III. TRADE POLICIES AND PRACTICES BY MEASURE

(1) INTRODUCTION

1. Since the early 1990s, India has moved gradually away from a strategy of industrialization through import-substitution and public sector production to a more open, market-oriented trade and investment regime. Nevertheless, policies continue to shield domestic producers from foreign competition, thus affecting an efficient allocation of resources. Moreover, having made selling in the large domestic market more lucrative than exporting, such policies have imparted an anti-export bias to India's trade regime, thereby hampering the economy's ability to generate growth through exports. The use of a wide array of trade policy measures to protect domestic producers from foreign competition, regulate domestic production and, at the same time, promote exports, renders the import and export regime unduly complex.

2. The customs tariff has become India's main instrument of trade policy, with the removal of some 1,400 quantitative restrictions. While it has been declining, the average MFN tariff is still over 32%. The authorities have announced their intention to reduce tariffs towards ASEAN levels: achievement of this goal is likely to depend critically on increased reliance on internal taxes. Tariff dispersion also remains high. Although the proportion of tariff lines that are bound has risen from 67% to 72.4% since the previous Review of India, the average bound rate considerably exceeds the average applied rate, thus imparting a degree of uncertainty to the tariff and providing scope for the authorities to raise applied MFN rates; indeed, tariffs were raised on some items following the recent removal of quantitative restrictions. With its numerous exemptions, the tariff is also a complex and thus opaque instrument, which has led to administration problems. Additional and special additional duties, which are largely aimed at offsetting the pro-import bias of internal taxes, contribute further to the complexity of import regime. Anti-dumping measures have become an important element in India's trade policy; some 250 actions have been initiated since 1995.

3. The export regime is complex. In addition to tariff exemptions and duty drawbacks, it encompasses schemes such as export-processing zones and special-economic zones. These measures, which are applied in a compound manner, have been put in place partly to mitigate the adverse impact of import restrictions on exporters' competitiveness. Measures are also in place to restrict or prohibit exports, although, according to a recent statement by the Government, these restrictions will be reduced.

4. Other forms of government intervention also continue to be important. The state retains ownership of a number of enterprises, and regulates the entry (through industrial licensing) of private companies into some activities, as well as their exit. State-owned enterprises continue to play a major role in the economy. Despite steps taken to improve it, their perfomance remains weak, thus constituting a heavy burden on the budgets of central and state governments. Moreover privatization (disinvestment) has been slow. Price controls, often containing a subsidy element, have been retained for essential commodities, although provisions to phase some of them out are in place. In addition, subsidies are widespread; their scope and cost are difficult to ascertain owing to the lack of information. The process of privatization and deregulation has highlighted the importance of competition policy and corporate governance. To address the limited scope of the present legislation on competition policy a Competition Bill was introduced in Parliament. Amendments were made to the Companies Act and new guidelines were issued to companies in an effort to improve corporate governance. Since its previous Review in 1998, India has introduced new legislation on intellectual property rights. Enforcement appears to remain weak, despite the authorities efforts to improve it.

(2) MEASURES DIRECTLY AFFECTING IMPORTS

(i) Customs procedures

(a) Registration and documentation

5. There have been no major changes in customs procedures since India's previous Review. Most importers and exporters are required to obtain an Importer Exporter (IEC) number from the Director General of Foreign Trade (DGFT).[1] For imports, three documents are normally required: the invoice, packing list, and bill of lading or airway bill. Health certificates, plant certificates, and phytosanitary certificates are required for certain goods; import permits, to be obtained from the relevant Government departments, are also required for items such as plants, plant materials, and livestock products.[2] Additional documents are required if the goods are being imported (or exported) under one of the preferential trading agreements, if they are restricted, or under one of the export incentive schemes.[3]

(b) Preshipment inspection

6. India does not require preshipment inspection for imports and does not have a procedure for clearance of imported goods on the basis of preshipment inspection. In addition, according to the authorities, there have been no changes in the position since the last Review, when certificates were required for imports of second-hand capital goods and metal scrap.

(ii) Customs valuation and clearance

7. Since its previous Review, the main change in India's legislation on customs valuation is an amendment to Rule 3 of the Customs Valuation (Determination of Price of Imported Goods) Rules, 1988, which lays down the method of determination of valuation.[4] Under the Customs Valuation (Determination of price of imported goods) Rules, 1998, the value of imported goods is based on their transaction value, which is defined as "the price actually paid, or payable for the goods when sold for export to India, adjusted for the value of certain costs and services including commissions and brokerage charges, container and packing costs".[5] If the transaction value of the imported good cannot be determined, the value of the import may be based on the cost of identical goods sold for export to India, the transaction value of similar goods, deductive value, and on the residual method.[6] Additional changes require: that the sale be in the ordinary course of trade under fully competitive conditions; that it should not involve any abnormal discounts or special discounts limited to exclusive agents; and that objective data should exist with regard to "adjustments" made in accordance with the provisions of Rule 9.

[1] Foreign Trade (Development and Regulation) Act, 1992, Chapter III; a list of importers who are exempt from obtaining an IEC number is given in Ministry of Commerce and Industry (2002).

[2] Exports to and imports from India of certain goods are subject to restrictions if imported from or exported to the United States under U.S. Export Control Regulations (Ministry of Commerce and Industry, 2002, Chapter II).

[3] The validity of licences under these programmes may vary between 12 and 24 months (Ministry of Commerce and Industry, 2002, Chapter II).

[4] Under the special provisions available for developing country Members under the Tokyo Round Customs Valuation Agreement, India maintains reservations under Annex III, paragraphs 3 and 4, relating to the reversal of the sequential order of Articles 5 and 6 and the application of Article 5.2, whether or not the importer so requests, respectively (WTO document G/VAL/M/7, 17 June 1998).

[5] Rule 9 of the Customs Valuation (Determination of price of imported goods), Rules, 1998.

[6] Rules 5-8 of the Customs Valuation (Determination of price of imported goods) Rules, 1998.

8. India's legislation was examined by the WTO Committee on Customs Valuation. Some Members raised questions regarding India's use of a specified percentage of the f.o.b. value of imports in cases where it was not possible to determine the cost of, *inter alia*, transport, loading, and unloading charges.[7] Following a discussion by Members, it was decided to pursue the matter on a bilateral basis.[8]

9. To speed up customs clearance procedures, the electronic data interchange (EDI) system has been introduced at almost all major ports and air cargo complexes. Under the EDI, the importer is not required to submit any documentation to customs in advance; these documents, however, must be submitted to customs at the time of examination of the goods. According to a recent advisory report to the Planning Commission, the introduction of computerization in customs administration under the EDI system is progressing well. However, the report states that delays in customs procedures continue to be reported by industry despite a fast-track clearance system. The delays are also due to the complexity of the tariff and exemptions, which may vary according to product, user, or specific export-promotion programme. These delays could be reduced by introducing selective physical examination of customs of targeted goods on the basis of intelligence. This would require devoting more resources to the collection of information (intelligence gathering) so that customs could target their inspection at specific products.[9] The authorities state that a number of additional steps have been taken to reduce clearance times. These include: increasing working hours for customs officers at the air cargo complexes; revising examination procedures whereby only a small percentage of cargo would be examined; allowing imports through couriers, which does not require the presence of the importer or exporter at the time of clearance; and filing customs declarations electronically. Efforts have also been made to hasten the process of moving cargo from and to ports. It appears that 23 customs complexes, which account for some 75% of all international trade, are currently automated. The authorities also state that approximately 80% of daily air cargo shipments are assessed on the same day by customs (subject to the condition that all the required documentation is complete).

10. Appeals against any decisions taken by the customs authorities may be examined by the Commissioner (Appeals) within three months of communication from Customs regarding valuation and procedures; judicial appeals may be made, also within three months of communication from Customs, to the Customs, Excise and Gold (Control) Appellate Tribunal. According to the authorities, however, due to logistical problems including a shortage of staff and infrastructural support, and given that the tribunal receives appeals on matters other than valuation and classification, it would be difficult for the Commissioner (Appeals) to decide all appeals within the three-month period. The number of appeals made to the Appellate Tribunal for customs matters fell from 16,700 to 12,600 between 1998 and December 2000; decisions taken on appeals for this period fell from 16,189 to 15,353. In 2000, 23 appeals were made to the Commissioner (Appeals).

(iii) Tariffs

(a) Introduction

11. The Indian customs tariff is a major source of revenue for the Central Government, accounting for almost 30% of net tax revenue (22% of gross tax revenue) in 2001/02 compared with 46% of net tax revenue (33% of gross tax revenue) in 1996/97.[10] The applied MFN tariff continues to

[7] WTO documents G/VAL/M/3, 24 June 1996, G/VAL/M/5, 3 June 1997, and G/VAL/M/7, 17 June 1998.
[8] WTO document G/VAL/M/7, 17 June 1998.
[9] Planning Commission (2001b).
[10] Calculated from Table III.13 (Customs as a percentage of the centre's net tax revenue).

provide a high level of protection for Indian industry, although average rates have declined from 35% to 32.3%, since the last Review of India; the average rate is expected to decline further to 29%, if current budgetary proposals are approved by Parliament. With its numerous exemptions, the tariff is also a complex and consequently opaque instrument, which leads to administrative problems.[11]

(b) Bound tariffs[12]

12. Since its previous Review, India has submitted rectifications and modifications of its schedule under Article XXVIII:1 of the GATT, 1994. As a result, the number of lines that are bound has increased, from 67%, to 72.4% in 2001. Bindings have been undertaken for previously unbound products, such as textiles and clothing, while India renegotiated some commitments on previously bound items, relating mainly to agriculture. India bound 100% of all agricultural lines (under the WTO definition of agriculture) and 68.2% of lines for non-agricultural products.[13] Bindings were not made in several chapters including fish and crustacean products (HS 3) in agriculture; and leather products (HS 42), footwear (HS 64), headgear (HS 65), and base metals (HS 83) in manufacturing (Chart III.1). In general, India bound its tariff at ceiling rates ranging from 40% for non-agricultural products to 100% for most agricultural products and 300% for edible oils.

13. As a result of India's commitments, the final average bound tariff is expected to be 50.6% in 2005, with an average of 115.7% in agriculture (HS 1-24) and 37.7% in non-agricultural products (Table III.1).[14] These averages do not include lines where different parts of the HS six-digit line were bound at different rates. Most of these excluded tariff lines are found in textiles and clothing and are discussed in greater detail in Chapter IV(3). The average bound tariff is considerably higher than the current MFN average tariff, which is 32.3%, and especially in agriculture where the current average applied rate is 41.7%.[15] This difference lends uncertainty to economic agents in India as it provides the Government with considerable scope to raise applied MFN tariffs within these bindings; during the period under review, however, there have not been many instances (except in agriculture) where applied tariffs have been increased.

14. The rectifications and modifications of India's Schedule have resulted in an increase in a number of tariffs; however, they are not yet certified because of reservations raised. India has, nevertheless, pursuant to Article 28(3) of the GATT 1947, applied these higher rates. As a result, although most final bound tariffs are considerably higher than their corresponding current MFN rates, MFN rates on a few tariff lines appear to be higher than the final bound rate. The products concerned include milk and cream products, wheat and meslin, alcoholic products, and some fabrics.

15. India notified the Committee on Market Access that it reserved its rights under Article XXVIII:5 of GATT 1994 to modify its Schedule XII during the three-year period commencing 1 January 2000.[16]

[11] Planning Commission (2001b).

[12] Based on India's Schedule XII as of March 2002.

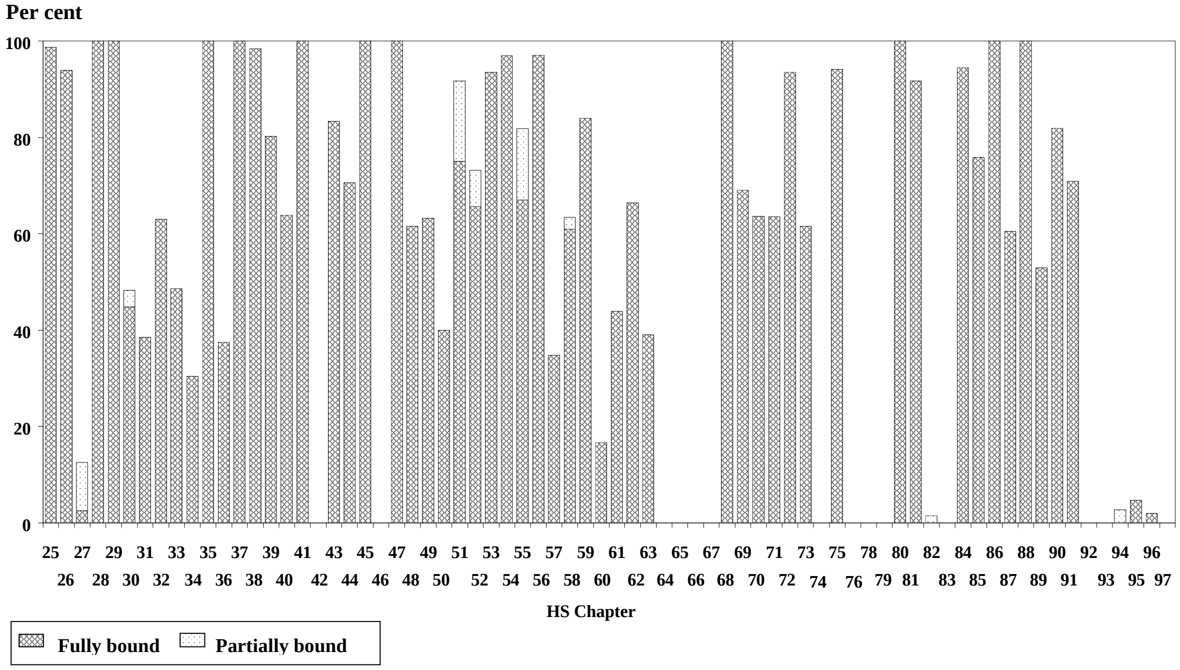
[13] In addition, around 1% (43 lines at the HS six-digit level) of non-agricultural lines were partially bound (a part of the six-digit line was bound).

[14] The overall average bound tariff for 2005 in the last TPR of India was estimated at 54%. The difference between this figure and the current average of 50.6% may be due to the change of nomenclature (from HS92 to HS96) and the bindings made in additional lines.

[15] As India's Schedule of commitments in the HS96 nomenclature does not have a base rate, it is not possible to calculate the current bound tariff for agriculture as no phase-out is indicated in the Schedule. The bound rates referred to in this report therefore refer to final bindings in 2005.

[16] WTO document G/MA/73, 21 October 1999.

Chart III.1
Share of bound tariff lines in manufactured products by HS chapter, 2001/02



HS Chapter	Description
25	Salt; sulphur; earths and stone, etc.
26	Ores, slag and ash
27	Mineral fuels, mineral oils, etc.
28	Inorganic chemicals; org. or inorg. compounds of precious metals, etc.
29	Organic chemicals
30	Pharmaceutical products
31	Fertilizers
32	Tanning or dyeing extracts etc.
33	Essential oils & resinoids; perfumery, cosmetic/toilet prep.
34	Soap, organic surface-active agents washing prep., etc.
35	Albuminoidal substances; modified starches; glues, etc.
36	Explosives; pyrotechnic products; matches, etc
37	Photographic or cinematographic goods
38	Miscellaneous chemical products
39	Plastics and articles thereof
40	Rubber and articles thereof
41	Raw hides and skins and leather
42	Articles of leather, etc.
43	Furskins and artificial fur; manufactures thereof
44	Wood and articles of wood, etc.
45	Cork and articles of cork
46	Manuf. of straw, of esparto, etc.
47	Pulp of wood or of other fibrous cellulosic material
48	Paper and paper board, etc.
49	Printed books, newspapers, etc.
50	Silk
51	Wool; fine/coarse animal hair, etc.
52	Cotton
53	Other vegetable textile fibres
54	Man-made filaments
55	Man-made staple fibres
56	Wadding, felt and non-wovens; special yarns; twine, cordage, etc.
57	Carpets; other textile floor coverings
58	Special woven fabrics; lace, etc.
59	Impregnated, coated, covered or laminated textile fabrics, etc.
60	Knitted or crocheted fabrics
61	Articles of apparel and clothing accessories, knitted or crocheted
62	Articles of apparel and clothing accessories, not knitted, etc.
63	Other made-up textile articles; sets, worn clothing, etc.
64	Footwear, gaiters, etc.
65	Headgear and parts thereof
66	Umbrellas, walking-sticks, etc.
67	Prepared feathers and down, etc.
68	Articles of stone, plaster, etc.
69	Ceramic products
70	Glass and glassware
71	Natural or cultured pearls, precious/ semi-prec. stones, prec. metals, etc.
72	Iron and steel
73	Articles of iron and steel
74	Copper and articles thereof
75	Nickel and articles thereof
76	Aluminium etc.
78	Lead and articles thereof
79	Zinc and articles thereof
80	Tin and articles thereof
81	Other base metals, etc.
82	Tools, implements, cutler spoons and forks, etc.
83	Misc. articles of base metals
84	Nuclear reactors, boilers, machinery, etc.
85	Electrical machinery and equipment, etc.
86	Railway or tramway locomotives, etc.
87	Vehicles other than railway or tramway rolling-stock; etc.
88	Aircraft, spacecraft, etc.
89	Ships, boats, etc.
90	Optical, photographic, etc. apparatus
91	Clocks and watches, etc.
92	Musical instruments, etc.
93	Arms and ammunition, etc.
94	Furniture, bedding, etc.
95	Toy, games, etc.
96	Miscellaneous manuf. articles
97	Works of art, antiques, etc.

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

Table III.1
Structure of tariffs in India
(Per cent)

		1997/98	2001/02	U.R.[a]
1.	Bound tariff lines/all tariff lines[b]	66.9	72.4	72.4
2.	Duty-free tariff lines/all tariff lines	1.4	1.1	..
3.	Non-*ad valorem* rates/all tariff lines	0.2	5.3	..
4.	Tariffs with no *ad valorem* equivalent	0.2	5.3	..
5.	Simple average bound tariff rate[c]	..	..	50.6
	Agricultural products (HS01-24)	..	..	115.7
	Non-agricultural products (HS25-97)	..	..	37.7
6.	Simple average applied tariff rate	35.3	32.3	n.a.
	Agricultural products (HS01-24)[d]	33.8	41.7	n.a.
	Non-agricultural products (HS25-97)	35.6	30.8	n.a.
7.	Domestic tariff "spikes"/all tariff lines[e]	0.2	1.3	..
8.	International tariff "spikes"/all tariff lines[f]	96.6	93.9	..
9.	Overall standard deviation	14.5	13.0	..
10.	Coefficient of variation[g]	0.4	0.4	..

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

a Based on 2001/02 MFN tariff description.
b Partially bound rates exist in 1997/98, 2001/02 and U.R., representing respectively 0.1%, 0.8% and 0.8% of all tariff lines.
c Tariff lines with two or more different bound rates have been excluded from the calculation. Such tariff lines are found in textiles (chapters 51, 52, 53, 54, 55, 58 and 63); chapter 84 (25 lines); 12, 27 and 85 (four lines each); 30, 33 and 90 (two lines each); and chapters 2, 4 , 9, 10, 13, 18, 19, 20, 21, 25, 32, 44, 48, 72, 82, 94 (one line each).
d Under the definition used in the WTO Agreement on Agriculture, the simple applied tariff average on agricultural imports is 35.1% and 40.7% in 1997/98 and 2001/02, respectively.
e Domestic tariff "spikes" are defined as those rates exceeding three times the overall simple average MFN rate.
f International tariff "spikes" are defined as rates exceeding 15%.
g The coefficient of variation is the standard deviation (indicator 9) divided by the simple average (indicator 6).

