if it is passed, the ordinance is enacted.[7]

9. The Parliament has jurisdiction on all matters related to international trade. The WTO Agreements, as well as other international obligations, must be incorporated into domestic laws before they can be invoked in the Indian courts.[8]

10. The judiciary is headed by the Supreme Court of India, with a high court in each state. The functions of the Supreme Court have not changed since 1998: it has jurisdiction over conflicts between the Central Government and one or more of the states or among states, as well as appellate jurisdiction in criminal and civil proceedings of a High Court.[9] Decisions of the Supreme Court are binding (Article 141).

11. The World Bank has noted that India's judicial and legal machinery is generally trusted by businesses, but that domestic firms find the court system expensive and slow.[10] It also identified several key weaknesses in India's legal framework. These include relevance of particular legal provisions in the light of recent economic reforms; possible conflict or overlap with other legislation; judicial interpretations running counter to the broad objectives of the law; enforceability and user-friendliness of laws.[11] More particularly, as noted by the Planning Commission[12], the law pertaining to the tariff and internal taxes are complex, with implications for transparency, administration, discretion in interpretation and governance. The responsible Ministries are taking steps to address these issues (Chapter III(2)(iii)(d) and (4)(I)). In this regard, a further simplification and liberalization of restrictions could improve the trade and investment environment.[13]

(iii) Trade policy formulation and implementation[14]

12. The agencies in charge of trade policy formulation and implementation have not changed since the previous Review of India. Trade policy is formulated and implemented mainly by the

[6] Money bills are related to taxes, borrowing of money, financial obligations undertaken by the Government of India, appropriation of moneys out of the consolidated Fund of India, and increase in expenditure by the Government. For a thorough explanation of the approval of a money or financial bill, see Articles 109-117 of the Indian Constitution or WTO (1998).

[7] Article 123 Constitution of India, Fifteenth Edition, 1996.

[8] WTO (1998).

[9] For more details on the India judiciary system see Article 124 of the Indian Constitution or WTO (1998).

[10] In 1999 there were 28 million cases pending and mounting arrears, it can take up to 20 years before a decision is obtained and enforced, putting judgements beyond the reach of the poor (World Bank, 2000).

[11] World Bank (2000).

[12] Planning Commission (2001b).

[13] World Bank (2000).

[14] Ministry of Commerce and Industry, Department of Commerce (2001a).

Ministry of Commerce and Industry, but also in consultation with the other concerned ministries, such as Finance, Agriculture, and Textiles, and the Reserve Bank of India. The responsibilities of the Ministry of Finance includes, *inter alia*, setting import duties and other border and internal taxes, surveying the working of customs, assisting and advising on implementation of the WTO Customs Valuation Agreement, and undertaking investigations to impose safeguard measures.[15] The Ministry of Agriculture designs the National Agriculture Policy, which is aimed at, *inter alia*, ensuring an adequate supply of essential food at "reasonable" prices, securing a reasonable standard of living for farmers and agricultural workers, developing agriculture and rural infrastructure, and helping the sector face the challenges arising out of globalization in a WTO-compatible manner. This Ministry and the Ministry of Commerce formulate India's proposals for the WTO negotiations on agriculture.[16] The Ministry of Textiles is in charge of promoting exports of textiles, and of managing quotas maintained by importing countries.[17] The Reserve Bank of India manages the exchange rate policy and also regulates interest rates, for instance, for pre- and post-shipment export credit.

13. The Department of Commerce within the Ministry of Commerce and Industry, together with other concerned ministries, formulates trade policies, which are reflected in India's Export Import Policy. The Directorate General of Foreign Trade under the Department of Commerce is responsible for the execution of the Export Import Policy. The Directorate General of Commercial Intelligence and Statistics (DGCI&S) is the agency responsible for the collection, compilation, and dissemination of trade statistics. The Directorate General of Anti-Dumping and Allied Duties was constituted in April 1998 to carry out investigations and to recommend levels of anti-dumping duty.[18]

14. Several autonomous bodies within the Ministry of Commerce and Industry aid in the implementation of trade policies (Table II.1). The Commerce Department is also advised by the Board of Trade and the Export Promotion Board (EPB). The Board of Trade provides for a continuous dialogue between the Government and industry regarding major trade developments.[19] The EPB coordinates the work of all ministries in charge of promoting exports and facilitating trade.[20]