Note: Tariff analysis based on standard tariff rates.
Calculations exclude specific duties and include the *ad valorem* part of alternate and compound rates.

Source: WTO Secretariat estimates, based on data provided by the authorities of India.

16. In the Information Technology Agreement (ITA), India has made commitments to remove tariffs on a number of products including computers, telecommunication equipment, semiconductors and semiconductor manufacturing equipment, software, and scientific instruments. Its ITA Schedule consists of 163 tariff lines at the HS six-digit level.[17] India is expected to remove tariffs on all these products by the end of 2004.[18]

(c) Applied MFN tariff

17. India's (bound and) applied most-favoured-nation (MFN) tariff is based on the Harmonized Commodity Description and Coding System (HS96).[19] Since its last Review, India has continued to

[17] Several of the 163 tariff lines have further subdivisions, resulting in a total of 217 lines at the six-digit and eight-digit levels.

[18] The Minister of Finance had announced in 1998 that India's commitment to remove tariffs on ITA products by 2004 would be implemented by the end of 2002. However, in the 2002/03 Budget, he announced that local manufacturers would be given an opportunity to prepare for international competition in these products by the end of 2004 (Ministry of Finance, 2002b, Part B, paragraph 140).

[19] The MFN tariff for 2002/03 is, however, based on the HS 2002 nomenclature.

rationalize its applied MFN tariff structure. Despite these efforts, however, the tariff remains complex and a number of exemptions applied to products, industries, and end-users add to its complexity and lack of transparency.[20] The authorities maintain that, as India is a developing country, tariffs are an important tool for ensuring efficient resource allocation and economic development. Thus, concessions are granted to certain end-users based on social, economic, industrial, and environmental constraints; however, these are notified, and related to specific chapters, headings or sub-headings, and "certification procedures" prevent misuse.

18. The MFN tariff is based on "standard" rates of duty, which are statutory tariffs and may only be changed through legislation. There are, in addition, numerous tariff exemptions[21], which are notified administratively from time to time by the Government and ratified subsequently by Parliament. While the standard rate is available only at the HS six-digit level, it was not possible to include the large number of tariff exemptions that are notified at the HS six-digit, eight-digit or ten-digit levels; some may be targeted at specific industries or end-users. The analysis presented here, therefore, may overstate applied tariff protection, although it is not possible to determine by what margin. On the other hand, in addition to the standard tariff, most imports into India face additional and special additional rates of duty, which are used, ostensibly, to balance the pro-import bias of central excise and state sales taxes that are applied only to domestically produced goods (section (vii) below).

19. Import duties are assessed on the c.i.f. value of imports. In 2001/02, India's MFN (standard) tariff contained 5,114 lines at the HS six-digit level. Of these, 94.7% are subject to *ad valorem* rates of duty, while 271 and 2 lines, respectively, are subject to alternate and specific rates of duty. The two tariff lines subject to specific rates are almonds (shelled and unshelled), and the 271 lines subject to alternate rates of duty relate to textiles and clothing products. *Ad valorem* equivalent rates for these alternate and specific duties were not available to the Secretariat; as a result, the tariff analysis includes the *ad valorem* rates (4,841 lines) and the *ad valorem* component of the alternate rates (271 lines), a total of 5,112 lines (the 2 specific tariff lines have not been used in the analysis).[22]

Tariff average, dispersion, and escalation

20. In 2001/02, India's standard applied MFN tariff averaged 32.3%, slightly lower than the 35.3% average for 1997/98 (also based on the standard rate of tariff) (Table III.2)[23]; the decline is in part due to the removal of the 5% special duty applied to most products, which was introduced in the 1996/97 and 1997/98 budgets and removed in the 1999/00 budget. In comparison, the average applied tariff on the basis of duty collected is estimated by the authorities to be considerably lower, some 21% in 2000/01.[24]

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[20] The exemptions may be granted to products but also to certain end-users, for example small-scale firms and firms operating in export-processing zones.

[21] In any standard publication of the customs tariff, containing 1,150 pages, it is estimated that 400 pages are devoted to exemptions (Planning Commission, 2001b).

[22] The *ad valorem* component of these alternate tariff lines is most likely to understate the protection provided to these products as the degree of protection provided by specific tariffs tends to be higher than *ad valorem* rates. Insofar as non-*ad valorem* duties conceal tariff "spikes", the overall simple average of applied tariff rates (indicator 6 in Table III.1) together with the indicators of tariff "spikes" and tariff dispersion (indicators 7-10) tend to be underestimated.

[23] The average tariff for 1997/98 is based on the standard rate plus the special duty of 5%, which was removed in 1999/00; duty exemptions have not been included in the analysis for the 1997/98 or 2000/01 tariff.

[24] The tariff averages calculated by the Secretariat involve *simple* (non-weighted) arithmetic average of MFN tariff rates, which take no account of the relative importance of various products. Among the main alternatives to simple averages are the *collected* tariff rate or averages *weighted* by the shares of imports or of

21. In 2002/03, it is expected that the simple average applied tariff will decline further to 29%, partly as a result of a decline in the "peak rate" of tariff from 35% to 30%; this is subject to the passage of tariff proposals made in the Budget for 2002/03. Moreover, in his 2002/03 budget speech, the Finance Minister stated that by 2004/05, there would be only two standard rates of tariff, 10% covering raw materials, intermediates and components, and 20% for final products.[25]

Table III.2
Summary analysis of Indian's MFN tariff, 1997/98 and 2001/02

		MFN 1997/1998			MFN 2001/02		
	No. of lines	Average (%)	Range (%)	Coefficient of variation	Average (%)	Range (%)	Coefficient of variation
Total	5,113	35.3	0-260	0.4	32.3	0-210	0.4
By WTO definition							
Agricultural products	676	35.1	0-260	0.9	40.7	0-210	0.7
Live animals and products thereof	81	25.4	15-45	0.6	39.8	35-100	0.4
Dairy products	20	31.5	0-35	0.3	38.0	35-60	0.2
Coffee and tea, cocoa, sugar, etc.	128	37.6	15-192	0.4	39.6	35-170	0.4
Cut flowers and plants	34	25.1	10-45	0.6	29.9	10-35	0.3
Fruit and vegetables	150	32.7	0-127	0.5	36.6	25-115	0.3
Grains	16	0.0	0-0	-	49.4	0-100	0.8
Oils seeds, fats, oil and their products	71	38.9	15-45	0.2	56.2	15-100	0.5
Beverages and spirits	31	114.8	15-260	0.8	96.9	35-210	0.8
Tobacco	9	45.0	45-45	-	35.0	35-35	-
Other agricultural products, n.e.s.	136	27.8	0-45	0.5	28.1	0-50	0.4
Non-agricultural products (excl. petroleum)	4,435	35.4	0-192	0.3	31.1	0-170	0.3
Fish and fishery products	108	20.3	0-65	0.6	35.0	35-35	-
Mineral products, precious stones, etc.	335	37.5	0-45	0.3	30.6	0-55	0.3
Metals	588	32.5	10-45	0.2	32.0	5-35	0.2
Chemicals and photographic supplies	840	34.6	0-192	0.2	33.8	0-170	0.2
Leather, rubber, footwear, travel goods	146	39.8	0-45	0.3	32.1	0-35	0.2
Wood, pulp, paper and furniture	248	30.1	0-45	0.4	29.3	0-35	0.4
Textiles and clothing	830	43.7	25-55	0.1	31.3	15-35	0.2
Transport equipment	122	41.7	3-45	0.2	40.5	3-105	0.6
Non-electric machinery	525	27.1	10-45	0.2	25.9	0-35	0.2
Electric machinery	257	34.7	15-45	0.3	26.8	0-35	0.4
Non-agricultural products, n.e.s.	436	37.1	0-55	0.2	30.0	0-35	0.2

Table III.2 (cont'd)

domestic production. The *collected* tariff rate, which declined from 31% in 1996/97 to 21 % in 2000/01, is the amount of customs duties as a proportion of the value of a given group of imported products; it therefore takes into account various exemptions and preferential rates. However, the collected tariff rate does not necessarily bear any relation to the "marginal" tariff rate, which is the most appropriate indicator of the potential dead-weight (efficiency) losses caused by duties. In particular, it attaches a small weight to the highly-protected products, entirely ignoring prohibitive tariffs that do not yield any revenues, thereby tending to underestimate the level of protection. Consequently, collected tariff rates are not usually regarded as reliable indicators of the potentially distorting effects of the tariff structure on domestic resource allocation. As regards *weighted* averages, the use of India's actual import volumes, like the collected tariff rate, assigns a small weight to the highly-protected products and none at all to prohibited tariffs, again tending to underestimate the degree of protection. (The use of variable-import weights can also result in spurious movements in weighted averages over time as the weights themselves would tend to be inversely related to a country's tariff rates.)

[25] Ministry of Finance (2002b), Part B, paragraph 132.

	No. of lines	MFN 1997/1998			MFN 2001/02		
		Average (%)	Range (%)	Coefficient of variation	Average (%)	Range (%)	Coefficient of variation
Petroleum	2	31.0	37-35	0.2	25.0	15-35	0.6
By sector[a]							
Agriculture and fisheries	289	26.5	0-45	0.6	33.1	0-100	0.4
Mining	105	26.2	0-45	0.5	21.9	5-55	0.5
Manufacturing	4,718	36.1	0-260	0.4	32.5	0-210	0.4
By stage of processing							
First stage of processing	628	25.7	0-127	0.6	29.4	0-115	0.5
Semi-processed products	1,673	35.7	0-192	0.2	32.3	0-170	0.2
Fully-processed products	2,812	37.3	0-260	0.4	33.0	0-210	0.5

a ISIC (Rev.2) classification. Electricity, gas and water are excluded (1 tariff line).

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

22. While the average tariff on non-agricultural products (WTO definition) fell from 35.4% to 31.1% between 1997/98 and 2001/02, the average tariff on agricultural products (WTO definition) rose from 35.1% to 40.7% (33.8% to 41.7% for Chapters 1-24) during this period (Table III.2). The increases have taken place mainly for live animals, grains, oilseeds, and fats (Chapter IV(2)). In addition, almost 94% of all tariff lines are subject to rates in excess of 15%. Some 68.8% of tariff lines carry rates between 30% and 35%, and a further 18.7% of tariff lines are subject to rates of between 20% and 25%. Some 2% of the tariff currently has rates exceeding the "peak rate" of 35%[26]; the products concerned include edible oils (ranging from 40% to 100%), alcoholic beverages (from 100% to 210%), and motor vehicles (105%)[27]; 93.9% of all tariff lines are three times the average tariff (international "spikes"). As a result partly of the decline in the "peak rate" in current Budget proposals, the average tariff for agriculture is expected to fall to 36.8% in 2002/03 once the proposed changes are approved.

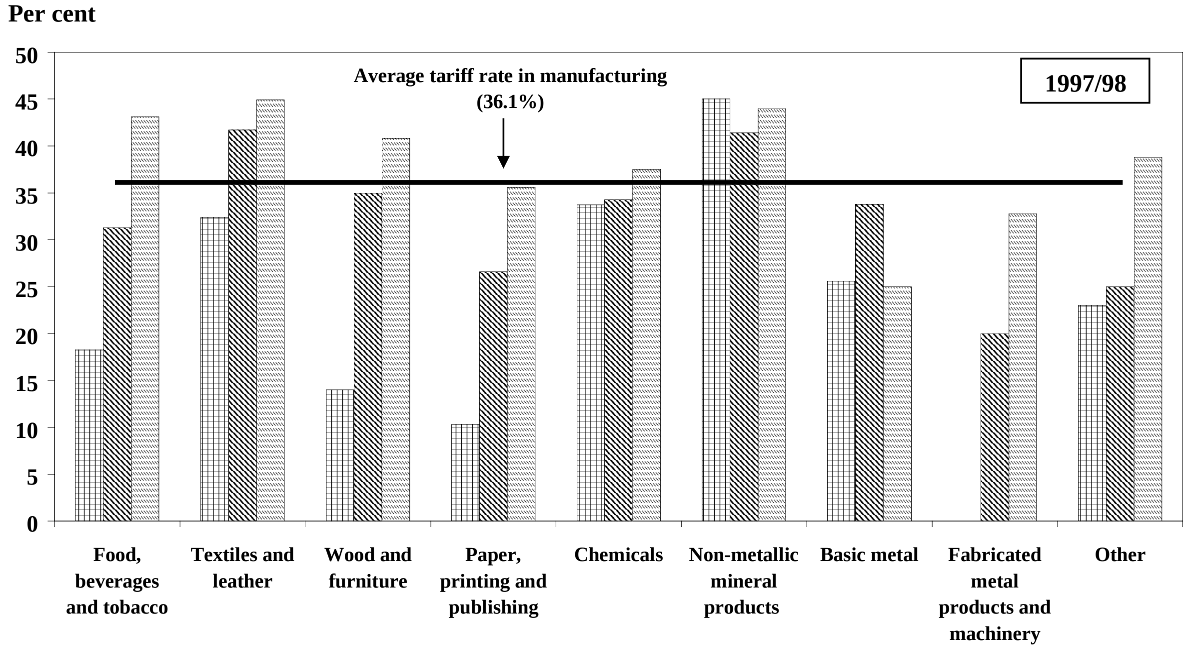
23. The Indian tariff is also characterized by escalation, with tariffs rising from 29.4% for unprocessed to 32.3% and 33% for semi-processed and processed products, respectively (Table III.2). Escalation is especially pronounced in food, beverages and tobacco, wood and furniture, textiles and leather, and basic metals (Chart III.2). De-escalation, showing higher protection for unprocessed and for semi-processed goods, is present in non-metallic mineral products, and for paper, printing, and publishing.

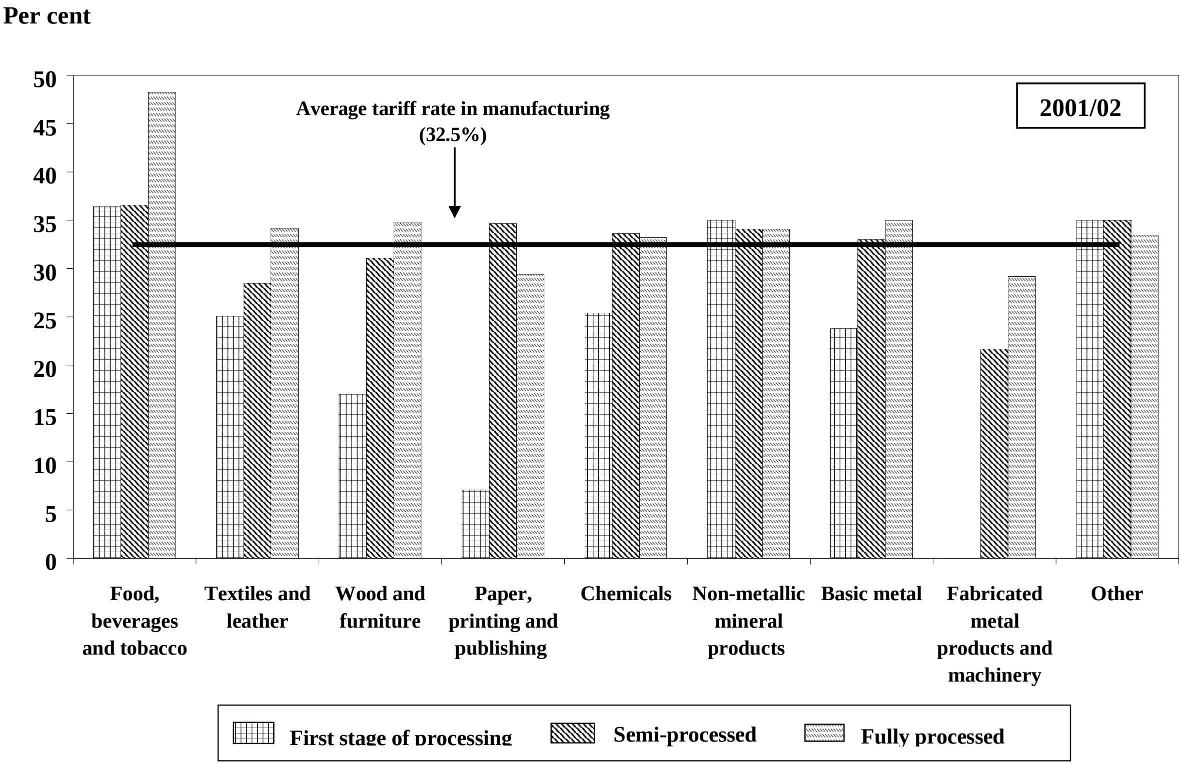
24. Tariff dispersion, as measured by the standard deviation remains high at 13.0, albeit lower than at the time of the last Review (14.0).

[26] This so-called "peak rate" should not be confused with tariff "spikes" (indicators 7 and 8) found in Table III.1.

[27] Tariffs in excess of the "peak rate" of 35% are found in 110 tariff lines at the HS six-digit level.

Chart III.2
Tariff escalation by 2-digit ISIC industry, 1997/98 and 2001/02





Note: Calculations exclude specific duties and include the *ad valorem* component of alternate and compound rates.

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

(iv) Tariff exemptions and other concessions

25. India continues to provide a wide range of tariff exemptions; most are product specific, but many are based on industrial or end-use. Although it appears that the number of exemptions have declined over the years, it was recently estimated that there are over 100 kinds of exemption, each running into several pages. The general notification for exemptions has 378 entries. There are at present some 105 end-use exemptions.[28] 415 entries are proposed for 2002/03.[29] The use of such exemptions not only increases the complexity of the tariff, it also reduces transparency and hampers efficiency-increasing tools such as computerization of customs. It has been suggested that removing or reducing the exemptions and introducing a lower and uniform MFN duty structure would be more simple and transparent, with clear implications for governance.[30] As mentioned earlier, in his recent budget speech, the Finance Minister indicated his intention to move towards two standard rates (10% and 20%) and reduce exemptions.

26. As stated, due to the complexity of the exemptions, it was not possible to incorporate them into the MFN tariff.[31]

27. The Indian Government also provides concessions or exemptions on import duty under a number of export-promotion schemes, although no evidence has been found that the exemptions have increased exports in the sectors they have targeted (section (3)(viii)(b) below).[32]

(v) Tariff quotas

28. India maintains tariff quotas on imports of: milk powder; maize; crude sunflower-seed and safflower oil; and refined rape, colza, and mustard oil. All the quotas are allocated by the Directorate General of Foreign Trade. For milk powder, imports of up to 10,000 tonnes may enter annually at an in-quota tariff rate of 15%, with an out-of-quota rate of 60%[33]; the rates are the same for imports of maize (other than seeds, HS 1005.90), for which the current tariff quota, released on 30 May 2001, is 400,000 tonnes.[34] The quotas for maize are placed at the disposal of the Agricultural and Processed Food Products Export Development Authority (APEDA) and are currently allocated to state trading companies, including the National Agricultural Cooperative Marketing Federation (NAFED), Minerals and Metals Trading Corporation (MMTC), State Trading Corporation (STC), the Project and Equipment Corporation (PEC), State Cooperative Marketing Federations, and actual users of maize for poultry and cattle feed and starch manufacture (section (xiii) below). The in-quota rates for crude sunflower-seed and safflower oil, and for refined rape, colza, and mustard oil are 50% and 45%, respectively; the out-of-quota rates are 75% and 85%.

[28] Central Board of Excise and Customs, Notification No. 17/2001.

[29] Ministry of Finance (Central Board of Excise and Customs), Notification No. 21/2002 – Customs.

[30] Planning Commission (2001b).

[31] The Secretariat attempted to calculate the impact of these exemptions on the overall MFN rate, by incorporating the exemptions at the eight-digit level, where possible. However, as most exemptions cannot be included in the analysis, the overall average tariff is almost the same as that calculated using the standard rate only.

[32] Planning Commission (2001b).

[33] For tariff lines 0402.10 and 0402.21, respectively.

[34] APEDA, Trade Notice (APEDA/TN/TRQMaize/Imp/01/2001-02), 30 May 2001, [Online]. Available at: http://www.apeda.com/apeda/maize2001.htm [10 September 2001].

(vi) Tariff preferences and rules of origin

29. Preferential rates of tariff are provided under various regional and bilateral agreements (Table III.3). Since its previous Review, India has signed a free-trade agreement with Sri Lanka, which came into force on 1 March 2000 (Chapter II(2)(ii)).

30. There have been no changes in India's rules of origin since its last Review. India does not apply rules of origin for imports from MFN sources. Preferential rules of origin are applied under bilateral and regional trade agreements (Table III.3).

Table III.3
Preferential rules of origin

Agreement	Members	Goods covered	Rules of origin
Regional			
South Asian Association for Regional Cooperation (SAARC)	Bangladesh, Bhutan, Maldives, Nepal, India, Pakistan, and Sri Lanka	Over 2,500 tariff lines at the HS six-digit level (generally preferences of 5-10% of the standard tariff rate of duty to developing countries and 50-60% to least developed country members).	Up to 40% of the f.o.b. value of the finished good if produced in a single country; 30% for LDCs; and 50% if several members are involved.
Bangkok Agreement	Bangladesh, India, the Lao People's Democratic Republic, Republic of Korea, and Sri Lanka	56 items (generally 5 percentage points below the standard rate of duty).	Not less than 50% of the ex-factory cost of the finished goods.
Preferential areas	Mauritius, Seychelles, and Tonga	19 categories of products (preferences ranging from 0-35%).	Not less than 50% of the ex-factory cost of the finished goods.
Bilateral			
Bhutan	n.a.	All goods (preferential rate of 0).	No specific rules of origin.
Nepal	n.a.	Mutually agreed primary products and most industrial products (preferential rate of 0).[a]	No specific rules; goods are considered to have been manufactured in Nepal if they involve manufacturing activity in Nepal.
Myanmar	n.a.	Standard duty of 5% for rice, pulses and beans, Chana, mustard and rapeseed, ground nuts, fresh vegetables and fruit, garlic and onions, reed brooms, sesame seeds, betel nuts, turmeric, dried ginger, coriander, fried chillies, poppy seeds, and wood in the rough.	No specific rules of origin.
Sri Lanka	n.a.	Some 1,300 tariff lines (0 rate of duty); 50% preferential rate for all other goods except those on the negative list. Tariff quota rates of 50% of the standard rate apply to garment imports; imports of tea are allowed at a preferential rate of duty of 7.5% under a tariff rate quota.	Minimum national content of 35%; foreign content not to exceed 65% of the f.o.b. value of the product (25% if the raw material or inputs are sourced in either country subject to the condition that the aggregate value addition in the contracting parties is not less than 35% of the f.o.b. value of the product).

n.a. Not applicable.

a Preferential treatment is not provided to imports from Nepal of: alcoholic liquors/beverages and their concentrates, except industrial spirits; perfumes and cosmetics with non-Nepalese or non-Indian brand names; and cigarettes and tobacco. Additional duty continues to apply to imports of goods manufactured in medium and large-scale units in Nepal.

Source: Ministry of Finance (Central Board of Excise and Customs), Notification No. 430-Cus, 1 November 1976 (as amended); and information provided by the authorities.

(vii) Additional and special additional duties

31. Additional duties (ADs) are imposed on imports in lieu of a complex system of central excise duties that successive governments have attempted to reform (see section (4)(ii) below), the purpose being to correct the excise duty's bias in favour of imports. However, the complexity of the excise tax structure is such that there is ample scope for misclassification of items; in particular, concordance between the classification of products in the excise tax and the customs tariff schedules is not complete.[35] Thus, it is not clear whether the additional duty actually imposed on each imported item corresponds to the excise tax levied on that item. However, the Government is moving gradually towards levying a single central excise duty rate of 16% on all but a few goods, and additional duty at the same rate; this would appear to reduce considerably the scope for such misclassification. The authorities maintain that the scope for misclassification has been virtually eliminated with the adoption of a single excise rate in respect of more than 95% of the lines and that the lack of alignment does not result in any divergence between excise duty and additional duty

32. A special additional duty (SAD) of 4% was introduced on most imports in the 1998/99 Budget to tax imports "similarly" to state sales taxes (section (4)(i) below).[36] As the SAD is an across-the-board 4% tariff on most goods, it may not be equivalent to local sales taxes imposed on similar domestically produced goods, some of which may face higher or lower rates of sales tax. However, it was not possible to take into account the impact of the additional and special additional duties for the following reasons. First, according to the authorities, while the excise and tariff nomenclatures are harmonized at the HS two-digit level, there are discrepancies between the two schedules at the HS six-digit level, at which the tariff is available.[37] Second, as in the case of exemptions in the tariff, there are a number of excise tariff lines for which exemptions are provided for end-users or industries, which cannot be incorporated into the standard excise duty rates.

(viii) Import prohibitions, restrictions, and licensing

(a) Import prohibitions

33. Import prohibitions and restrictions are maintained under Section 11 of the Customs Act, 1962, which allows the Central Government to prohibit imports or exports of certain goods, either absolutely, or subject to conditions, by notification in the *Official Gazette*.[38] Since its previous Review, India has added beef and beef products to its list of import prohibitions (Table III.4). In

[35] According to the authorities, the two schedules are harmonized at the HS two-digit level; however, since excises relate to the concept of manufacture rather than trade, some ambiguity may arise in classification at the HS six-digit level. According to a report by an advisory body to the Planning Commission, it has been suggested that such discrepancies could be minimized if appropriate and specific definitions are included in the excise tariff (Planning Commission, 2001b).

[36] The authorities state that the special additional duty is required in order to remove or reduce the pro-import bias resulting from the application of these taxes to domestically manufactured goods only. An 8% tax was originally proposed in the budget speech, but this was scaled back to 4%.

[37] According to the authorities, these discrepancies may be because the excise duty is a duty on "manufacture" and not on "trade" or "sale". In case of such discrepancies arising, the authorities state that the classification of any imported good must be determined under the Central Excise Tariff Rules to calculate the additional duty rate, using the Rules of Interpretation of the Excise and MFN tariff schedules, which are identical.

[38] Under Section 11(2), the reasons for such a prohibition include, *inter alia*, security, public order, morality, prevention of smuggling, and the conservation of foreign exchange and safeguarding the balance-of-payments (Government of India, *Customs Act, 1962*).

addition, the prohibition on waste, parings and scrap plastics, was relaxed by allowing imports of these products by export-processing zones.[39]

Table III.4
Import prohibitions, 2001

Product prohibited for import on 1 April 2001	Status on 1 April 1997
Tallow, fat and/or oils, rendered, unrendered or otherwise, of any animal origin, including the following:	prohibited
(i) Lard stearine, oleo stearine, tallow stearine, lard oil, oleo oil and tallow oil not emulsified or mixed or prepared in any way;	
(ii) Neat's-foot oil and fats from bone or waste;	
(iii) Poultry fats, rendered or solvent extracted;	
(iv) Fats and oils of fish/marine origin, whether or not refined, excluding cod liver oil, squid oil containing Eicospentaenoic acid and De-cosahexaenoic acid; and	
(v) Margarine, imitation lard and other prepared edible fats of animal origin.	
Animal rennet	prohibited
Wild animals including their parts and products and Ivory	prohibited
Beef and products containing beef in any form[a]	not prohibited

a DGFT, Notification No. 29 (RE-2000)/1997-2002, 7 August 2000.

Source: WTO (1998), *Trade Policy Review - India*; and Ministry of Commerce **(**1997), *Export-Import Policy 1997-2002*; and amending notifications up to August 2001.

(b) Import restrictions and licensing

34. Import restrictions may be imposed by the Government of India under the Customs Act, 1962, and the Foreign Trade (Development and Regulation) Act, 1992. India's import licensing measures were maintained under GATT Article XVIII:B, for balance-of-payments reasons. At the time of the last Review, some 32% of the tariff was subject to import restrictions under Article XVIII:B.[40] However, as a result of consultations with Australia, Canada, the European Communities, New Zealand, and Switzerland, and a dispute with the United States, a mutually agreed solution on phasing out the remaining restrictions by 1 April 2001 was notified to the WTO in January 2000.[41] Accordingly, India notified the WTO of its removal of restrictions on 714 and 715 import items in December 2000 and February 2002, respectively.[42] In addition, it appears that the Special Import Licence (SIL), which was accorded to certain importers, has been discontinued since 1 April 2001.[43] Previously, when items were liberalized, they were first moved from the non-automatic licensing list to a list subject to SILs, and then de-restricted.

35. While most products previously restricted for balance-of-payment reasons have been de-restricted, restrictions are maintained on some products for reasons of health, security, and public

[39] Initially notified as an import prohibition in November 1998 (Notification No. 32 (RE-98)/97-02); this prohibition was relaxed a month later (DGFT, Eximpolicy Notification No. 37 (RE-98)/97-02, 23 December 1998).

[40] WTO (1998).

[41] India also informed the Committee on Import Licensing Procedures that it had liberalized imports of a number of items on 13 April 1998 (WTO document G/LIC/N/2/IND/1, 18 June 1998); and on 31 March 1999 (WTO document G/LIC/N/1/IND/2, 23 September 1999).

[42] WTO documents G/LIC/N/1/IND/3, 13 December 2000, G/LIC/N/1/IND/4, 27 February 2002, and G/LIC/N/2/IND/4, 27 February 2002. According to the authorities all these restrictions have been removed, with the exception of palm stearin, other than crude (HS Ex 382311.01), and other parts for watches (HS 911490.01); the paperwork to remove restrictions on these products is currently being completed.

[43] Ministry of Commerce and Industry (2001a).

morals. These include firearms, explosives and ammunition, certain medicines and drugs, and jewellery, notified by India under Articles XX and XXI of the GATT 1947[44], as well as products protected under the Wildlife Protection Act, 1972, the Convention on International Trade in Endangered Species (CITES), and the Montreal Protocol on Substances that Deplete the Ozone Layer. India also restricts the import of poppy seeds, which may be imported from certain countries and subject to certain conditions.[45] Licensing requirements are in place for seeds for sowing and for agricultural and food products under India's sanitary and phytosanitary laws (section (xiii) below).

36. Import restrictions are maintained for imports of second-hand motor vehicles, which must not be older than three years from the date of manufacture, for environmental reasons. In addition, they must meet conditions required under the Motor Vehicles Act, 1988, including, *inter alia*, right-hand steering and controls, and a speedometer indicating speed in kilometres; according to the authorities, the restrictions are maintained for consumer protection and road safety reasons as India follows the metric system and has right-hand drive traffic conditions. Importers of second-hand motor vehicles not older than three years are required to submit supporting documents at the time of import, including a certificate showing that the vehicle has been tested immediately before shipment to India and conforms to regulations specified in the Motor Vehicles Act, 1988; they must also produce a certificate declaring a minimum roadworthiness of five years from the date of import. Second-hand motor vehicles (not older than three years) may be imported only through the customs port at Mumbai; new vehicles may be imported only through the customs ports of Chennai, Kolkata, and Nhava Sheva.[46] The authorities argue that the requirement to import through certain ports is necessary to monitor these technical requirements. Nonetheless, the outcome is that more stringent (i.e. prohibitive) standards are applied to imported used cars over three-years old than to domestic used cars of the same age. As of December 2001, all imports of natural rubber must be carried out through the ports of Kolkata and Visakhapatham.[47]

37. The Government has also issued a list of 300 sensitive items, whose import it monitors; the items include milk products, fruit and nuts, coffee, tea, spices, cereals, oilseeds and edible oils, alcoholic products, silk, new and second-hand motor vehicles up to three years old, and toys.[48] The monitoring, based on monthly import data on these products, is carried out by a committee chaired by the Secretary of Commerce. Measures taken initially to allow imports of these products only through certain ports of entry have been discontinued, although certain products, such as second-hand cars (under three years old) and products subject to preferential tariff rates under bilateral trade agreements, must enter at specified ports.[49]

[44] WTO document WT/BOP/N/24, 22 May 1997.

[45] Ministry of Commerce and Industry, Notification No. 27 (RE-2000)/1997-2002, 1 August 2000.

[46] The vehicle is required to be re-tested once in India by an agency certified by the Government (Ministry of Commerce and Industry, Notification No. 4(RE-2001)/1997-2002, 13 March 2001).

[47] Ministry of Commerce and Industry, Department of Commerce, Notification No. 41 (RE-2001)/1997-2002, 19 December 2001.

[48] Imports of most of these items were restricted to entry points at Chennai, Cochin, Delhi, JNPT, Kolkata, Mumbai, Tughlakabad, and Vishakhapatnam; imports of some second-hand and used motor vehicles were allowed only through Mumbai (Ministry of Commerce and Industry, Notification No. 11 (RE-2001)/1997-2002, 2 May 2001. Entry was extended for some products to the ports of Bedi, Haldia, Jamnagar Kakanadi, Kandla, Marmagoa, Mundra, and New Mangalore (Ministry of Commerce and Industry, Notification No. 12 (RE-2001)/1997-2002, 8 May 2001.

[49] Both notifications were revoked on 21 May 2001 (Ministry of Commerce and Industry, Notification No. 13(RE-2001)/1997-2002, 21 May 2001).

(ix) Minimum import prices

38. Minimum import prices on steel products were withdrawn by the Central Government through a notification issued in November 1999; the notification was expected to have become effective on January 2000. However, the authorities state that the notification has been stayed by the High Court in Kolkata for HR coils. Minimum import prices are maintained for seconds and defective steel products, for human health and safety reasons.

(x) Countertrade

39. According to the authorities, there is no law requiring Indian exporters to enter into agreements on countertrade. However, global tenders have sometimes included a clause providing preferences to companies who agree, *ceteris paribus*, to countertrade operations. The major state-owned companies that have been involved in countertrade in the past were the Minerals and Metals Trading Company (MMTC), and the State Trading Company (STC).

(xi) Contingency measures

(a) Anti-dumping and countervailing measures

40. There have been no major changes in anti-dumping and countervailing legislation since the previous Trade Policy Review of India; India's legislation came into force on 1 January 1995 (Box III.1).[50]

41. The major administrative change since the previous Review is the establishment of the Directorate General of Anti-Dumping and Allied Duties, in the Ministry of Commerce, to conduct all anti-dumping and countervailing investigations. The Directorate General, which is headed by the Additional Secretary in the Ministry, was established in April 1998. Appeals on decisions taken by the Directorate General may be made under Chapter XV (section 129) of the Customs Act, 1962, to the Appellate Tribunal, and, as a last resort, to the Supreme Court. The Appellate Tribunal, also known as the Customs, Excise and Gold (Control) Appellate Tribunal, consists of at least two members, one judicial and one technical. Since the formation of the Tribunal, 34 cases have been filed, of which the decision of the Directorate General of Anti-Dumping and Allied Duties was upheld in 22 out of 29 rulings; the Tribunal rejected three cases and modified the original decision taken by the Directorate General in four cases. The authorities maintain that the Tribunal is independent from the Directorate General of Anti-Dumping and Allied Duties, as the former is constituted under the Customs Act 1962, while the latter is appointed under the Rules made under the Customs Tariff Act 1975.[51] In addition, a Committee was established in August 2001, headed by the Director General of the Directorate of Anti-Dumping and Allied Duties, to examine, inter alia, the adequacy of laws and procedures governing anti-dumping investigations and consistency between the rules and statutes of the Directorate and the rulings of the Central Excise and Gold (Control) Appellate Tribunal.[52]

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[50] India's legislation with regard to anti-dumping and countervailing procedures is contained in sections 9, 9A, and 9B of the Customs 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 (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).

[51] WTO document G/ADP/Q1/IND/5, 23 April 1997.

[52] Ministry of Commerce, Press Release, 15 August 2001, [Online]. Available at: http://commin.nic.in/doc/aug01_release.htm [22 August 2001].

42. Since the passage of its legislation on anti-dumping, India has become a major user of anti-dumping measures; 250 anti-dumping actions were initiated since 1995.[53] Moreover, the number of anti-dumping measures in force has risen steadily, especially since 1997, from 19 notified measures in force, to 131 in 2001 (Chart III.3).[54] The majority of the initiations have been for chemical and related products (47.2%); a large number of actions have been initiated against imports from the European Union (19.2%) and China (18.8%).[55]

43. As notified to the WTO, India had not taken any countervailing measures up to 30 June 2001.[56]

(b) Safeguards

44. Safeguard measures may be taken by the Central Government under Article 8B of the Customs Tariff Act, 1975 as amended in 1997.[57] Under the Customs Tariff (Identification and Assessment of Safeguard Duty) Rules, 1997, safeguard investigations are carried out by the Director General of Safeguards based in the Department of Revenue, Ministry of Finance. Investigations may be initiated upon receipt of a written application by or on behalf of the domestic industry or by the Director General if there is evidence of serious injury from increased imports. There have been no changes in procedures for investigating and imposing safeguards since the previous Review.[58]

45. Since the passage of its legislation, India has imposed safeguard duties on eight products[59]; the final findings of the Director General (Safeguards) for Methylene Chloride, recommend imposition of safeguard duties, but this is yet to be notified.

[53] Based on notifications of anti-dumping actions initiated made to the WTO Secretariat up to end 2001.

[54] Initiations as well as measures in force increased significantly in 1998, the same year as the Directorate General of Anti-Dumping and Allied Duties was established.

[55] According to the authorities, the removal of quantitative restrictions on imports has not led to a corresponding surge in imports of these products; however, cases relating to specific products, if any, have been given necessary relief by the Directorates of Anti-Dumping and Safeguards (Ministry of Finance, 2002a, Box 6.4).

[56] WTO document G/SCM/N/75/Add.1, 17 October 2001.

[57] Finance Bill No. 25 of 1997, Chapter V.

[58] Preliminary findings must be reported in a public notice, with a copy to the Ministries of Commerce and Finance; provisional safeguard measures based on these findings may be imposed for a maximum period of 200 days. Final findings and any recommended safeguard duties must be notified within eight months from the date of initiation through a public notice. Provisional measures must be removed within 30 days if the investigation reveals no injury. A final safeguard measure may be in place for four years unless the Central Government deems it necessary to continue the measure for longer, in which case it may not remain in place for more than ten years from when it was first imposed. If the duration of the safeguard measure is over one year, it must be progressively liberalized at regular intervals within the period of duration.

[59] These are: acetylene black (10 December 1998); carbon black (9 October 198); flexible slabstock polyol (24 December 1998); hard board (12 November 1998); styrene butadiene rubber (1 May 1998); phenol (28 June 1999); acetone (27 January 2000); white/yellow phosphorus (17 January 2000); and gamma ferrie oxide/magnetic iron oxide (24 January 2001).