Table II.1
Autonomous bodies

Body	**Function**
Commodity Boards: Tea Board, Coffee Board, Rubber Board, Spices Board, and Tobacco Board	Promote development, production, and exports of these products
Export Inspection Council	Enforce quality control and compulsory preshipment inspection of various exportable commodities covered under the Export (Quality Control & Inspection), Act, 1963
India Institute of Foreign Trade (IIFT)	Train personnel regarding international trade; undertake market research, area surveys, commodity surveys; and disseminate information

Table II.1 (cont'd)

[15] Ministry of Finance (2001b).
[16] Ministry of Agriculture, Department of Agriculture and Cooperation (2001).
[17] Ministry of Textiles (2001).
[18] Ministry of Commerce and Industry, Department of Commerce (2001a).
[19] The Board's terms of reference include advising the Government on policies aimed at promoting exports; reviewing the export performance of various sectors; identifying export constraints; examining the institutional framework related to exports; reviewing export incentives and suggesting areas were incentives are most needed (Ministry of Commerce and Industry, Department of Commerce, 2001a).
[20] The EPB's membership includes the Secretaries of the Department of Commerce, Department of Revenue of the Ministry of Finance, the Department of Industrial Policy and Promotion, and the Department of Agriculture and Cooperation; and the Ministries of Textiles, Aviation, and Surface Transport.

Body	**Function**
India Institute of Packaging	Develop new types of packaging for export products; and organize training programmes on packaging technology
Indian Diamond Institute	Train and improve manpower for the gems & jewellery industry; and certify coloured stones & diamond (i.e. authentication of colour, purity, cut, shape & weight)
Export Promotion Councils (EPCs)	Perform both advisory and executive functions.
Federation of Indian Export Organizations	Provide assistance to Government-recognized Export/Trading Houses
Indian Council of Arbitration	Promote the use of arbitration as a means of settling commercial disputes; and provide advice regarding arbitration
Marine Products Export Development Authority	Develop marine products, especially exportables
Agricultural and Processed Food Products Export Development Authority	Market agricultural and horticultural exports and processed foods
India Trade Promotion Organisation (ITPO)	Promote exports and imports through trade fairs; introduce new technology; disseminate information on products and markets
National Centre for Trade Information	Provide up-to- date trade, business, and economic information to Indian and foreign enterprises to promote trade

Source: Department of Commerce, Advisory Bodies [Online]. Available at: http://commin.nic.in/doc/autobodi.htm#ITPO, 1 August 2001; and NCTI – An Introduction [Online]. Available at: http://www.nic.in/ncti/ncti2.htm, 24 July 2001.

15. The Department of Commerce also has regular consultations with trade and industry groups such as the Confederation of Indian Industries (CII), the Federation of Indian Chambers of Commerce (FICCI), and the Associated Chambers of Commerce (ASSOCHAM).

16. The Prime Minister's Council on Trade and Industry was created in 1998 as a forum for the Government to discuss trade and economic reforms with the business community. Six groups were constituted from among the members of the Council to consider and recommend policies. These groups interact with the different ministries and with bodies such as CII, FICCI, and ASSOCHAM. The Council has already submitted several recommendations, many of which were implemented by Government through the budget and other policy initiatives taken by the concerned ministries.[21]

17. An autonomous Tariff Commission under the Department of Industrial Policy and Promotion in the Ministry of Industry (at present part of the Ministry of Commerce and Industry) was created in 1997 and subsequently reformed. The role of the Commission is ostensibly to advise the Government regarding tariffs and all tariff-related issues, taking into account the interest of various sectors including producers, traders, and consumers, as well as India's international commitments. The Commission had to look into the issue of tariff rationalization and to undertake pricing analysis on selected product sectors.[22] The Planning Commission also sets up task forces to conduct independent reviews of various policies, including trade and trade-related policies; these reports are normally published. Moreover, from time to time, the Government appoints independent *ad hoc* groups to advise it on trade and trade-related policies.