Box III.1: Anti-dumping and countervailing procedures

Anti-dumping

An anti-dumping investigation may be initiated by the Directorate General of Anti-Dumping and Allied Duties by or on behalf of the domestic industry, where: domestic industry supporting the application must account for at least 25% of the total domestic production, and the collective output of domestic producers supporting the application constitutes more than 50% of the total output by those expressly supporting and those opposing the application, or *suo motu*, if it is satisfied that there is evidence regarding dumping or injury. The Directorate must issue a public notice of its decision to initiate an investigation, along with the time limits allowed for interested parties to make their views known (Section 6(1)); according to the authorities, this normally takes place within 45 days of the receipt of proper documentation. Interested parties may provide any relevant information to the Directorate within 30 days of receipt of the notice or any further period of time as specified by the Directorate (Section 6(4)).

Preliminary findings, according to the authorities, would normally be made within 150 days of the initiation.

Provisional duties may be imposed by the Central Government on the basis of preliminary findings reached by the Directorate; the provisional duty should not exceed the margin of dumping and may be imposed before the expiry of 60 days from the date of public notice issued by the Directorate initiating the investigation. The duty may remain in place for a period not exceeding six months and may be extended to nine months upon request of exporters representing a significant percentage of the trade involved (Section 13). The investigation may be terminated if the Directorate finds that, *inter alia*, the margin of dumping is less than the *de minimus* margins.

Final findings must be notified to the Central Government within a period of one year from initiation of the investigation, although this period may be extended by the Central Government for a period of six months (Section 17(1)(a)). *Definitive anti-dumping duties* not exceeding the margin of dumping would be imposed within three months of the publication of the final findings and would remain in place for a five-year period unless extended for periods of five years by the Directorate.

Countervailing

Countervailing investigations are also carried out by the Directorate General of Anti-Dumping and Allied Duties, under the Customs Tariff Act and the Customs Tariff (Identification, Assessment and Collection of Countervailing Duty on Subsidized Articles and for Determination of Injury) Rules, 1995. Procedures to investigate subsidies that are liable for countervailing duty are subject to similar time limits as anti-dumping investigations. A decision to initiate an investigation must be notified through a public notice, which may call for any relevant information to be provided within 30 days of receipt of notice (assumed to be seven days from transmission by the Directorate), from interested parties (Section 7(4)).

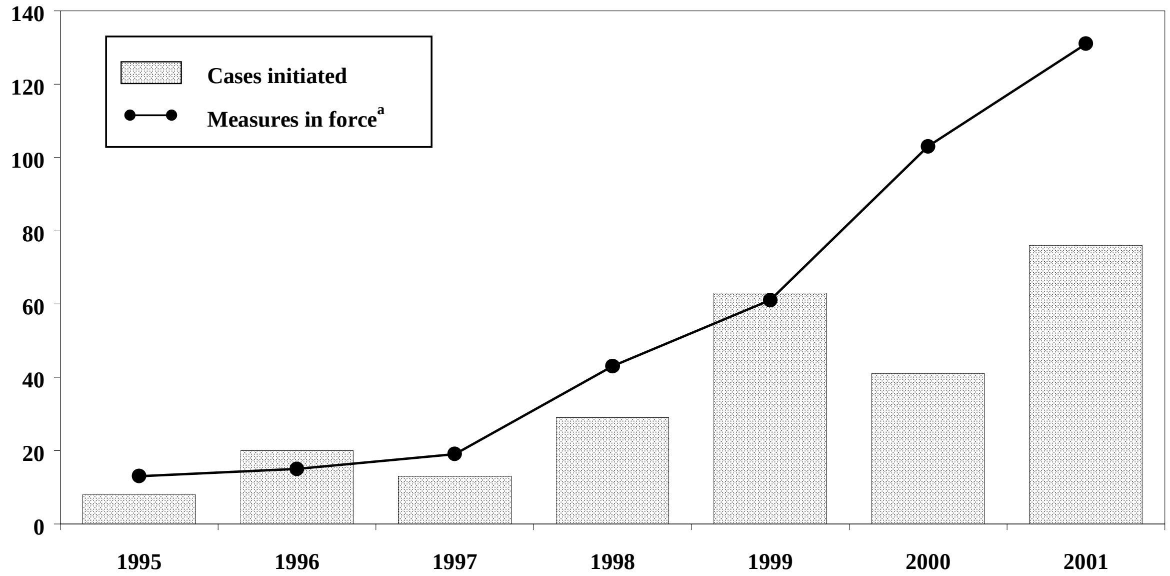
Provisional duty, based on preliminary findings by the Directorate, must be imposed before the expiry of 60 days from the date of issue of the decision to initiate the investigation. Provisional duties may remain in force for a maximum period of four months.

Final findings must be made within one year of the date of initiation and may in exceptional circumstances, be extended by the Central Government for a further six months. Through notification in the *Official Gazette*, the Central Government, upon recommendation by the Directorate General of Anti-dumping and Allied Duties, may impose *definitive countervailing duty* within three months of the final findings being published.

Source: WTO documents G/ADP/N/1/IND/2, 15 August 1995; and G/ADP/N/1/IND/2/Suppl.2, 18 August 1999.

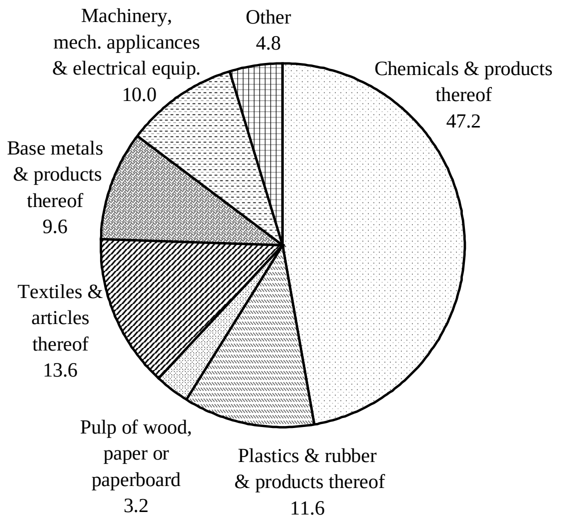
Chart III.3
Anti-dumping measures, January 1995 - December 2001

(a) Number of cases initiated and measures in force

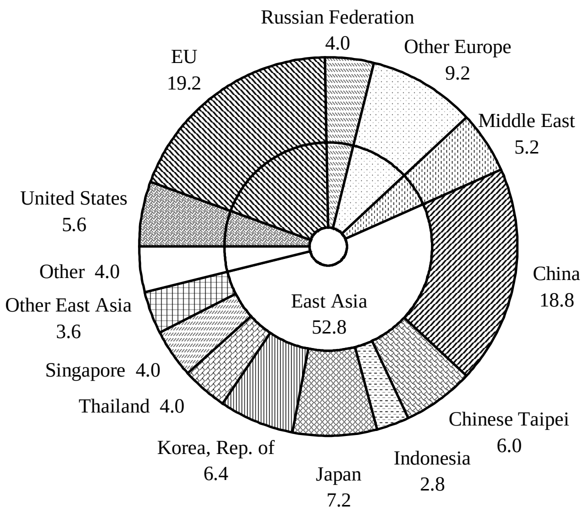


a Anti-dumping measures in force on 31 December.

(b) Initiations by product
Per cent



(c) Initiations by origin
Per cent



***Source*: Notifications to the WTO; and information provided by the authorities.**

(xii) Standards, testing, and certification

(a) Standards

46. There have been no significant changes in the legislative basis of India's technical standards. India notified the WTO that the Bureau of Indian Standards, the national standards body of India, had been designated as the WTO-TBT Enquiry Point, while the Ministry of Commerce is responsible for implementing and administering the WTO Agreement on Technical Barriers to Trade.[60] India accepted the Code of Good Practice on 19 December 1995.[61]

47. Indian standards are formulated by the Bureau of Indian Standards (BIS), which was established as a statutory body under the Bureau of Standards Act, 1986, and became operational on 1 April 1987.[62] Standards are developed through 15 division councils, covering a wide number of sectors (Box III.2).[63] From its formation until 1 April 2001, the BIS had developed 17,428 voluntary standards relating to a number of sectors. In order to ensure their continued relevance, Indian standards are reviewed as and when considered necessary, but at least once every five years.

Box III.2: Development of Indian standards

Proposals for establishing new standards or for revising existing standards may be submitted in writing to the Bureau of Indian Standards (BIS) by Ministries and agencies of the central and state governments, professional associations including consumer organizations, industrial units, industry associations and professional bodies, and members of the BIS and of its technical committees. The proposal is examined within the relevant Division Council, of which there are currently 15. Formulation of the new or revised standard is entrusted to an appropriate existing technical committee or, if necessary, a new technical committee, which is appointed by the Division Council.

The draft standard is issued and circulated for a period of at least three months amongst the various interest groups concerned. The Technical Committee may also decide not to circulate the standard, if necessary, including when the standard is considered urgent or non-controversial.

Upon incorporation of comments deemed to be relevant by the Technical Committee, the draft standard is finalized and must be approved by the Sectional Committee before being submitted to the Chairman of the Divisional Council for adoption. All Indian standards must be reviewed periodically and at least once every five years; standards that need not be revised in the view of the Sectional Committee must be reaffirmed by the Committee. According to the authorities the process of drafting new standards may take between one year in the case of harmonization with international standards, and two-three years for the formulation of new standards.

Source: Information provided by the Indian authorities.

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[60] WTO document G/TBT/2/Add.56, 22 October 1999.

[61] WTO document G/TBT/CS/N/26, 29 January 1996.

[62] The BIS has its main office in New Delhi, with five regional and 19 branch offices around the country. To support its testing and certification activities, the BIS has a network of eight laboratories across India, which provide conformity testing and calibration services. In addition, the BIS recognizes and uses the services of a number of laboratories, which follow international criteria, including ISO/IEC Guides for testing.

[63] The sectors or activities currently covered are: basic and production engineering; chemicals; civil engineering; electronics and telecommunications; electrotechnical; food and agriculture; mechanical engineering; management and systems; medical equipment and hospital planning; metallurgical engineering; petroleum, coal, and related products; transport engineering; textiles; and water resources (Bureau of Indian Standards online information. Available at: http://www.bis.org.in/sfp1.htm [21 August 2001]).

48. As a matter of policy, the BIS endeavours to align Indian standards as far as possible with international standards. As of 1 April 2001, 3,020 Indian standards (some 17%) had been harmonized with international standards; during the period from 1998 to 2001, however, the percentage of standards that have been harmonized with international standards is considerably higher, averaging around 42%.

49. The BIS, which was a founder member of the International Standards Organization (ISO), continues to participate in technical and policy-making committees of the ISO, and the International Electrotechnical Commission (IEC).

(b) Certification

50. Indian and foreign manufacturers who meet a BIS standard may carry the BIS Certification Mark. The BIS Certification Mark was made mandatory for 133 items (both locally produced and imported).[64] The BIS laboratories provide conformity testing for products (both domestic and imported) requiring BIS certification. Voluntary certificates are also issued for environmentally friendly products (Ecomark), environmental management systems, quality systems, and hazard analysis and critical control points (HACCP). Licences granted for quality systems, environmental management systems, and HAACP are valid for three years and must be renewed. The BIS carries out regular surveillance audits and inspections to ensure that the systems and products meet the relevant standards. All the BIS certification schemes are operated according to the relevant ISO/IEC guides and the quality system certification scheme is accredited by the Dutch Council for Accreditation (Raad voor Accreditatie).

(xiii) Sanitary and phytosanitary measures

51. There is no single agency to implement sanitary and phytosanitary regulations; instead, measures are maintained under a number of Acts, which are implemented by different agencies.[65] The main change since the last Review of India is the introduction of the Livestock Importation (Amendment) Ordinance in 2001, which amends the Livestock Importation Act, 1898 under which (along with the Meat Food Product Order, 1973) the inspection of animals and meat products is mandatory. Under a notification issued in October 2001, "livestock products" include products, eggs, and seeds of all aquatic animals; imports of all these products require a sanitary import permit issued by the Department of Animal Husbandry and Dairying.[66]

52. Under the Export and Import Policy, all imports of primary agricultural products are subject to a Bio Security and Sanitary-Phytosanitary import permit issued by the Department of Agriculture and Cooperation under the Plants, Fruit and Seeds (Regulation of Import into India) Order, 1989. The

[64] DGFT, Notification No. 44 (RE-2000)/1997-2002, 24 November 2000; and No. 7 (RE-2001)/1997-2002, 31 March 2001.

[65] For food safety and quality, the main legislation is the Prevention of Food Adulteration Act, 1954; inspection of imports of and domestically produced agricultural products is mandatory under the Essential Commodities Act, 1955, the De-Oiled Meal and Edible Flour Control Order, 1967, the Fruit Product Order, 1955, and the Plants, Fruit and Seeds (Regulation of Imports into India) Order, 1989. Inspection of animals and meat products is mandatory under the Meat Food Products Order, 1973 and the Livestock Importation Act, 1898, amended in 2001.

[66] Other recent notifications include restrictions on the import of "grand parent stock" of live poultry, which are only allowed if accompanied by a sanitary import permit issued by the Department of Animal Husbandry and Dairying; and a six month prohibition on imports of domestic and wild birds, day-old chicks, hatching eggs, fresh meat of domestic and wild birds, and products of animal origin from birds used in animal feed or by industry from countries reporting and outbreak of Avian Influenza (Notification Nos. 590 and 591, Ministry of Agriculture, Department of Animal Husbandry and Dairying).

permits are issued on the basis of import risk analysis based on scientific principles, including, *inter alia*, the types of pests associated with the particular product being imported and their potential impact on India's international trade.[67]

53. Other sanitary and health regulations are found in the Drugs and Cosmetics Act, 1940, and accompanying rules, as amended, which govern quality control for pharmaceutical products as well as alternative Indian medicines such as ayurveda, unani, and siddha systems. The Act and its accompanying rules are administered by the Ministry of Health and implemented by the state governments. All new pharmaceutical products, whether imported or domestically produced, must first be approved by the Central Drugs Standard Control Organization, headed by the Drugs Controller of India, before they may be marketed in India.

(xiv) Labelling and marking

54. India's legislation on labelling and marking is contained in the Prevention of Food Adulteration Act, 1955, last amended in 1986, and in Part VII of the Prevention of Food Adulteration Rules 1995. Requirements include, *inter alia*: the name, trade name, or description of food; ingredients in descending order of their composition by weight or volume; the name and address of the manufacturer or importer or packer; net weight or number or measure of volume; and best-before dates. For packages containing aspartame, the expiry date must be included and cannot exceed three years from the date of packaging.[68] The Standards of Weights and Measures (Packaged Commodities) Rules were issued in 1977 to regulate packaging and to rationalize standard quantities and measures.

55. With regard to imports, a notification was issued recently requiring all packaged products subject to the provisions of the Standards of Weights and Measures (Packaged Commodities) Rules, 1977, when produced, packed or sold in India, to carry the following information: (i) name and address of the importer; (ii) generic or common name of the commodity; (iii) net quantity in terms of standard unit of weights and measures (or its equivalent if given in any other unit); (iv) month and year in which the commodity was manufactured, packed, or imported; and (v) maximum retail sale price (including all taxes, freight, transport charges, commission payable to dealers, and all other charges including for advertising, delivery, and packing).[69] Furthermore, as of July 2001, all imports of edible products, for which the domestic manufacture and sale are governed by the Prevention of Food Adulteration Act, 1954, must, at the time of importation, have a valid shelf life of not less than 60% of their original shelf life; according to the authorities, this condition is necessary to ensure that food products whose shelf life has expired are not sold in the market.[70]

[67] Ministry of Commerce, Notification No. 3(RE-2001)/1997-2002, 31 March 2001.

[68] More specific instructions are to be followed for certain products. Further details can be found in the Prevention of Food Adulteration Act and in Part VII of the Rules.

[69] Ministry of Commerce, Notification No. 44 (RE-2000)/1997-2002, 24 November 2000, Directorate General of Foreign Trade.

[70] The shelf life of the product is calculated on the basis of the date of manufacture and expiry date on the package. The 60% period has been determined by taking into account the overall time taken to import products. (Ministry of Commerce, Notification No. 22 (RE-2001)/1997-2002, 30 July 2001, Directorate General of Foreign Trade).

(xv) Government procurement

(a) Introduction

56. India is not a Member of the WTO Agreement on Government Procurement. In 2000/01 the estimated value of purchases by the central government procurement agency, the Directorate General of Supplies and Disposals (DGS&D) was Rs 32.8 billion (around US$0.8 billion); additional procurement by ministries of central and state governments as well as public sector enterprises was estimated at around Rs 23.1 billion (approximately US$0.6 billion) for the year 2000/01 up to December 2000.[71]

57. There appear to have been no major changes to government procurement procedures since the last Review of India. Government procurement policies are based on the General Financial Rules of the Ministry of Finance. Although the Directorate General of Supplies and Disposals was established as the central purchasing agency for all government ministries and departments, government procurement has been decentralized over the years. Thus, key ministries such as Railways, Defence, Posts and Telegraphs have been authorized since 1974 to make their own purchases. Procurement was further decentralized in 1991 with the result that the DGS&D mainly undertakes contracts for items required on a recurring basis by central government departments. In addition, state governments, public-sector units and semi-autonomous bodies may also use the services of the DGS&D if they wish to do so.[72] The purchase contracts maintained by DGS&D allows the procurement of goods from reliable sources without the need for recurrent tenders by each government department as the need arises; as of 1 December 2001 these contracts were maintained for 367 items.[73]

(b) Tendering procedures

58. In general, under the General Financial Rules of the Ministry of Finance, purchases of up to Rs 1,000 may be made without tendering. Purchases valued at between Rs 1,000 and Rs 10,000 may be made by department heads without calling for tenders or through pre-selection from the list of contracts maintained by the DGS&D; nevertheless, in such cases, quotations from suppliers must be invited. Department heads also have discretion in deciding whether to advertise tenders abroad.[74]

59. For purchases with a value of over Rs 10,000, procurement is carried out through tendering (open, limited or single tender, or negotiation). For all cases where the value of the purchase is above Rs 200,000, the General Financial Rules call for an open tender system; tenders must be published in the *Indian Trade Journal* issued by the Director General of Commercial Intelligence and Statistics, Calcutta, in addition to Indian newspapers, if necessary. Limited and single tenders are used for purchases below Rs 200,000 in value and are based on a list of approved contractors maintained by the DGS&D. The contractors on this list are reviewed by the DGS&D once every three years. Limited tenders should include contractors that have been granted procurement contracts in the past in addition to 15 other companies on the list. Single tenders may be used in the case of availability of the product with a single known supplier or in the case of "proprietary" goods. Goods may also be procured in this manner in special circumstances, such as in the case of a monopoly supplier or where there is a shortage of capacity. Limited and single tenders must also be used for important plant,

[71] Ministry of Commerce and Industry, Department of Commerce (Supply) (2001).
[72] Ministry of Commerce and Industry, Department of Commerce (Supply) (2001).
[73] Ministry of Commerce and Industry, Department of Commerce (Supply) (2001), Annex XIII.
[74] Appendix 8, Rule 2.

machinery, and iron and steel works with purchases being made from the DGS&D's list of approved contractors.[75]

60. Non-Indian suppliers must be registered with the DGS&D through their local agents; companies that have the necessary arrangements for after-sales services in India may register directly with the DGS&D.

(c) Preferences

61. Although preferences for procurement through local suppliers have been reduced greatly since 1992, preferred sources for procurement include the public sector and the small-scale sector. At the time of the last Review, procurement of 405 specified products had to be from the small-scale sector, including 75 from the handicraft and handloom sectors. The list has been reduced to 350 items from the small-scale sector and eight items from the handicraft and handloom sector; in addition, the present guidelines on procurement from these sectors are advisory and non-mandatory. Another advisory and non-mandatory preference is a price preference for the small-scale sector of up to 15%, on a tender-by-tender basis if the small-scale unit has successfully bid for previous contracts by competing with large-scale units on a non-preferential basis; an advisory and non-mandatory price preference of 10% is also applicable to public-sector companies. According to the authorities, of the purchases made in 2000/01 by the DGS&D, around 7.7% and 11.9% were made from the public and small-scale sectors, respectively.

62. Price preferences of up to 15% may also be granted for indigenous-equipment suppliers (up to 30% for exports of ships)[76]; indigenous equipment is defined as such if at least 20% of the value of the product is added in India. Cargo preferences are also provided to Indian ships for the carriage of dry bulk cargo and for petroleum and other liquid oil cargo in Indian territorial waters.[77]

(xvi) State-trading

63. India states that food grains and certain agricultural products are subject to procurement by state trading companies to guarantee remunerative minimum support prices guaranteed to farmers for these products. Food grains form part of the Government's public distribution system and state trading companies are used to monitor supply of these products so as to address food security concerns. Other products, such as gasoline and fertilizers, are imported through state trading companies to allow domestic subsidization in the case of fertilizers and cross subsidization for petroleum products.[78]

64. Since the last Review of India, there has been a significant reduction (at the HS ten-digit level) of products subject to state-trading, mainly involving edible oils, seeds, and some petroleum products (Table III.5).[79] The value of imports by state trading companies, with the exception of petroleum oils (other than crude oil) has been declining, and was estimated to be some Rs 55 billion in

[75] The list includes heavy machinery, electronics, rolling stock, machine tools, motor vehicles, aircraft, and fire fighting equipment (Ministry of Commerce and Industry, Department of Commerce (Supply) (2001), Schedule A and Rule 4 in Appendix XVIII).

[76] The 30% preference for exporters of ships is meant to offset taxes paid by the constructor.

[77] The requirement that dry bulk cargo be carried by an Indian ship if the goods originate in India or if transport is the responsibility of the Indian party (WTO, 1998) has been discontinued.

[78] WTO document G/STR/N/7/IND, 8 October 2001.

[79] On 1 April 1997, over 170 lines at the HS eight- and ten-digit levels were subject to state trading. As of India's notification in October 2001, there appear to be some 30 lines at the HS eight- and ten-digit levels subject to imports by state trading companies.

2000/01 (2% of merchandise imports, down from 19% in 1996/97); the main import was petroleum, which accounted for around 98% of all imports by state trading companies.[80]

Table III.5
Imports subject to state trading, 1997 and 2001

1 April 1997	1 April 2001	Agency
Petroleum products including: - Aviation turbine fuel; - Crude oil; - Kerosene; - Liquified petroleum gas (LPG); - Motor spirit; - Bitumen (asphalt)-paving grade; - Naphtha; and - Furnace oil	Petroleum products including: - Aviation turbine fuel; - Aviation spirit; - All types of spirit type (gasoline type) jet fuel; - Motor spirit (gasoline); - Diesel gas oil; and - Other gas oil.	Indian Oil Corporation Limited
All types of nitrogenous phosphatic, potassic and complex chemical fertilizers except DAP fertilizer	Urea, whether or not in aqueous solution	Minerals and Metals Trading Corporation of India Limited; and Indian Potash Limited
Ammonium sulphonitrite	Unchanged	Minerals and Metals Corporation of India Limited
Edible oils including coconut, groundnut, safflower, palm, rapeseed, sunflower, soyabean and cotton seed oils	Coconut oil and its fractions	State Trading Corporation of India Limited and Hindustan Vegetable Oils Corporation Limited
Copra, groundnut, palm, rapeseed, safflower, soyabean, sunflower and cotton seeds	Copra	State Trading Corporation of India Limited and Hindustan Vegetable Oils Corporation Limited
All other non-edible oils (excluding tung oil, China wood oil and natural essential oils, seeds or material from which oil can be extracted)	Removed	
Most cereals excluding feed grade maize, poultry or animal feed	Some cereals (wheat, rye, oats, maize, rice, grain sorghum, buckwheat, millet, canary seed, jawar, bajra, ragi, and other cereals)	Food Corporation of India
Cloves, cinnamon, and cassia	Removed	Spices Trading Corporation Limited and National Agricultural Cooperative Marketing Federation of India Limited

Source: WTO (1998), *Trade Policy Review – India;* and Ministry of Commerce (1997), Export Import Policy, 1997-2002.

(xvii) Balance-of-payments measures

65. Import restrictions maintained for balance-of-payments reasons under Article XVIII:B of the GATT were removed by 1 April 2001 (section (viii)(b) above).

(3) MEASURES DIRECTLY AFFECTING EXPORTS

(i) Procedures

66. As in the case of imports, most exporters are required to register with the Director General of Foreign Trade in the Ministry of Commerce, and obtain an IEC number before any exports may be carried out.[81] Licences are also required for restricted exports and exports subject to export quotas.

[80] Based on data provided in WTO document G/STR/N/7/IND, 8 October 2001.
[81] Ministry of Commerce (1997), Chapter 4.

The authorities state that export licensing requirements have been continuously reduced and that the remaining restrictions exist essentially for food safety and security reasons.

(ii) Quality control and preshipment inspection for exports

67. The Export Inspection Council (EIC) of India was established under Section 3 of the Export (Quality Control and Inspection) Act, 1963. The Act empowers the Government of India to set minimum standards for export of certain commodities and to set up a suitable mechanism for inspection and quality control. The EIC advises the Government on measures to be taken to enforce quality control and inspection for exports. Around 1,000 items were notified under the Act as subject to compulsory quality control[82]; however, according to the authorities, as part of economic reforms initiated in the early 1990s, this requirement was waived for specific categories of exporters (see below).

68. Preshipment inspection and certification services for exports are provided by five export inspection agencies (EIAs), established by the Government in 1966; these are under the administrative and technical control of the EIC. The main offices of the five EIAs are in Kolkata, Chennai, Delhi, Kochi, and Mumbai, with a network of 44 suboffices, including laboratories, located in other industrial centres and ports. The Government, through the EIC, also recognizes other government and private sector agencies that provide preshipment inspection services for exports based on international standards (ISO 17020/17025) as applicable.

69. The EIC offers export inspection and certification services under the following systems: consignment wise inspection (CWI); in-process quality control (IPQC); or self-certification. Any one or more of the systems may be specified in the notification of individual commodities; however, items such as fish and fish products, egg products, and milk products are subject to mandatory export certification based on Food Safety Management Systems (FSMSC). Under CWI, each export consignment is inspected and tested to check conformity with established standards; certification takes between one day and a week depending on the product and time required for testing. IPQC relies on the exporter to ensure that established standards are met at each stage of production, with random spot checks carried out by the EIC; the self-certification scheme allows approved manufacturers and exporters to issue certificates for their products themselves. The FSMSC is based on international standards of food safety management systems such as HACCP/GMP/GHP and involves approval and surveillance of food processing units.[83]

70. In order to streamline the process of approval and to make manufacturers and exporters take greater responsibility for ensuring quality in exports, the Government has exempted from compulsory preshipment inspection exports of products notified under the Export (Quality Control and Inspection) Act, 1963, for Star Trading Houses, Trading Houses, Export Houses, industrial units established in the free-trade zones, the export-processing zones, and 100% export-oriented units. Units approved by the EIAs under the IPQC system may also issue inspection certificates unless they request a certificate from the EIAs. In addition, a larger number of products, including fish, egg, and milk products have been brought under the purview of the Export (Quality Control and Inspection) Act. The EIC also organizes seminars and training programmes to increase quality control consciousness among manufacturers and exporters. India also notes that in the context especially of the WTO's SPS Agreement, import restrictions are being imposed in the food sector due to health and safety concerns.

[82] These include engineering, chemicals and allied products, food and agricultural products, jute and jute products, coir and coir products, footwear and footwear components, cashews, fish and fishery products, eggs, etc. (Ministry of Commerce, 2001a).

[83] Three such units had been approved to provide self-certification as of September 2000 (Ministry of Commerce, 2001a).

To address these concerns, food items are being brought under mandatory export certification. In addition to fish and fish products, egg and milk products, it has been proposed to subject honey, live fish, fresh poultry and poultry products, rice, and dried fish and fish maws to compulsory export certification. As the official export inspection and certification body, the EIC is working to develop equivalence agreements, as envisaged under the SPS Agreement, with the official import control bodies of its trading partners. In this context the EIC's export certification is recognized by the European Union for fish and fish products and Basmati rice and by the U.S. Food and Drugs Administration for black pepper.[84]

(iii) Export taxes

71. Since its previous Review, India has removed export taxes on all products except hides, skins, and leathers, tanned and untanned (not including manufactures of leather).[85] The export duty on these products was raised from 15% to 60% in 2000.[86] According to the authorities, the export duties are maintained to ensure export of high value-added leather goods. However, insofar as such taxes (or other export restrictions) depress the domestic prices of such leather items, they constitute implicit assistance to domestic downstream processing of such items.

(iv) Minimum export prices

72. Under its Export-Import Policy, India may impose minimum export prices. At the time of its previous Review, exports of stone boulders to Bangladesh were subject to a minimum export price of US$18 per tonne. Since then, minimum export prices have been imposed for coir and coir products. According to the authorities, the only entities entitled to export onions (which are subject to export quotas) are designated state trading enterprises; these enterprises also issue minimum export prices for onions.

(v) Export prohibitions and restrictions

(a) Export prohibitions

73. India maintains export prohibitions on a number of items including wild animals, exotic birds, tallow, wood products, beef, and sandalwood products (Table III.6). The only change, since the previous Review has been the inclusion in the list of export prohibitions of: manufactured articles and shavings of shed antlers of deer; peacock tail feathers, including handicrafts and other articles using them; certain species of sea shells; and 29 species of plants.

74. In accordance with United Nations Security Council resolutions, India prohibits exports of some products to Iraq and Libya.[87] An embargo on trade with Fiji maintained at the time of the last Review has been lifted.

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[84] In addition, the Australian Quarantine and Inspection Service (AQUIS) has agreed to recognize the EIC's certification system for fish and fish products; the EIC is also in discussion with agencies from other countries including Japan, Canada, and Sri Lanka.

[85] Notification No. 100/89-Cus., dated 1 March 1989, amended by Notification No. 133/2000-Customs, 17 October 2000.

[86] Central Board of Excise and Customs, Notification No. 132/2000, 17 October 2000.

[87] Exim Policy Procedures, Chapter 4.

Table III.6
Export prohibitions, 1997 and 2002

Description (status on 1 April 2002)	Reason for prohibition	Status on 1 April 1997
All forms of wild animals including their parts and products except peacock tail feathers including handicrafts made thereof subject to conditions as specified in Schedule 2, Appendix I of the book titled "ITC (HS) Classifications of Export and Import Items"	Protection of wildlife under the Wild Life Protection Act, 1972	prohibited
Peacock tail feathers including handicrafts and articles made thereof	Control of poaching and illegal trade in wildlife and its products	not prohibited
Manufactured articles and shavings of shed antlers of Chital and Sambhar subject to conditions as specified in Schedule 2 Appendix I of the book titled "ITC(HS) Classifications of Export and Import Items"	Control of poaching and illegal trade in wildlife and its products	not prohibited
Exotic birds[a]	Protection of wildlife	prohibited
All items of plants included in Appendix I and II of the Convention on International Trade in Endangered Species (CITES), wild orchid as well as plants as specified in Schedule 2 Appendix 2 of the book titled "ITC(HS) Classifications of Export and Import Items"	Protection of endangered species	prohibited
Beef	Social and religious reasons	prohibited
Human skeletons	Social reasons	prohibited
Tallow, fat and/or oils of any animal origin excluding fish oil	Social and religious reasons	prohibited
Wood and wood products in the form of logs, timber, stumps roots, bark, ships, powder, flakes, dust, pulp, and charcoal except sawn timber made exclusively out of imported logs/timber subject to conditions as specified in Schedule 2 Appendix I of the book titled "ITC(HS) Classifications of Export and Import Items"	Ecological and environmental reasons	prohibited
Speciality chemicals, organisms, material, equipment, and technologies, as specified in Schedule 2 Appendix 3 of the book titled "ITC(HS) Classifications of Export and Import Items"	Strategic importance of the listed products	prohibited
Sandalwood in any form but excluding: (i) Finished handicraft products of sandalwood; (ii) Machine finished sandalwood products; and (iii) Sandalwood oil subject to quantitative ceilings and conditions as notified by the Directorate General of Foreign Trade, from time to time.	Ecological and environmental reasons	prohibited
Red Sanders wood in any form, whether raw processed or unprocessed but excluding such value-added products of Red Sanders Wood as specified and subject to the conditions laid down in Schedule 2 Appendix 4 of the book titled "ITC(HS) Classifications of Export and Import Items"	Ecological and environmental reasons	prohibited
Sea shells of the following species: (i) Trochus niloticos (ii) Turbo species (iii) Lambis species (iv) Tridacua gigas (v) Xancus pyrus	Ecological and environmental reasons and for the conservation of exhaustible natural resources	not prohibited

a Except albino budgerigars, budgerigars, Bengali finches, white finches, and zebra finches, which may be exported subject to preshipment inspection; and java sparrows, which may be exported under licence (Notification No. 25 (RE-2000)/1997-2002, 24 July 2000).

Source: WTO (1998), *Trade Policy Review – India;* and Ministry of Commerce (1997), *Export-Import Policy 1997-2002,* and amending notifications up to September 2001.

(b) Export restrictions

75. Exports of a number of products are restricted and may be exported only if a licence is obtained.[88] The licences are issued by the Directorate General of Foreign Trade on the approval of its Export Facilitation Committee. The list of restricted items (Table AIII.1), includes cattle, camels, fertilizers, cereals, groundnut oil, and pulses.

76. Export restrictions on hides and skins have been lifted, but exporters of these products are required to register the export contracts (indicating the price, quantity etc.), with the Council for Leather Exports or with the Marine Products Export Development Authority (MPEDA) for fish hides and skins.[89]

(c) Export quotas

77. Export quotas may be notified from time to time by the Director General of Foreign Trade. At present, it appears that export quotas are maintained for: onions[90]; whole and infant milk; pure milk; butter (unless exported as branded products in consumer packs not exceeding 5 kg.); wheat and wheat products; coarse grains; brown seaweed and agarophytes, excluding G-adulis of Tamil Nadu coast origin in processed form; sandalwood oil; and cotton yarn. Export quotas for sugar, powdered milk, ghee, and peacock tail feathers have been removed.

(vi) Voluntary restraints and surveillance

78. India maintains restrictions on exports of textiles and clothing under the Agreement on Textiles and Clothing. Indian exporters' utilization of quotas in these two markets has in some instances been low, for reasons that are unclear. One possible reason is India's high production costs.[91] Another possible reason may be preferential market access accorded to other exporting countries under regional or bilateral trade agreements (Chapter IV(3)(ii)).

(vii) Measures maintained by importing countries

79. Exports from India are currently subject to 40 anti-dumping and 13 countervailing measures, as notified to the WTO.[92] According to a study carried out by the Department of Commerce, several exports face non-tariff measures in India's main markets. The products concerned include: agricultural products such as spices, tea, tobacco, meat and poultry, groundnuts, floriculture, cereals and cereal products, fresh fruit, dairy products, and marine products (mainly for SPS/TBT and tariff rate quota reasons); textiles and clothing products (anti-dumping duties); chemical and related products (registration requirements, quantitative restrictions, TBT, anti-dumping measures); engineering goods such as steel wire roads, welded carbon quality line pipes, hot rolled lead and bismuth carbon steel products, automobiles, and iron and steel (tariff rate quotas, safeguard and countervailing duties, TBT, government procurement regulations); electronic products (anti-dumping measures); and leather and footwear (SPS/TBT, labour standards, safeguards).[93] A more detailed

[88] Government of India, Notification No. 24 (RE-2000)/1997-2002, 14 August 2001.

[89] Ministry of Commerce and Industry, Notification No. 40 (RE-00)/1997-2002, 20 September 2000.

[90] Onion export quotas are also allocated to individual state trading companies (see section (ix) below).

[91] Panagariya (2002), pp. 279-284. It follows that India may not necessarily be able to expand exports in line with any future relaxation of quotas under the ATC.

[92] Based on the WTO anti-dumping and countervailing database.

[93] See Ministry of Commerce and Industry (2001).

analysis of non-tariff measures facing Indian exports of pharmaceuticals, engineering goods, leather, marine products and mangoes was carried out in a recent study by the Commonwealth Secretariat.[94]

(viii) Duty and tax concessions

(a) Drawback

80. Duty drawback is available under Sections 74 and 75 of the Customs Act 1962. Under Section 75 of the Customs Act, 1962, drawback is permitted for imported inputs used in the manufacture of goods that are exported. The rate of drawback is notified by the Central Government (Ministry of Finance) annually, three months after the Budget is introduced in Parliament. The rates known as "all-industry rates" are calculated on the basis of broad averages of, *inter alia*, consumption of inputs, duties and taxes paid, quantity of wastage, and f.o.b. prices of export products.[95] According to the authorities, the all-industry rates neutralize around 70-80% of the total duty paid on the inputs. If all-industry rates are unavailable or if it is felt that duty drawback provided inadequate compensation for import duty paid on inputs, the exporter may request the establishment of "special brand rates".[96] The special brand rates, according to the authorities, envisage duty neutralization of up to 90-95% of total tax paid on inputs. However, while the all-industry rates are based on average rates of consumption of inputs and rates of duty paid, the special brand rate scheme is product and exporter specific, requiring the detailed submission of proof of duty payments by the exporter.

81. Drawback is also allowed on goods originally imported into India and exported within two years from payment of import duty, under Section 74 of the Customs Act. For goods exported without being used, 98% of the import duty is refunded; for goods exported after use, the percentage of duty refunded varies depending on the period between import and export of the product.[97] Duty forgone from drawback has risen from Rs 36.6 billion in 1997/98 to Rs 43.2 billion in 2000/01.

(b) Other duty and tax concessions

82. To reduce or remove the anti-export bias inherent in the system of indirect taxation and to encourage exports, several schemes have been established allowing importers to benefit from tariff exemptions, especially on inputs. The schemes are meant either for specific industries or users (the end-use scheme). Some of these programmes provide customs duty exemptions or concessions for inputs such as the advance licence and Export Promotion Capital Goods (EPCG) schemes, while others provide import duty rebates on imported inputs on an ex post basis such as the Duty Entitlement Passbook (DEPB) and Duty Free Replenishment Certificate (DFRC) schemes. Several schemes are also accompanied by specific export obligation (Table III.7). With the exception of drawback, these schemes are generally administered by the Directorate General of Foreign Trade in the Ministry of Commerce and Industry. The Ministry of Finance also administers the Income Tax

[94] Commonwealth Secretariat (2001).

[95] The drawback consists of the "customs allocation", which includes the basic customs duty rate and the special additional duty, and the "central excise allocation", which includes the additional duty and the excise duty on locally produced inputs.