18. The Comptroller and Auditor General (CAG) of India, who is appointed by the President and is independent of both the Executive and Legislature, is in charge of compiling, keeping, and auditing

[21] Recommendation were made in the areas of food and agri-industries, capital markets, and financial sector initiatives, knowledge-based industries, infrastructure services industries, and administrative legal simplifications (Prime Minister's Council on Trade and Industry [Online]. Available at: http://www.nic.in/pmcouncils/tic [24 July 2001]).

[22] Resolution of the Ministry of Industry (F. No.A-42012/1/98-E.IV/CDN).

accounts kept in any department of the Union or of a State. The CAG's reports are presented to the President of India and to the state Governors, and thereafter referred to the Public Accounts Committee (PAC).[23] The PAC, which consists of representatives of all political parties, keeps watch over government spending and performance; it also examines and reviews measures and makes recommendations for improving administration.[24]

(2) TRADE AGREEMENTS AND ARRANGEMENTS

(i) World Trade Organization

19. India is a founding Member of the WTO and grants at least MFN treatment to all its trading partners. As a developing country, India benefited from a transition period to implement a number of commitments under various WTO Agreements. India has kept the reservation on the application of the Customs Valuation Agreement regarding the reversal of sequential order of valuation methods (i.e. deductive and computed value), and the application of Article 5.2 (i.e. the use of unit price whether or not the importer so requests it).[25]

20. India was involved in the extended WTO negotiations on basic telecommunications and financial services. India accepted the Fourth Protocol on 10 November 1997 and the Fifth on 9 December 1998 (Chapter IV(4)).[26]

21. Table AII.1 shows India's status in relation to notification requirements under the WTO Agreements as at March 2002.

22. India's concerns with the implementation of the Uruguay Round are of three types: non-realization of expected benefits of some agreements such as the Agreement on Textiles and Clothing, and the Agreement on Agriculture; inequities and imbalances in some of the agreements like TRIPS, subsidies, anti-dumping, TRIMs; and the non-operational and non-binding nature of special and differential provisions.[27]

23. In preparation for the 1999 Ministerial Conference, India submitted several proposals for the negotiations, including on IPR issues, anti-dumping, subsidies, SPS measures, TRIMs, TBT, trade in services, textiles and clothing, customs valuation, agriculture, and BOP provisions.[28] India's position at that time was that trade negotiations should concentrate on core issues of market access, including agriculture, an area in which the developed countries should eliminate export subsidies and other trade distortive support. India considered that the multilateral trading system had been designed to deal with issues involving trade alone. Thus, attempts aimed at including environmental issues in future negotiations went beyond the competence of the multilateral trading system, while labour-related

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[23] The CAG's reports contain an overall financial survey, comments on utilization of budget; audit findings on transactions; and value for money reviews

[24] Comptroller and Auditor General of India: the Supreme Audit Institution of India [Online]. Available at: http://www.cagindia.org [25 July 2001].

[25] WTO document G/VAL/W/77, 30 October 2000.

[26] WTO documents WT/LET/276 and WT/LET/198. The Legal and Treaties Division of the Ministry of External Affairs has clarified that under the Indian Constitution there is no prerequisite of approval by the Parliament before agreements are concluded and enter into force. The treaty-making power is exercised and, in its procedure, regulated by the Executive (the Cabinet). Accordingly, India signed these protocols after approval by the Cabinet.

[27] WTO document WT/MIN(99)/ST/16, 30 November 1999; and India's speech at the informal General Council meeting of the WTO on 25 June 2001.

[28] WTO documents WT/GC/W/147, 200-203, 223-227, 342-343, and 363-364; February to October 1999.

issues belonged to the ILO. India rejected any attempts to introduce these in the WTO; and did not consider a multilateral framework on investment to be necessary.[29]