[96] Central Board of Excise and Customs, *Duty Drawback*, [Online]. Available at: www.cbec.gov.in/cae/customs/dbk-schdule/dbk-mainpg.htm, [20 July 2001].

[97] The rates range from 85% of import duty for goods that remain in the country for up to six months, to 30% for goods that remain in the country for between 30 and 36 months; drawback under this provision is not allowed for wearing apparel, tea chests, exposed cinematographic films passed by the Board of Film Censors in India, unexposed photographic films, paper and plates and x-ray films, and for cars that have been used for over four years. (Notification No. 19/65–Customs, 6 February 1965).

Exemption Scheme which is provided to exporters and units based in free-trade zones (section (x) below).

83. Over the years, it appears that an increasing number of exporters have made use of these schemes. It is not clear whether they have been successful in boosting Indian exports. Data provided by the authorities show that the share of exports qualifying for these schemes as a share of total exports has risen steadily, from around 37% in 1997/98 to 71% in 1999/00; but India's exports themselves accounted for only around 8.6% and 8.2% of GDP during these two years.[98] Duty forgone as a result of these schemes also rose, from some Rs 89 billion in 1997/98 to around Rs 173 billion in 2000/01 (from around 22% of customs revenue to around 35%) although the authorities point out that as the EPZs are duty-free enclaves, in real terms no duty is forgone.[99] Instead, it has been suggested that an increase in the exports to GDP ratio from around 5% in 1990 to 8% at present, may be due more to liberalization policies pursued since 1991 than to the export promotion schemes themselves.[100] A study presented recently by an advisory body to the Planning Commission argues that the multiplicity of such export promotion schemes makes administration of the schemes difficult and time-consuming.[101]

Table III.7
Drawback and other concessional imports, 2001/02

Scheme	Eligibility	Concessions	Performance requirements
Duty drawback	All exporters	Refunds customs duty paid on imports of inputs used in manufacture of goods subsequently exported; based on industry average drawback rates	n.a.
Brand rate fixation	Manufacturer-exporters	Provides drawback for individual exporters on particular brands	n.a.
End-use tariff	Range of industries and other users	Concessional rates of duty on certain imports	n.a.
Export promotion capital goods (EPCG)	Manufacturer-exporters with or without supporting manufacturer/vendor, merchant exporters tied to supporting manufacturers and service providers	5% duty on capital good imports, including jigs, fixtures, dies, moulds and spares subject to export obligation	Export obligation of five times the c.i.f. value of capital goods (on f.o.b. basis) or four times the c.i.f. value of capital goods on NFE basis to be fulfilled within eight years from grant of licence[a]
Duty exemption schemes			
- Advance licence	Manufacturer-exporter and merchant exporter	0 duty on imports of inputs for production of exports	Export obligation on the basis of published input-output norms

Table III.7 (cont'd)

[98] The schemes included in this data are: advance licence, advance intermediate licence, special imprest licence, DEPB, and EPCG.

[99] Data on duties forgone are available for advance licence, export-processing zones, export-oriented units, EPCG, special imprest licence, and DEPB

[100] Panagariya (2000). The paper goes on to argue that the correction of a distortion (anti-export bias in this case) by another distortion (export promotion schemes) is not preferred to leaving the original distortion in place as the two distortions are likely to become additive due to rent seeking and corruption, while the introduction of the "corrective" distortion will eliminate the pressure to remove the original distortion.

[101] Planning Commission (2001b).

Scheme	Eligibility	Concessions	Performance requirements
- Advance licence for intermediate supply	Manufacturer supplying goods to final exporter/deemed exporter holding another advance licence	0 duty on imports of inputs required for production of exports	Export obligation on the basis of published input-output norms
- Advance licence for deemed export	Main contractor or sub-contractor	As above	Export obligation on the basis of published input-output norms
Duty remission schemes			
- Duty free replenishment certificate (DFRC)	Merchant-exporter or Manufacturer-exporter for the import of inputs used in the manufacturer of goods	Post-export remission of duty (basic and special additional duty but not additional duty which is equal to excise duty) on imported inputs used for manufacture of export products	Duty reimbursed as a percentage of exports; minimum value addition of 33% based on SION published inputs used for exports may be replenished
- Duty entitlement passbook scheme (DEPB)	As above	Exporter may apply for credit on import duty as a certain percentage of the f.o.b. value of exports (no entitlement to drawback)	Duty reimbursed as a percentage of exports
Annual Advance Licence	Manufacturer exporter with export performance of Rs 1 crore in the preceding year	Exporters meeting eligibility requirements entitled to annual advance licence of 200% of the average f.o.b. value of exports in the preceding licence year	n.a.
Deemed exports	Goods manufactured in India supplied against an Advance Licence DFRC supplied to EOUs or units located in EPZs, SEZs, STPs or EHTPs; EPCG licence holders; to projects financed by multilateral or bilateral agencies	Advance Licence for intermediate supply or for deemed export, refund of Terminal Excise Duty and deemed exports drawback	n.a.
Diamond, gem and jewellery export promotion			
- Replenishment licence	Exporters of gems and jewellery	Duty-free licence for import of inputs post export at c.i.f. between 55% and 95% of the f.o.b. value of imported inputs to be used in specified gem exports (Appendix 30A)	Duty reimbursed as a percentage of exports
- Gem replenishment licence	Post-export imports of rough diamonds, precious, semi-precious and synthetic stones and pearls, and empty jewellery boxes.	Licence valid for 18 months	Duty reimbursed as a percentage of exports
- Diamond imprest licence	Importers of rough diamonds	Licence valid for import of rough diamonds equal to the best export performance of cut and polished diamonds during preceding three licensing years or for import of cut and polished diamonds of up to 5% of the export performance of the preceding year of cut and polished diamonds for status holders	Export obligation of inverse ratio of 65% of replenishment within five months of clearance of imports by Customs[b]

Table III.7 (cont'd)

Scheme	**Eligibility**	**Concessions**	**Performance requirements**
- Bulk licence for rough diamonds	M/s Hindustan Diamond Company Ltd. (HDCL), Mumbai; MMTC Ltd. New Delhi; exporters whose annual average f.o.b. value of export of cut and polished diamonds during the preceding three licensing years has not been less than Rs 0.75 billion; and any overseas company with a branch office in India whose annual average turnover in diamonds during the preceding three licensing years is not less than Rs 1.5 billion	Value of licence shall not exceed 50% of the annual average value of export of cut and polished diamonds made by applicant during preceding three licensing years; licencee may apply for further licence before expiry of bulk licence upon providing proof of supplying rough diamonds of up to 75% of the value of the previous bulk licence	Obligation to supply imports of rough diamonds to a holder of a valid replenishment or diamond imprest licence, an EOU or EPZ, or for export; the sale has to be completed within 12 months from the date of issue of licence or three months from date of import whichever is later
- Schemes for gold, silver, platinum jewellery	Exporters of gold/silver/platinum jewellery and articles thereof	Essential inputs may be purchased from nominated agencies (MMTC Ltd., Handicraft and Handloom Export Corporation, State Trading Corporation, Project and Equipment Corporation of India and any agency authorized by Reserve Bank of India) at 0 duty rates	n.a.
Export oriented units (EOUs)	Units involved in manufacture, services, trading, repair, remaking, reconditioning, re-engineering, including making of gold, silver, platinum jewellery and articles thereof, and agriculture, undertaking to export their entire production of goods and services	0 duty on imports of all goods required for its activities (except basmati paddy/brown rice); imports from the domestic tariff area (DTA) exempt from Central Excise Duty, reimbursement of Central Sales Tax and Central Excise Duty on bulk tea, duty paid on fuels or any other goods from the DTA; and discharge of export performance for supplier. Income tax exemptions under Sections 10A and 10B of the Income Tax Act	Minimum export obligation for a period of five years ranging from US$0.25 million or three times the c.i.f. value of imported capital goods, whichever is higher, to US$3.5 million or three times the value of imported capital goods, whichever is higher for the manufacturing sector; US$0.5 million or three times the c.i.f. value of imported capital goods whichever is higher for all services except IT enabled services; and US$1 million or three times the c.i.f. value of imported capital goods, whichever is higher for jewellery, trading and all other sectors. Minimum NFE obligations are also in place[a]
Export Processing Zones (EPZs)	As above	As above	As above
Agricultural Export Zones	Exporters of products in the agriculture and allied sectors.	As for EPCG; imports of inputs including fertilizers, pesticides, insecticides and packing material under Advance Licence/DFRC/DEPB schemes.	As for SEZs, exporters of agricultural products may also obtain recognition as Export House, Trading House, Star Trading House and Super Star Trading House if stipulated export and NFE performance levels are achieved[a, c]

Table III.7 (cont'd)

Scheme	Eligibility	Concessions	Performance requirements
Special Economic Zones (SEZs)	Manufacture of goods and rendering of services, production, processing, assembling, trading, repair, remaking, reconditioning, re-engineering including making of gold, silver and platinum jewellery, and articles thereof.	0 duty on imports; imports from the DTA exempt from Central Excise Duty, reimbursement of Central Sales Tax and Central Excise Duty on bulk tea, duty paid on fuels or any other goods from the DTA; and discharge of export performance for supplier.	No minimum export performance. Positive NFE requirement[a]
Software technology parks		Same as above	As for EOUs
Electronic hardware technology parks (EHTPs)		Same as above	As for EOUs
Export Houses, Trading Houses, Star Trading Houses, Super Star Trading Houses	Merchant as well as Manufacturer exporters; service providers; EOUs; units located in EPZs, including agricultural export zones, SEZs, Electronic Hardware Technology Parks and Software Technology Parks provided they meet certain prescribed export and foreign exchange earnings levels	Special Import Licence (abolished on 1 April 2001)	A range of prescribed export performance levels[d]

n.a. Not applicable.

a NFE is defined as the f.o.b. value of exports minus the c.i.f. value of all imported inputs, capital goods, and payments made in foreign exchange for royalties, fees, dividends, interest on external borrowings during the first five year period.

b For example, if the licence is issued for a c.i.f. value of US$65 the f.o.b. value of the export obligation shall be US$100.

c Export performance ranges from Rs 40 million average f.o.b. value during the preceding three licensing years and Rs 60 million during the preceding licensing year for export houses; Rs 200 million and Rs 300 million respectively for trading houses; Rs 1 billion and Rs 1.5 billion, respectively for star trading houses and Rs 3 billion and Rs 4.5 billion respectively for super star trading houses. Average NFE earnings during the preceding three licensing years and during the preceding licensing year range from Rs 30 million and Rs 50 million, respectively for export houses; Rs 150 million and Rs 250 million respectively for trading houses; Rs 750 million to Rs 1.25 billion respectively for star trading houses; and Rs 2.25 billion and Rs 3.75 billion respectively for super star trading houses.

d Export performance ranges from Rs 150 million average f.o.b. value during the preceding three licensing years and Rs 220 million during the preceding licensing year for export houses; Rs 750 million and Rs 1.1 billion respectively for trading houses; Rs 3.75 billion and Rs 5.6 billion respectively for star trading houses and Rs 11.25 billion and Rs 16.80 billion respectively for super star trading houses. Average NFE earnings during the preceding three licensing years and during the preceding licensing year range from Rs 120 million and Rs 180 million respectively for export houses; Rs 620 million and Rs 900 million respectively for trading houses; Rs 31.20 billion and Rs 45 billion respectively for star trading houses and Rs 93.70 billion and Rs 135 billion respectively for super star trading houses.

Source: Ministry of Commerce (1997), *Export Import Policy 1997-2002*.

(c) Export subsidies

84. While India provides indirect subsidies for exports, including exemptions from tax and import duty (section (b) above), it does not provide direct subsidies for exports.

(ix) State-trading

85. According to its WTO notification, India grants export privileges to state trading companies for certain agricultural and minor forest produce grown by large numbers of small farmers or in tribal areas, to ensure better marketing, to provide protection from fluctuations in price, and to ensure a steady domestic supply of these products. Other products such as kerosene and liquified petroleum gas (LPG), which are used as domestic fuels and therefore require a steady domestic supply, must also be exported through state trading companies.[102] There have been some changes to the list of products

[102] WTO document G/STR/N/7/IND, 8 October 2001.

whose export is subject to state-trading. Since 1998, exports of some petroleum products, such as aviation turbine fuel, bitumen, and high speed diesel, have been removed from the list, while iron ore products manufactured by Kudremukh Iron Ore Company Limited have been added to the list (Table III.8).

Table III.8
Exports subject to state-trading, 1997 and 2002

Products on 1 April 2002	Products on 1 April 1997	State-trading agency
Chrome ore lumps with Cr_2O_3 not exceeding 40%	Same as in 2002	Mineral and Metals Trading Corporation of India Limited (MMTC)
Low silica friable/fine ore with Cr_2O_3 not exceeding 52% and silica exceeding 4%	Same as in 2002	
Low silica friable/fine chromite ore with Cr2O3 from 52-54% and silica exceeding 4%	Not subject to state-trading	MMTC
Gum karaya	Same as in 2002	Tribal Cooperative Marketing Federation of India Limited (TRIFED)
Mica waste (including factory cuttings) and scrap which is obtained by processing mica and which because of size and colour is considered below the specification of processed mica	Mica waste (including factory cuttings) and scrap which is obtained by processing mica and which because of size and colour is considered below the specification of processed mica	MMTC
Iron ore, except: (i) of Goa origin when exported to China, Europe, Japan, South Korea, and Chinese Taipei, irrespective of the Fe content; (ii) iron of Redi origin irrespective of the Fe content; (iii) all iron ore of Fe content up to 64%; (iv) rejects of iron ore chips and the like generated from the manufacturing process after using imported raw material subject to the following conditions: (a) the quantity of export of such rejects shall not be more than 10% of the imported raw materials (i.e. pallets); and (b) the size of the rejected pellets chips (fines) shall be less than 6 mm.	Same as in 2002 except (iv)	MMTC
Iron ore concentrate prepared by beneficiations and/or concentration of low grade iron ore containing 40% or less of iron produced by Kudremukh	Not subject to state-trading	Kudremukh Iron Ore Company Limited.
Iron ore pellets manufactured by Kudremukh Iron Ore Company Ltd. out of concentrates produced by it	Not subject to state-trading	Kudremukh Iron Ore Company Limited.
Manganese ores (excluding lumpy/blended manganese ore with ore more than 46% manganese)	Same as in 2002 except they were previously subject to imports by the MMTC	Manganese Ore India Limited
Mineral ores and concentrates, namely: - Rare earths (including yttrium) ores, concentrates and compounds thereof; - Other minerals containing samerskite; urraniferrous allanite; and radium ores and concentrates; and - Granular sillimanite produced by Indian Rare Earths Limited and Kerala Minerals and Metals Limited	Same as in 2002	Indian Rare Earths Limited and Kerala Minerals Metals Limited

Table III.8 (cont'd)

Products on 1 April 2002	Products on 1 April 1997	State-trading agency
Not subject to state-trading	All grades of bauxite, except calcined bauxite and low grade bauxite with alumina content Al_2O_3 less than 54% of west coast origin	Indian Rare Earths Limited
Niger seeds	Same as in 2002	TRIFED; the National Agricultural Cooperative Marketing Federation of India Limited (NAFED), National Dairy Development Board (NDDB), the Madhya Pradesh State Cooperative Oilseeds Growers Federation Limited, and the Karnataka State Agricultural Produce Processing and Export Corporation
Onions (all varities other than Bangalore Rose and Krishnapuram Onions)	Same as in 2002	NAFED, National Cooperative Consumers' Federation of India Ltd., Andhra Pradesh State Trading Cooperation, Spices Trading Cooperation Ltd., Maharashtra State Agriculture Marketing Board (MSAMB) and Gujarat Agro Industries Corporation (GAIC)[a]
- Bangalore Rose Onion		Karnataka State Cooperative Marketing Federation Ltd.
- Krishnapuram Onion		Andhra Pradesh Marketing Federation
Petroleum products[b,c]: - Crude oil	Petroleum products, namely: - Aviation turbine fuel; - Bitumen (asphalt); - Crude oil; - Furnace oil - High speed diesel; - Kerosene; - Liquefied petroleum gas (LPG); - Motor spirit; - Raw petroleum coke; and - Naphtha	Indian Oil Corporation Limited

a Government of India, Ministry of Commerce, Notification No. 37 (RE-99) 1997-2000, 1 December 1999. Exports of onions are allowed through other state-trading agencies as notified from time to time by the Director General of Foreign Trade.
b Government of India, Ministry of Commerce, Notification No. 10 (RE-98)/1997-2002, 22 July 1998.
c Liquified petroleum gas (LPG) and kerosene were removed from the list of products subject to state-trading in the Exim Policy 2002-2007 (Ministry of Commerce (2002), *Export-Import Policy 2002-2007, Schedule II – Export Policy*).

Source: WTO (1998), *Trade Policy Review – India*; Export Import Policy, 1997-2002; WTO document G/STR/N/7/IND, 8 October 2001; and Ministry of Commerce Notifications.

86. Since the last Review of India, exports by state trading companies have increased in value, from 2.9% of merchandise exports in 1996/97 to 5.3% in 2000/01 (some Rs 105 billion), of which petroleum products accounted for 79%.[103]

(x) Free-trade zones

87. India has attempted to encourage exports through the establishment of free-trade zones such as export processing zones (EPZs), export oriented units (EOUs) and, more recently, special-

103 Based on WTO document G/STR/N/7/IND, 8 October 2001.

economic zones (SEZs). EPZs were first established in India in 1965.[104] These free-trade zones (except for EOUs) provide infrastructure facilities, including land, power, and water, at low rates, and telecommunication facilities, as well as on-the-spot customs clearance for imports and exports. In addition, a wide range of incentives are provided, including exemption from payment of customs duty on imports of raw materials, capital goods, and consumables, exemption from payment of central excise tax on goods procured from indigenous sources, income tax deductions for new units up to 2010, reimbursement of central sales tax paid on goods procured locally, and permission to sell a share of their output in the domestic tariff area (DTA) subject to the payment of duties.[105] With the creation of the SEZs in 2001, several EPZs have been converted into SEZs (see below). The EPZs, SEZs and EOUs include a range of industries, such as electronics, engineering items, chemicals and allied products, gems and jewellery, textiles and clothing, agriculture and forest products, plastics and rubber products. It is estimated that around 700 units are currently in operation in the EPZs.

88. To encourage exports of agricultural products, and to improve the rural agri-based economy, the Government established agricultural export zones in 2001. The agricultural export zones, which will include production of all agricultural and allied products, will be managed by state governments. All units established under the scheme will have access to the EPCG programme, including concessional import tariff rates of 5% for capital-good inputs. Units set up in the zones will also be eligible for export, trading, "star trading", and "super star" trading house status, depending on the value of their exports.

89. The export oriented unit (EOU) scheme was first introduced in 1981 and provides essentially the same facilities as for the EPZs, but with a wider choice for location of the units. With the exception of infrastructure facilities, EOUs enjoy essentially the same incentives as EPZs and SEZs. As of March 2001, there were an estimated 1,536 EOUs operating in India, mainly involved in exports of textiles and yarn, food processing, electronics, chemicals, plastics, granite, and minerals/ores; the value of exports by the EOUs has grown steadily, from Rs 102.8 billion in 1997/98 to a projected Rs 159 billion in 2000/01 (relatively unchanged at some 8% of total exports).[106] Duty forgone has risen, from Rs 20 billion in 1997/98 to around Rs 40 billion in 2000/01, although as stated above, the authorities maintain that as EOUs/EPZs/SEZs are duty-free enclaves under Customs supervision, no duty is forgone in real terms.

90. Although the Government has continued to set up schemes to encourage exports, there is little evidence to suggest that they have been successful in boosting exports. While the value of exports from the EPZs has increased in absolute terms from some Rs 48.2 billion in 1997/98 to a projected Rs 86 billion in 2000/01, their share of total exports has risen only slightly (from 3.7% in 1997/98 to 4.2% in 1999/00)[107]; duty forgone has also risen slightly from Rs 12 billion in 1997/98 to Rs 12.2 billion in 2000/01. It has been suggested that sluggish exports are partly because some EPZs have accounted for a large share of the total export earnings of the EPZs, while the share of others has fallen; this superior export performance may be related to infrastructural and locational advantages provided by some of the EPZs rather than the incentives themselves.[108] In addition, in light of the Government's announcement in the 2000/01 Budget of a phased withdrawal of export incentives, it has been suggested that incentives given to EPZs and EOUs should also be withdrawn in a similar

[104] The first export-processing zone was established at Kandla, Gujarat in 1965, followed by the Santa Cruz Electronics export-processing zones in Santa Cruz, Maharashtra in 1974.

[105] Tax holidays were increased from five to ten years in 1999. This was changed, however, to a deduction from profits and gains with effect from 1 April 2001.

[106] Ministry of Commerce and Industry (2001a) and updates provided by the authorities.

[107] Ministry of Commerce and Industry (2001a) and updates provided by the authorities.

[108] Kundra and Sharan (2000).

phased manner.[109] The authorities maintain that the exemptions provided should not be termed incentives, as they are put in place to neutralize the incidence of duties on the inputs used in the products exported.

91. Special economic zones (SEZs) were established in the Export Import Policy announced in 2000, and may be set up for the manufacture of goods and rendering of services, assembling, trading, repair, remaking, and reconditioning[110]; they will receive more attractive incentives than those accorded to the EPZs. Existing EPZs may also be converted into SEZs through a notification issued by the Ministry of Commerce and Industry.[111] To date, the Kandla, Santa Cruz Electronics, Cochin, and Surat EPZs have been converted into SEZs.[112] According to the authorities, exports from SEZs are expected to lead to a "quantum jump" in exports, for the following reasons: the size of the SEZs, which is expected to be significantly larger than the size of existing EPZs[113]; they are expected to be fully integrated and provide improved infrastructure; and their single window clearance facilities.[114] In the Exim policy 2002-2007, it was announced that Overseas Banking Units (OBUs) would be established in the SEZs (Chapter IV(4)(iv)(b).[115]

92. Other schemes to encourage exports include bonded warehouses, and export, trading, and super star trading houses. The trading house status is granted to exporters that have achieved the prescribed export-performance level subject to the conditions laid down in the Export Import Policy.

(xi) Performance requirements

93. A previous requirement of "dividend balancing" for 22 consumer-goods industries was discontinued in July 2000.[116] However, balancing requirements between the actual c.i.f. value of imports by automobile producers in India and exports of automobiles appear to be maintained. India's policy relating to the import of CKD/SKD kits/components was the subject of questions raised by Japan and the United States in the Committee on Trade-Related Investment Measures.[117] Following consultations with India, the United States and the European Communities requested the establishment of a WTO panel, alleging violations of Articles III:4 and XI:1 of GATT and of

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[109] It has also been pointed out that since EOUs need to be defined as "hundred percent export oriented undertakings" by a Board appointed by the Central Government, this requirement may be biased against undertakings that export almost all of their output but have not been approved by the Board (Planning Commission, 2001b).

[110] Ministry of Commerce and Industry (2001b), Chapter 9-A.

[111] Existing EPZs may be converted into SEZs by the Ministry of Commerce and Industry through issue of a notification. EPZs not wishing to convert to SEZs may either convert to EOUs or "de-bond", but must physically move out of the SEZs (9-A.24).

[112] In addition, approval has been given for the establishment of SEZs at Positra (Gujarat) and by the State Governments at Dronagiri in Mahrashtra, Paradeep and Gopalpur in Orissa, Kulpi and Salt Lake in West Bengal, Bhadohi (Greater Noida) and Kanpur in Uttar Pradesh, Kakinada in Andhra Pradesh, Nanguneri in Tamil Nadu, Indore in Madhya Pradesh, and Hassan in Karnataka.

[113] Some of the approved SEZs, for example, will be set up over a proposed area of between 4,500 hectares and 20,000 hectares; this is considerably larger than the size of the current EPZs, which ranges from 100 to 300 acres.

[114] Ministry of Commerce and Industry (2001a).

[115] Ministry of Commerce and Industry (2002).

[116] Ministry of Commerce and Industry, *Press Note No. 7 (2000 series)*, [Online]. Available at: http://indmin.nic.in/vsindmin/policy/ changes/press7_00.htm [24 July 2001].

[117] WTO documents G/TRIMS/W12, 9 April 1998 and G/TRIMS/W/13, 6 April 1998. India's answers to the questions raised are contained in WTO documents G/TRIMS/W/15, 30 October 1998 and G/TRIMS/W/16, 30 October 1998.

Articles 2.1 and 2.2 of the TRIMs Agreement.[118] The panel found on 21 December 2001 that India had acted inconsistently with its obligations under Articles III:4 and XI of the GATT 1994, and recommended that the WTO Dispute Settlement Body request India to bring its measures into conformity with its obligations under the WTO Agreements.

94. Export-performance requirements are also specified in export-promotion schemes providing import concessions (section (viii)(b) above).

(xii) Export finance, insurance, and guarantees

(a) Export finance

95. In addition to their priority-sector lending requirements, domestic banks are required to allocate 12% of total annual lending for exports. Export credit may be provided either in rupees or in one of the convertible foreign currencies. The credit in rupees is provided at concessional rates of interest announced by the RBI; these concessional rates help to mitigate the high costs of export finance owing to India's high real interest rates (Chapter I(1)(i)). The credit in foreign currency is provided at internationally competitive interest rates. Exporters may borrow money in either rupees or in foreign currency, whichever is more beneficial to them. Under this arrangement, until 4 May 2001 banks were required to provide export credit at rates ranging from 10-13% per annum; as of 5 May 2001, they have been directed by the Reserve Bank of India to charge a maximum rate of interest of 1.5 percentage points below the prime lending rate.[119] The ceiling rate of interest on export credit was reduced further by one percentage point across the board, effective 26 September 2001 to 31 March 2002.

(b) Export insurance and guarantees

96. The Export Credit Guarantee Corporation of India Limited (ECGC), a Government of India public-sector undertaking under the administrative control of the Ministry of Commerce and Industry, was established in 1957 under the name of the Export Risk Insurance Corporation Limited. It provides insurance to exporters against the risk of non-realization of export proceeds for political or commercial reasons and a range of guarantees for banks and other financial institutions to enable them to extend credit facilities to exporters on a "liberal" basis.[120]

(xiii) Export promotion and marketing assistance[121]

97. In addition to export assistance through concessional tariff measures, the Government, primarily through the Ministry of Commerce, provides marketing development assistance to facilitate promotion of exports of Indian products. The India Brand Equity Fund (IBEF) Trust, which was established in 1996, continues to assist the promotion of Indian brands and to project India as a reliable supplier of goods and services of world class quality. The Trust also provides medium-term soft loans to encourage the promotion of Indian brands of products that have achieved world class quality and performance standards. The Department of Commerce has also established a Marketing Development Assistance Scheme, which helps exporters to explore overseas markets and to promote their exports through recognized product-specific Export Promotion Councils, Commodity Boards,

[118] WTO documents WT/DS/175/4, 18 May 2000 and WT/DS/146/2, 13 October 2000.
[119] Department of Banking Operations and Development (DBOD), Circular No. Dir.BC.108/13.3.00/ 2000-01, Reserve Bank of India, 18 April 2001.
[120] Ministry of Commerce and Industry (2001a).
[121] Unless otherwise indicated, this section is based largely on Ministry of Commerce and Industry (2001a).

and Export Development Authorities. To supplement this scheme, the Market Access Initiative (MAI) was launched in 2001/02 to promote potential Indian exports in selected countries by, *inter alia*, supporting the collection of marketing intelligence data and helping exporters to display their products. The Government spent Rs 400 million and Rs 145 million under the Marketing Development Assistance Scheme and the MAI, respectively.

98. There are also a number of agencies involved in export promotion. The main trade promotion agency under the Ministry is the India Trade Promotion Organization (ITPO), which organizes trade fairs and exhibitions in India and abroad, arranges meetings between buyers and sellers, and provides information on products and markets. In 2000/01, the ITPO participated in 47 events abroad, including in Europe, America, and South-East Asia. Other institutional arrangements for promoting exports include the Indian Institute of Foreign Trade (IIFT) and the National Centre for Trade Information (NCTI). The former, established in 1964, provides training to executives, and conducts market and commodity surveys. The NCTI was registered as a company under the Indian Companies Act in 1995, and includes representatives from, *inter alia,* the ITPO, chambers of commerce, industry and trade, export promotion councils, and commodity boards. It conducts market surveys and provides information on trade opportunities abroad. There are also a number of export promotion councils and product-specific commodity boards, which are involved in marketing assistance for exporters.

(4) MEASURES AFFECTING PRODUCTION AND TRADE

(i) Industrial policy

(a) Industrial licensing

99. Traditionally a major instrument of India's industrial policy, licensing has been used to regulate, *inter alia,* the scale, technology, and location of investment projects. While its scope has been reduced markedly as a result of the 1991 reforms, industrial licensing is still required for: industries reserved for the public sector; industries subject to compulsory industrial licensing; industries subject to locational restrictions; and industries manufacturing items reserved for the small-scale sector (see below). In general, the number of industries subject to industrial licencing has been reduced since the previous Review in 1998. The rationale for such licensing, according to the authorities, is to regulate capacity addition and location, based on certain strategic and industrial development considerations. Compulsory licensing is maintained at present mainly for environmental, safety, and strategic reasons, along with the need to maintain the viability and strength of the small-scale units.

100. Three industries are currently reserved for the public sector (down from six in 1998): defence aircraft and warships, atomic energy, and railways.[122]

101. Undertakings subject to compulsory industrial licensing are required to submit an application to the Secretariat of Industrial Assistance (SIA) at the Department of Industrial Policy and Promotion of the Ministry of Commerce and Industry. According to the Department, applications for industrial licences are granted within six weeks. Whether a licence is granted depends on: the sectoral policy of the Ministry concerned; recommendations made by state governments regarding location of the particular industry; and security considerations. Industrial undertakings exempt from industrial licencing need to file an Industrial Entrepreneur Memoranda (IEM) with the SIA. A Carry-on-Business (COB) Licence is required if an industry is put on the list of industries subject to compulsory industrial licensing. A COB is also required when a small-scale unit exceeds the prescribed small-

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

scale limit of investment and continues to manufacture small-scale reserved item(s). The application for COB licence should be submitted to the SIA. The number of industries subject to compulsory licensing has also been reduced; sugar, coal and lignite, and petroleum (other than crude) and its distillations have been liberalized as have 19 out of 22 hazardous chemicals (Table III.9).

Table III.9
Industries subject to compulsory industrial licensing in India, November 2001

Industry	HS Classification
Distillation and brewing of alcoholic drinks	22.03, 22.04, 22.05, 22.06, 22.08
Cigars and cigarettes of tobacco and manufactured tobacco substitutes	24.02
Industrial explosives, including detonating fuses, safety fuses, gun powder, nitrocellulose, and matches	36.01 to 36.06
Hazardous chemicals	281119.01, 281210.01, 292910.09
Drugs and pharmaceuticals (according to Drugs Policy)	Items not classified under HS: - Bulk drugs produced by the use of re-combinant DNA technology and bulk drugs requiring in-vivo use of nucleic acids as the active principles. – Formulations based on use of specific cell or tissue targeted formulations.
Electronic aerospace and defence equipment (all types)	87.10, 88.01 to 88.05, 8906.01, 93.01 to 93.07

Source: WTO (1998), *Trade Policy Review – India*; Ministry of Commerce and Industry, SIA (2001), *Manual on Industrial Policy and Procedures in India*; and information provided by the authorities.

102. Locational restrictions apply to industries that are to be located in cities with a population of more than a million (as per the 1991 census); the list of locations to which these restrictions apply was reduced to 21 cities in 1991. These restrictions, according to the authorities, are due to environmental and urban area congestion considerations. Firms must be located at least 25 km. away from the "Standard Urban Area" limits of a city, unless they are to be located in an area designated as an "industrial area". Electronics, computer software, and printing (and any other industry defined as a non-polluting industry) are exempt from such locational restriction, as are small-scale industries (SSIs). The location of industrial units is also regulated by local zoning and land-use regulations, as well as by environmental regulations. Entrepreneurs are required to obtain pollution control and environmental clearances from the Ministry of Environment prior to setting up an enterprise. The Environment Protection Act 1986 lists 29 industries that require such clearance.[123] Small-scale sector firms (i.e. with investment of less than Rs 10 million) are exempt from obtaining environmental clearance.

103. Between January 1998 and October 2001, 286 industrial licences (including nine COB licences) were issued; one application by an Indian company to manufacture industrial explosives was rejected on security grounds. The sectors concerned were textiles, chemicals (other than fertilizers), leather goods, transportation industry, and industrial machinery.

[123] This list includes industries such as petro-chemical complexes, petroleum refineries, cement, thermal power plants, bulk drugs, fertilizers, dyes, paper, etc. However, if investment is less than Rs 500 million, such clearance is not necessary, unless it is for pesticides, bulk drugs and pharmaceuticals, asbestos and asbestos products, integrated paint complexes, mining projects, tourism projects of certain parameters, tarred roads in Himalayan areas, distilleries, dyes, foundries, and electroplating industries (Ministry of Commerce and Industry, SIA (2001)).

(b) Small-scale industries

104. Small-scale industries (SSIs) are defined as firms with investment in plant and machinery of less than Rs 10 million. This definition was revised in 1999 to lower the investment ceiling, which stood at Rs 30 million in 1998.[124] For high-technology and export-oriented industries, such as hand tools and knitwear, this ceiling is currently Rs 50 million. SSIs presently manufacture 799 items (at HS six-digit) reserved exclusively for the SSI. However, these 799 items can also be manufactured by medium/large-scale units, if they apply for and obtain an industrial licence. In such cases, a minimum export requirement of 50% must be met.[125] As shown in Table III.10, there are 28 major industry groups in the SSI. The number of items reserved for the SSI is reviewed regularly. The Minister of Finance recently announced in the Budget that over 50 items of knitwear, certain agricultural implements, auto components, some chemicals and drugs will be de-reserved.[126]

Table III.10
Items reserved for the small-scale sector

Product	Number of items	
	1998[a]	2001[b]
Food and allied industries	12	12
Textile products including hosiery	16	16
Articles of silk and man-made fibre hosiery[c]	6	15
Wood and wood products	14	14
Paper products	30	30
Leather and leather products including footwear	18	9
Rubber products	22	21
Plastic products	15	15
Injection moulding thermo-plastic products (1)[c]	44	42
Injection moulding thermo-plastic products (2)[c]	7	7
Chemicals and chemical products laboratory chemicals and reagents	62	62
Natural essential oils	7	7
Organic chemicals, drugs and intermediates[c]	37	37
Other Chemicals and chemical products	76	76
Glass and ceramics	3	3
Ceramic table wares and allied items in stone wares semi-vitreous wares and earthen wares[c]	24	24
Mechanical engineering excluding transport equipment	201	193
Electrical machines, appliances & other apparatus including electronics electrical apparatus	47	47
Electronic equipment and components[c]	9	9
Transport equipment boats and truck body building[d]	3	3
Auto parts components and ancillaries and garage equipment[c]	47	47
Bicycle parts, tricycles & perambulators	42	42
Miscellaneous transport equipment[c]	4	4

Table III.10 (cont'd)

[124] However, the term SSI appears to have different meanings for different agencies. The Central Excise Department, distinguishes SSIs on the basis of the annual turnover of the units (up to a maximum limit of Rs 30 million); while the Small Scale Industries Board defines SSIs on the basis of investment in plant and machinery (an upper limit of Rs 1 million).

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

[126] Ministry of Finance (2002b).

Product	Number of items	
	1998[a]	2001[b]
Miscellaneous: mathematical and survey instruments; sports goods; stationery items; clocks & watches	52	52
Others[c]	23	22
Total	**821**	**799**

a WTO (1998), *Trade Policy Review – India*; and changes made by the authorities.
b SID Online information "List of items reserved for exclusive manufacture in small-scale sector". Available at: http://www.laghu-udyog.com/ssiindia/resevex.htm.
c These classifications did not appear in the previous TPR.
d This is listed in the 1998 TPR as transport equipment; boats and truck body parts and others.

Source: WTO (1998), *Trade Policy Review – India;* and SID Online information. Available at: http://www.laghu-udyog.com/ssiindia/resevex.htm [2 October 2001].

105. SSIs accounts for some 40% of manufacturing production in India and over 35% of exports. However, according to a report of the Expert Committee on Small Enterprises (Hussain Committee), the reservation of products for SSIs has crippled growth in several industrial sectors, and restricted exports in many areas (including garments, toys, and leather products). A subsequent study group on the Development of Small Scale Enterprises, constituted by the Planning Commission, suggested in 2001 that the list of sectors reserved for the small-scale sector should be reviewed periodically in light of changing economic conditions. Periodic reviews of the list of items reserved for the sector take place in consultations with stakeholders. As a result of such reviews, 22 items (mainly readymade garments, leather items, and toys) have been removed from the list since 1998. The criteria for reservation include: the nature and employment potential of articles that may be produced economically by ancillary or small-scale industrial undertakings; the possibility of encouraging and diffusing entrepreneurship in industry; the prevention of concentration of economic power; and any other matters considered important by the Statutory Advisory Committee, which takes decisions regarding reservations. SSI reservation has also been an impediment to FDI, since many industries that could otherwise be attractive to foreign investors are not.[127] A maximum of 24% of foreign equity may be invested in the small-scale sector through the automatic investment route. Foreign investment above that limit is subject to approval and a mandatory export requirement of 50% of annual production.

106. The Government's commitment to the SSI sector has been demonstrated repeatedly through the provision of tax relief (i.e. exemption of excise duties), and special credit lines, as well as specific programmes aimed at improving the sector's performance (Table III.11). Several credit schemes have been designed for the SSIs in order ensure a guaranteed flow of funds, which otherwise would be attracted to other, more lucrative, areas. The public sector continues to extend preferences for the purchase of items manufactured by SSIs. The Ministry of Small-Scale Industries and Agro and Rural Industries in its "Mission for the Millennium" stated that all new subsidies to the SSIs should be examined for their WTO compatibility.[128]

[127] IMF (2000).
[128] Ministry of Small Scale Industries and Agro and Rural Industries (undated), *Mission for the Millennium* [Online]. Available at: http//ssi.nic.in/mission20.html [11 October 2001].