24. At the Doha Ministerial Conference, India emphasized that the Ministerial Conference should address all implementation-related concerns and take stock of and give policy directions to the ongoing mandated negotiations in agriculture and services, and other mandated reviews. Moreover, there was a need to address trade barriers in industrialized counties in the form of tariff peaks and tariff escalation, which continued to affect exports from developing countries. India stated that it was important to wait until an explicit concensus emerged, as agreed in the Singapore Declaration, on issues such as investment, competition, trade facilitation, or transparency in government procurement. It opposed any linkage between trade and labour standards and considered that the existing WTO rules were adequate to deal with all legitimate environmental concerns.[30] It also felt that the mandated negotiations in agriculture, services, and geographical indications protection to products other than wines and spirits, coupled with the mandated reviews of TRIPS, TRIMs, etc., already constituted a large enough agenda.[31]

25. India has also submitted proposals for the ongoing negotiations in the WTO on services and agriculture. Regarding GATS, India is interested in rapid liberalization of movement of professionals.[32] India's proposals for the ongoing negotiations in agriculture include issues such as export subsidies, food security concerns, market access, and domestic support.[33]

26. Since 1998, India has been involved in 17 cases under the WTO Dispute Settlement mechanism, nine as a complainant and eight as a defendant. India participated as a third party in 12 disputes (Tables AII.2 and AII.3).

(ii) Other arrangements

27. India continues to be a member of the South Asian Association for Regional Cooperation (SAARC) and a party to the Bangkok Agreement. The members of the SAARC (Bangladesh, Bhutan, India, the Maldives, Nepal, Pakistan, and Sri Lanka) signed the South Asian Preferential Trade Arrangement (SAPTA) in April 1993; the agreement came into force in December 1995. The SAPTA provides a framework for the exchange of tariff concessions, with a view to promoting trade and economic cooperation between SAARC members. Its final objective is the creation of the South Asian Free-Trade Area (SAFTA). At the Tenth SAARC Summit in July 1998, it was decided to establish a Committee of Experts from the SAARC members, to commence negotiations to establish the SAFTA. This agreement will spell out binding schedules for freeing trade and is expected to be finalized and put in place by 2002.

28. Three rounds of trade liberalization have been completed within SAPTA. India's concessions in these three rounds covered 2,565 tariff lines at the HS six-digit level, with special concessions for the least developed countries (Bangladesh, Bhutan, Maldives, and Nepal). In 1997, India granted tariff preferences ranging from 5% to 10%. The third round of SAPTA negotiations included a product-by-product approach as well as negotiations on a sectoral or chapter-wise basis. India provides further tariff reductions ranging from 10% to 50% for non-LDCs and up to 100% in some

[29] WTO document WT/MIN(99)/ST/16, 30 November 1999.
[30] WTO document WT/MIN(01)/ST/10, 10 November 2001.
[31] WTO document WT/MIN(01)/ST/10, 10 November 2001.
[32] A complete proposal is available online at: http://commin.nic.in/doc/wtojdec2k.htm [11 July 2001].
[33] A complete proposal is available online at: http://commin.nic.in/doc/wtojan01.htm [11 July 2001].

instances for LDCs.[34] India lifted all quantitative restrictions maintained for balance-of-payments reasons for SAPTA members on 1 August 1998.[35]

29. India continues to be a party to the Bangkok Agreement signed in 1975.[36] The agreement provides for liberalization of both tariff and non-tariff barriers; at present it is limited to tariff concessions. India provides concessional entry on 188 tariff lines (at the HS six-digit level), the duty rates are generally 5 percentage points below the standard rate.[37] The third round of negotiations is expected to be launched shortly.

30. A trade agreement signed with Bangladesh, which came into force on 4 October 1980 and could be extended by further periods of three years, was valid up to 3 October 2001.[38] India has proposed to extend the agreement up to 3 October 2004. In 1997, a transit route of 60 km. through Indian territory was opened for trade between Bangladesh and Nepal. India continues to grant duty exemptions to most goods produced in Nepal. Preferences apply to some basic goods and all manufactured goods other than: alcoholic liquors/beverages and their concentrates except industrial spirits; perfumes and cosmetics with non-Nepalese/non-Indian brand names; and cigarettes and tobacco. India is seeking to revise and review certain provisions of the India-Nepal Treaty, which is valid until 5 December 2001, because some Nepali products (e.g. hydrogenated vegetable oil, acrylic yarns, copper wire, iron pipes, and zinc oxide) have flooded the Indian market.[39] The agreement was renegotiated on 6 March 2002. Imports from Nepal are exempt from special additional duties (SADs), but are subject to additional duties (ADs) (Chapter III(2)(iii)). A new Transit Treaty between India and Nepal was signed on 5 January 1999. The new Treaty, valid for periods of seven years (until 5 January 2006), can be renewed automatically for further periods of seven years, unless either party gives written notice of its intention to terminate, six months before the date of termination of the treaty.

31. India and Sri Lanka signed a free-trade agreement (FTA) on 28 December 1998, which came into operation on 1 March 2000. India grants duty-free access to over 1,000 tariff lines and a 50% margin of preference to all other items except those on a negative list. Tariffs are to be reduced to zero over a period of three years. Tariff concessions on textiles are 25% below the MFN rate. India has retained some 400 items in the negative list, including garments, petrochemicals, alcoholic spirits, and coconut oil. Tariff quotas apply to tea and garments under the FTA. India's tariff quota for tea was set at 15 million kg./year at a preferential rate of 50%. The tariff quota for garments should not exceed 8 million pieces/year at a concession of 50%, of which 6 million should be manufactured from fabrics of Indian origin.[40] Imports of tea are allowed only through the ports of Kochi and Kolkata,

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[34] For a complete list of products subject to preferences see Notification 105, 10 August 1999 [Online]. Available at: http://www.vcbec.gov.in/cae/customs/cs-tariff, 23 July 2001; and SAPTA schedules [Online]. Available at: http://www.saarc-sec.org/sapta_schedules.htm [15 May 2001].

[35] Goyal (2000).

[36] The members of the agreement are: Bangladesh, Republic of Korea, Sri Lanka, India, Lao People's Democratic Republic, and China.

[37] India also provides concessional entry to ten additional products imported from Bangladesh: dried fish, leather of bovine or equine animals, goat or kid-skin leather, composition leather, timber, jute or bamboo pulp, newsprint, printing paper, hand-woven Jamdani sarees, and carpets wholly made of jute (Goyal, 2000; and Notification No. 26/95-Cus, 16 March 1995. Available online at: http://www.cbec.gov.in/cae/customs [23 July 2001]).

[38] Article XIII of the Trade Agreement between India and Bangladesh [Online]. Available at: http://commin.nic.in/doc/trade_agrmnt.htm [5 July 2001].

[39] *Reuters*, 14 and 19 August 2001.

[40] Origin is determined according to domestic content and substantial transformation. Thus, origin is granted when raw materials/inputs originate in countries other than the contracting parties (i.e. Sri Lanka or India) or are of undetermined origin if they do not exceed 65% of the f.o.b. value of the final good. If raw

and garments may be imported only through Chennai and Mumbai. The agreement allows for the use of safeguard and anti-dumping measures. In addition, in case of balance-of-payments difficulties, members may provisionally suspend the preferential treatment. When any such measures are taken, the member that initiates the action has to simultaneously notify the other party. India also participates in the Bangladesh, India, Myanmar, Sri Lanka, Thailand–Economic Cooperation (BIMST–EC), which came into force in 1997 as a forum to facilitate and promote trade, investment, and technical cooperation among the member countries, with the objective of creating a free-trade area. BIMST–EC is designed to act as a link between SAARC and ASEAN.[41]

32. Indian products receive preferential treatment under the Generalized System of Preferences (GSP) schemes of Australia, Bulgaria, Canada, Czech Republic, the European Union, Hungary, Japan, New Zealand, Norway, Republic of Belarus, Republic of Poland, Russian Federation, Slovak Republic, Switzerland, and the United States.[42] India participates in the Global System of Trade Preferences among Developing Countries. India offers tariff concessions ranging from 10% to 50% on 53 tariff lines at the HS six-digit level.[43] The rules of origin for the GSTP have not changed since the previous Review of India.

33. India has initiated talks with other countries to deepen their bilateral trade ties. It is evaluating the possibility of entering into preferential trade agreements, and strengthening economic cooperation with some of its trading partners including Colombia, Egypt, the EU, Singapore, and South Africa.[44]

(3) FOREIGN INVESTMENT REGIME

34. India does not have a specific statute to regulate foreign direct investment (FDI). The Ministry of Commerce and Industry, specifically the Department of Industrial Policy and Promotion is responsible for the implementation of FDI policy.[45] India's Foreign Investment Promotion Board (FIPB), the Secretariat for Industrial Assistance (SIA), and the Foreign Investment Promotion Council (FIPC) assist the Ministry in approving FDI, when required, and in attracting FDI. The FIPC, in the Ministry of Commerce and Industry is in charge of attracting FDI into the country; it identifies specific sectors that require FDI and target countries/region for its mobilization.[46] The Foreign Investment Implementation Authority (FIIA) facilitates realization of approved FDI and provides "pro-active" one stop services to foreign investors by helping them obtain the necessary approvals and acting as a single point interface between the investor and government agencies. Tax and non-tax incentives are available at the federal and state levels to attract foreign investors, although they appear to be offered to domestic and foreign investors alike (Chapter III).

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material/inputs originate in Sri Lanka for production in India (or vice-versa) domestic content can be reduced to 25%. The final good must also undergo substantial transformation at the four-digit level of the Harmonized System.

[41] Ministry of Commerce and Industry (2000).

[42] Information compiled by the WTO Secretariat (Statistics Division). Recently, the United States announced that it would enhance preferential trade access under the GSP for 42 Indian products: jewellery, leather goods, and carpets. (*Reuters*, 8 August 2001, and *Financial Times*, 9 August 2001).

[43] Tariff concessions of 50% apply to specific tariff lines (HS 4104.21, 4104.22 and 4104.29) and are available only to Bangladesh, United Republic of Tanzania, Benin, Guinea, Haiti, Mozambique, and Sudan (Government of India, 2001).

[44] *The Times of India*, 1 March 2001; *Business Times*, 28 November 2000; *BBC News Online*, 20 July 2001; and *Business Line*, 8 February 2001.

[45] Cabinet Secretariat (2001).

[46] Secretariat for Industrial Assistance (2001).

35. Since its previous Review, India has liberalized and simplified its foreign investment regime; the number of sectors in which FDI approval is automatic was expanded, and new sectors were opened to FDI. Foreign equity restrictions were eliminated in specific sectors[47]; while FDI limits were raised from 40% to 49% in the banking sector; and from 49% to 74% for Internet Service Providers with gateways, radio paging, and end-to-end bandwidth. Other sectors have been opened to FDI such as insurance and defence (up to 26%); airports, courier services, development of integrated townships and settlements, and mass rapid transport system (100%) (Table AII.4). FDI restrictions remain in place for agriculture, including plantation; print media; railways; retail trading; legal services; real estate, except development of integrated townships and settlements.[48] The dividend balancing and export obligation conditions, which applied to 22 consumer goods industries[49], were withdrawn in all sectors receiving foreign investment.[50]

36. The approval mechanism for FDI involves a two-tier system. Under the automatic approval route the Reserve Bank of India (RBI) needs to be informed within 30 days of receipt of funds or issuance of shares to the foreign investor.[51] This route applies when:

- the industries do not require an industrial licence[52];
- FDI does not exceed 24% of equity in the items reserved for small-scale industries (SSI)[53];
- industries do not require an industrial licence because of location[54];
- FDI is in identified areas and up to the prescribed foreign equity limits;
- the foreign investor has no previous ventures/tie ups in the proposed sector; and

[47] Secretariat for Industrial Assistance, Press note No. 2 (2000 series); and Reserve Bank of India Exchange Control, A.D. (M.A. Series) Circular No. 3 (31 March 2000).

[48] Some FDI restrictions do not apply to non-resident Indian (NRI)/overseas corporate body (OCB) investors, who are allowed to invest up to 100% in housing and real estate activities, and in airlines (See Table AII.4).

[49] These sectors include manufacturing of food and food products (e.g. dairy products, grain mill products, bakery products, hydrogenated oil) beverages, tobacco and tobacco products; soft drinks and water; refining of sugar; production of common salt; processing of tea and coffee; distilling of spirits, wines and malt liquors; manufacture of wood and wood products; leather and fur products; manufacture of footwear, prophylactics; motor cars; entertainment electronics; and white goods (Reserve Bank of India Notification No. FEMA 20/2000-RB, 3 May 2000).

[50] Ministry of Commerce and Industry, Press Note No. 7 (2000 Series), 14 July 2000.

[51] Proposals for investment in public sectors units, as well as export oriented units, export processing zones, special economic zones, electronic hardware technology parks, and software technology parks also qualify for the automatic route subject to the parameters specified by the Government (i.e. specific sectors and equity restrictions).

[52] The industries for which industrial licensing is compulsory are: distillation and brewing of alcoholic drinks; cigars and cigarettes of tobacco and manufactured tobacco substitutes; electronic aerospace and defence equipment; industrial explosives; hazardous chemicals; drugs and pharmaceuticals. The compulsory licences do not apply for small-scale units manufacturing any of the above items (Ministry of Commerce and Industry, SIA (2001).

[53] There are at present 799 products (at the HS six-digit level) reserved for the small-scale sector (Chapter III(4)).

[54] At present, electronics, computer software, and printing are exempt from locational requirements; similar exemptions may also become available to other industries if they are notified as "non-polluting".

- FDI does not involve the transfer of existing shares of an Indian company to foreign/non-resident Indian (NRI)/overseas corporate body (OCB) investors.[55]

37. In all other cases, the proposals have to be considered and approved by the Foreign Investment Promotion Board (FIPB), which is serviced by the Secretariat for Industrial Assistance (SIA) within the Department of Industrial Policy and Promotion (DIPP). Foreign investment proposals received by the SIA are placed before the FIPB within 15 days of receipt. The recommendations of the FIPB regarding project proposals involving an investment of up to Rs 6 billion are considered and approved by the Minister of Industry; projects exceeding that sum have to be submitted to the Cabinet Committee on Economic Affairs (CCEA) for decision. The decisions in all cases are conveyed to the investors by the SIA, normally within 30 days. The FIPB considers each project taking into account specific guidelines, including: whether the proposal involves mandatory export requirements (for items reserved for the small-scale sector and for units established as 100% export-oriented units or in export-processing zones); if minimum value-added requirements apply; and if the proposal has concurrent commitment, under other schemes (e.g. EPCG Scheme, Export Oriented Units, etc.).[56] Pollution control and environment clearances issued by the Ministry of Environment are required to set up specific industries.[57]

38. Foreign companies may conduct business through: liaison/representative offices; project offices; branch offices, wholly owned subsidiaries (with 100% equity) or joint ventures. As of May 2001, FDI can be in the form of new investment or investment in an existing Indian company; both the original investment and the returns can be fully repatriated.[58]

39. Since 1998, India has signed bilateral investment promotion and protection agreements with Australia, Austria, Argentina, Bulgaria, Indonesia, Lao People's Democratic Republic, Mauritius, Morocco, Philippines, Portugal, Qatar, Sweden, Thailand, Turkey, Uzbekistan, and Zimbabwe. Of these, the agreements with Australia, Sweden, and Switzerland have been ratified.[59] India is a member of the World Association of Investment Promotion Agencies (Indian Investment Centre, Ministry of Finance and the Bureau of Industrial Promotion, Rajasthan).

40. Since 1998, India has signed double taxation agreements with 14 countries.[60]

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[55] Ministry of Commerce and Industry, Press Note No. 2 (2000 Series), 11 February 2000.

[56] Ministry of Commerce and Industry, SIA (2001).

[57] The Environment Protection Act 1986 lists 29 industries that require environmental clearance. These include petrochemical complexes, petroleum refineries, cement, thermal power plants, bulk drugs, fertilizers, dyes, paper, tourism projects of certain parameters, etc. (Ministry of Commerce and Industry, SIA (2000)).

[58] Department of Industrial Policy & Promotion (2001).

[59] The agreement in force at the time of the last Review (with Denmark, France, Germany, Italy, the Netherlands, South Korea, and the United Kingdom) remains in force.

[60] They are: Czech Republic, Morocco, and Portugal in 1998; Austria, Jordan, Kyrgyz Republic, New Zealand, Qatar, Trinidad and Tobago, and Ukraine in 1999; Ireland and Switzerland in 2000; and Algeria and Malaysia in 2001.