Table III.11
Incentives/concessions offered to small-scale industries (SSIs)

Incentives/concessions	Description
Fiscal incentives	Excise duty exemption up to Rs 10 million if total clearances sales do not exceed Rs 30 million.
Credit	Priority sector lending by banks.
	Allocation of funds for the SSI sector: 40% for units with investment below Rs 0.5 million; 20% for units with investment between Rs 0.5 – Rs 2.5 million; and 40% for all other units.
	Credit at concessionary rates for rehabilitation of sick SSI units.
	Credit Insurance Scheme to improve flow of investment credit to SSI units; the scheme is implemented by a Credit Guarantee Fund Trust.
	Credit Linked Capital Subsidy Scheme to upgrade technology was launched in October 2000 providing 12% capital subsidy on projects of technology upgradation in specified products/subsectors.
	Refinance and other schemes provided by the Small Industries Development Bank of India (SIDBI).
	Equity-type support to new/existing projects under the National Equity Fund Scheme (NEF), with project cost of up to Rs 5 million and loans up to Rs 1 million.
	Collateral-free loans by banks of up to Rs 0.5 million.
	Technology Development and Modernization Fund Scheme, operated by the SIDBI, provides for loans at the prime lending rate (PLR); and refinancing at 2% below the prime lending rate (PLR).
	Prime Minister's Rozgar Yojana provides funding for micro enterprises.
Others	Reservation of products for SSI (799 items at present).
	Non-mandatory government purchase (356 items) and price preferences (up to 15%).
	The Integrated Infrastructure Development Scheme to strengthen infrastructural facilities; the scheme is to progressively cover all areas in the country with a 50% reservation for rural areas.
	Infrastructural support to Entrepreneurship Development Institutes set up for training.
	Marketing Development Assistance (MDA) Scheme to provide financial assistance to SSI associations for participating in international fairs, collection of information on marketing and exports, conducting surveys for filing anti-dumping cases etc., programmes on quality awareness, pollution control and Vendor Development Programme.
	Reimbursement of expenses incurred on acquiring ISO 9000 certification of up to 75% of the cost or a maximum of Rs 75,000, whichever is less.
	Cluster Development Programme in collaboration with UNIDO Integration Technology Upgradation and Management Programme (UPTECH) to help modernize the clusters.
	Reimbursement of expenses incurred in acquiring EAN/UCC Registration for bar coding up to 75% of the cost or Rs 11,250, whichever is less.

Source: Ministry of Finance (2001), Union Budget 2001-2002, Budget Speech - Part A [Online]. Available at: http//indiabudget.nic.in/ub2001-02/bs/speech.htm[9 October 2001]; Ministry of Small Scale Industries and Agro and Rural Industries, *Modernisation and Technology Upgradation* [Online]. Available at: http://ssi.nic.in/schtinymod.html [11 October 2001]; Ministry of Small Scale Industries and Agro and Rural Industries, *Annual Report 1999-2000* [Online]. Available at: http://ssi.nic.in/ar1999-2000.html [30 July 2001]; and *SSI Policy 2000, Incentives* [Online]. Available at: http://www.bisnetworld.net/timeis/cgovt/ssiPolicy2000a.html [02.10.2001].

107. "Sickness" in the SSI sector is a concern. Industrial sickness has been caused by, *inter alia*, lack of planning, management deficiencies, inefficient financial controls, and infrastructural constraints. The Reserve Bank of India has issued detailed guidelines for the rehabilitation of "sick" SSI units. These guidelines include the provision of concessions such as: loans for working capital at 1.5% below the prevailing fixed/prime lending rate (PLR); funded interest term loans free of interest[129]; term loan at a concessionary rate of 2% below the document rate (interest rated agreed to

[129] Funded interest term loans are defined as the unpaid interest on term loans (loans restricted to a certain period of time) and cash credit during a period when the SSI incurred continuous cash losses; no interest is charged on the funded loan and the loan is to be repaid within a period not exceeding three years.

and indicated in the document laying out the terms and conditions of the loan); and contingency/loan assistance at concessional rates for working capital.[130]

(c) Exit policies

108. India does not seem to have a bankruptcy law; thus the revival and reconstruction of sick industrial companies is dealt with by the Sick Industrial Companies (Special Provisions) Act, 1985 (SICA) and its amendments. This Act was enacted to detect sick and potentially sick companies and to ensure the adoption of remedies and measures needed to revive and rehabilitate such companies. However, the SICA has itself become a barrier to restructuring because the procedures stipulated in the Act have led to endemic delays. Moreover, the Board for Industrial and Financial Reconstruction (BIFR), a quasi-judicial body established in 1987 to implement the SICA, which is responsible for rehabilitating or winding up companies, is widely criticized for delaying resolutions, and not being able to provide viable schemes for the revival of sick companies in a reasonable short time frame.[131] Thus, the Government constituted a high level committee on law for the revival, reconstruction and/or winding up of sick companies. The Committee's report proposes to, *inter alia*, repeal the SICA, and to amend the Companies Act in order to set up a National Company Law Tribunal, which would be entrusted with the powers and jurisdictions presently exercised by the Company Law Board, the BIFR, the Appellate Authority of Industrial and Financial Reconstruction (AAIFR), and the High Courts. The Government has accepted the Committee's key recommendations, which will be introduced in Parliament during the current session.[132]

109. Under the SICA, a company has to be referred to the BIFR, "if its accumulated losses at the end of any financial year resulted in an erosion of 50% or more of its maximum net worth during the four preceding financial years".[133] By end December 2000, the BIFR had received 4,575 referrals of sick industrial units, of which 3,296 were registered. Of the latter, 7.5% were judged "non-sick", revival schemes were approved for 16.9%, and 25% were recommended to the High Courts for closure.[134] A total of 175 registered referrals involved public-sector enterprises (PSEs) of which rehabilitation and closure was recommended for 25.7% and 20%, respectively (Table III.12).

[130] Where contingency loan assistance is defined as the financial assistance extended to units under rehabilitation in order to meet escalations in expenditure in capital to be incurred under the rehabilitation programme, such assistance can be provided up to a maximum of 15% of the estimated cost of rehabilitation and concessional rates of interest may be offered. Ministry of Small Scale Industries and Agro and Rural Industries (2000).

[131] Report of the High Level Committee on Law relating to Insolvency of Companies [Online]. Available at: http://www.nic.in/dca/comp/insolv-comp.html [17.10.2000].

[132] Ministry of Finance (2001c); Ministry of Law, Justice, and Company Affairs, Department of Company Affairs (undated).

[133] The Sick Industrial Companies Act, 1985, as amended in 1994, Chapter IV, Art 23.

[134] According to the SICA revival schemes refer to: the financial reconstruction of the sick industry, the proper management or take over of the industry, the amalgamation of the industry, the sale or lease of part or the whole of the industry, etc. (The Sick Industrial Companies Act, 1985, Art 18).

Table III.12
Status of sick industry referred to the BIFR (Board for Industrial and Financial Reconstruction)

	Total	Private sector	Public sector
References received	4,575	4,324	251
References registered	3,296	3,121	175
Dismissed as "non-maintainable"	688	657	31
Rehabilitation schemes approved/sanctioned	557	512	45
Declared "no longer sick" out of above	249	241	8
Winding up recommended to the concerned High Court	824	789	35
Net worth became positive during enquiry	35	32	3
Cases dealt with	2,104	1,990	114
Pending cases	1,192	1,131	61

Source: Ministry of Finance (2001a), *Economic Survey 2000-2001*, New Delhi.

(d) Corporate governance

110. An efficient capital market capable of mobilizing savings and channelling them into the most productive uses is essential for successful economic restructuring and long-term development. In this regard, corporate governance is important. A lack, or weakness, of such governance can constitute a major impediment to the establishment of an efficient capital market; studies show a positive correlation between the quality of corporate governance and share prices in the local market[135], which are, in turn, a key determinant of companies' cost of capital. Moreover, inadequate corporate governance could jeopardize other reforms, notably privatization and corporate and financial restructuring.

111. The Companies Act 1956, provides the basic framework for corporate governance in India. Until recently, the Act had proved to be inadequate in ensuring high standards of corporate governance for companies, particularly with regard to transparency and respect of shareholders' rights.[136] Hence, the corporate sector had been characterized by an increasing number of "vanishing" companies, mismanagement, widespread shareholder dissatisfaction, and unethical business practices.[137] The last decade also witnessed the unearthing of several scams including recent price-rigging and other scandals in India's equities markets.[138] Consequently, the Government has taken several steps to improve corporate governance; these include major amendments in 1999 and 2000 to the Companies Act. Further amendments are envisaged in 2002.

112. A Task Force was set up in May 2000 by the Department of Company Affairs (in the Ministry of Law, Justice, and Company Affairs), which is responsible for administering the Companies Act, to explore, *inter alia*, ways of improving corporate governance; the Group's Report was issued in November 2000.[139] Upon the recommendation of the Task Force, in October 2001 the Government

[135] See, for example, Gompers, Ishii and Metrick (2001), p. 29.
[136] See KAR (2001), p. 273.
[137] Ministry of Law, Justice, and Company Affairs (2000).
[138] In April 2001, for example, the SEBI decided to ban three companies bidding for privatized assets from access to Indian capital markets; the bans, which were the penalty for share-price rigging, raised doubts about the privatization process. At around the same time, the SEBI suspended three stock-broking firms for their alleged manipulation of the stock market. (See "Stock market scandal hits India's plans to privatize" *Financial Times*, 24 April 2001; and *The Economist*, 28 April 2001, "India's stockmarkets: Getting tough".
[139] Ministry of Law, Justice, and Company Affairs (2000).

announced its intention to set up an independent and autonomous body, the Centre for Corporate Excellence, to improve corporate governance standards in India.[140]

113. The Ministry of Finance and the Securities Exchange Board of India (SEBI) have also taken steps to remedy poor governance. The SEBI appointed a Committee on Corporate Governance in May 1999 to draw up a code of corporate governance, drawing extensively on international experience.[141] Responding to the recommendations arising out of the Report, the SEBI issued, in February 2000, directions to stock exchanges in India to amend their listing requirements. Some of the requirements to be introduced in a phased manner include: not less than 50% of the Board of Directors of a company consisting of non-executive directors; the annual reports of companies to have a separate section on corporate governance which would include details of the remuneration of directors of the company; and Board procedures including the frequency of Board meetings. In addition, a qualified and independent audit committee is to be set up, which will meet at least three times a year. The Reserve Bank of India has also appointed a Committee to report on governance requirements specific to banks and financial institutions. In an effort to promote corporate governance further, the Government instituted an annual Natural Award for Excellence in Corporate Governance in the 1999/2000 Budget.

114. Among the professions, the Institute of Chartered Accountants of India is the regulator of public auditors, and has issued a number of accounting and auditing standards. The constitution of an independent National Advisory Committee on Accounting Standards has been included in the amending Act of 1999.[142]

115. Usually corporate governance measures are imposed by self discipline and market forces, rather than by legislation and regulation. In India, self-regulation has been somewhat lacking in the area of corporate governance, although industry associations such as the Confederation of Indian Industry (CII) have come up with guidelines for their member companies in the area of governance. In 1998/99 the CII published a Desirable Code of Corporate Governance and some companies have already complied with the code.[143] Some private companies have already significantly improved their governance; indeed, several, mostly in the technology sector, are not only globally competitive, but maintain standards of governance that are world class.[144] Furthermore, investor associations have become more active. The Task Force is nonetheless convinced that the level of non-legislative and non-regulatory intervention is a function of the maturity of the market and the economy. Thus, until acceptable levels of such maturity and market influence are reached, it may be necessary for the Government to support self discipline and self-regulation with appropriate legislative and regulatory support with a provision for review after three years.[145]

[140] Ministry of Law, Justice, and Company Affairs (2000).

[141] Most of the recommendations made by the Committee are mandatory for listed companies. Additional non-mandatory recommendations have also been made by the Committee. It has also been recommended that the SEBI writes to the appropriate regulatory bodies and governmental authorities to incorporate the recommendations in their respective regulatory framework (SEBI (undated), "The Draft Report of the Committee Appointed by the SEBI on Corporate Governance under the Chairmanship of Shri Kumar Mangalam Birla" [Online]. Available at: http://www.sebi.gov.in/report/corpgovern.html [25 October 2001].

[142] Ministry of Law, Justice, and Company Affairs (2000).

[143] Ministry of Law, Justice, and Company Affairs (2000); and SEBI (undated), "The Draft Report of the Committee Appointed by the SEBI on Corporate Governance under the Chairmanship of Shri Kumar Mangalam Birla" [Online]. Available at: http://www.sebi.gov.in/report/ corpgovern.html [25 October 2001].

[144] For example, a major financial institution in need of re-capitalization in order to write off bad debts, became the first Indian lender to reconcile its accounts to U.S. Gaap in March 1999. Subsequently, after a full audit, it raised US$315 million of equity in New York.

[145] Ministry of Law, Justice, and Company Affairs (2000).

(ii) Tax measures and other incentives/subsidies

(a) Taxation and tax measures

116. The Central Government has been making efforts to bring about far-reaching reforms of the direct and indirect tax structures as well as their administration. India's tax system has long been an important instrument of economic policy rather than a mere source of revenue. Although tax rates have often been high, they have not yielded a great deal of revenue because the tax bases tended to be narrow owing to numerous incentives and exemptions, including tax holidays. These measures are in addition to the export assistance described above and direct subsidies discussed in the next section. The tax system has thus constituted a major impediment to the efficient allocation of resources. The complexity of tax laws has allowed tax (as well as customs) officials considerable discretion in interpreting them, giving rise to problems of corruption.[146] A related problem has been the tax system's lack of transparency. However, several measures have been introduced in recent Budgets to broaden the tax base, reduce tax rates and simplify the tax system, especially in the case of commodity taxation.

Indirect taxation

117. Indirect taxes are levied by both central and state governments; they currently account for over 60% of total gross taxes collected (Table III.13). They include a multiplicity of excises as well as a service tax at the central level and various sales taxes at the state level. The structure of these taxes, at both levels of government, has been very complex and therefore difficult to administer, and, until recently, there were wide differences in tax bases and rates between states.

Table III.13
Composition of Centre's gross tax revenues, 1992-03
(Rs billion and per cent)

	Accounts							Revised	Budget
	1992/93	**1995/96**	**1996/97**	**1997/98**	**1998/99**	**1999/00**	**2000/01**	**2001/02**	**2002/03**
Gross tax revenue (Rs billion)	746.4	1,112.2	1,287.6	1,392.2	1,438.0	1,717.5	1,983.2	1,966.9	2,358.0
	(Per cent of gross tax revenue)								
Corporation tax	11.9	14.8	14.4	14.4	17.1	17.9	19.5	19.9	20.6
Taxes on income other than corporation tax	10.6	14.0	14.2	12.3	14.1	14.9	17.8	17.5	18.0
Interest tax	1.0	1.1	1.3	0.9	0.9	0.7	0.2	..	..
Other taxes on income and expenditure	0.2	0.2	0.2	7.1	0.3	0.2	0.2	0.2	0.1
Customs	31.9	32.1	33.3	28.9	28.3	28.2	25.1	21.9	19.2
Union excise duties	41.3	36.1	35.0	34.5	37.0	36.0	35.6	37.9	38.8
Service tax	..	0.8	0.8	1.1	1.4	1.2	1.1	1.8	2.6
Estate duty	0.0	0.0	..	..	..	0.0	..	..	..
Wealth tax	0.6	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.1
Gift tax	0.0	0.0	0.0	0.0	0.0	0.0	..	..	..
Other taxes and duties	0.5	0.5	0.5	0.6	0.7	0.6	0.4	0.5	0.4
Taxes of Union Territories	2.0	0.2	0.2	0.2	0.2	0.2	0.2	0.3	0.2

Table III.13 (cont'd)

[146] Planning Commission (2001b), p. 80.

	Accounts							Revised	Budget
	1992/93	1995/96	1996/97	1997/98	1998/99	1999/00	2000/01	2001/02	2002/03
Less states' share[a]	27.5	26.3	27.2	31.3	27.2	25.3	26.4	26.9	26.0
Income tax	8.1	10.1	10.5	9.7	10.1	9.6	..	..	..
VDIS	..	..	..	5.5	..	..	..	..	..
Union excise duties	19.4	16.2	16.7	16.1	17.2	15.7	..	..	..
Less assignments of UT									
(i) Taxes to local bodies	1.0	..	..	..	..	..	..	..	..
(ii) Surcharge for financing NCCF[b]	..	..	..	..	..	..	..	0.8	0.7
Net Centre's tax revenue	72.4	73.7	72.8	68.7	72.8	74.7	72.8	72.4	73.4

.. Not available.

a The taxes and duties referred to on the Union list are now distributed in the manner laid down by the Constitution (Eighteenth Amendment) Act, 2000 read along with the recommendations of the Eleventh Finance Commission.

b National Calamity Contingency Fund (NCCF).

Source: Data provided by the Indian authorities.

Central taxes

118. Central taxes are levied mainly on domestically manufactured goods, thereby favouring services; this constitutes a potentially important distortion to the domestic allocation of resources. Their bias in favour of imported manufactures, necessitates additional duties levied by the Central Government on imports (section (2)(vii)). Exemptions and other forms of relief are used to mitigate the adverse effects of these taxes on exports. The Minister of Finance has the discretion to make *ad hoc* changes in excise tax rates.[147]

119. However, India is moving gradually towards replacing excise duties with a full-fledged value-added tax (VAT) on manufactured goods. Accordingly, both the number and level of rates have been reduced during the past ten years so that the current central excise rate (referred to as CENVAT) is now 16% and a credit/offset is, in general, given for tax paid on inputs in order to eliminate tax cascading ("tax on tax").[148] While the vast majority of goods are now taxed at the single CENVAT rate of 16%, some eight items are subject to a supplementary special excise duty rate of 16%.[149] Rates on items that were previously exempt from the tax currently attract lower rates of 4% and 8%, with a view to raising them eventually to the CENVAT rate. This convergence of tax rates and the accompanying curtailment of exemptions have reduced the distortions arising from excise taxes and simplified tax administration (thereby making the tax system less susceptible to evasion).[150]

[147] Planning Commission (2001b), p.151.

[148] Until recently, the cascading ("tax on tax") nature such excises was such that they tended to favour imports of goods and discourage exports; the credit for taxes paid on capital inputs, for example, had been staggered over two years. This cascading effect has largely been removed, however, as a full credit/offset is now allowed for taxes paid on most inputs.

[149] In the 2002/03 Budget, for example, it was announced that with the exception of eight items subject to special excise duty (polyester filament yarn, motor cars, multi-utility vehicles, tyres for replacement, aerated soft drinks and soft drink concentrates, air conditioners, *pan masala*, and chewing tobacco and miscellaneous tobacco preparations), all other products subject to excise duty would face rates of 16%; rates for products currently at zero, would gradually be increased to 16% (Ministry of Finance, 2002b, Part B, paragraphs 106-108).

[150] The formulation of exemptions has tended to be extremely complex. Of the standard publication of tariffs of 720 pages, 220 pages were devoted to exemptions. There were, for example, 20 exemptions for

120. In an attempt to broaden further the indirect tax base, a tax on services was introduced in 1994 (under Chapter V of the Finance Act, 1994). While the tax base initially covered only telephone bills, general insurance, and stock-broking fees, coverage has been greatly expanded.[151] Currently, 41 services are subject to tax; following proposals in the 2002/03 Budget, an additional ten services are to be added.[152] The tax rate is 5%, although there are exemptions. No tax credit for inputs is allowed, however, which can result in tax cascading. There is also the central sales tax (CST) of 4% on inter-state commodity sales; power to administer the tax was delegated by the Central Government to the states, which are allowed to retain the revenues. In addition, the Miscellaneous Cess Act provides for the collection of Cess on manufactured products (including tea, cotton, sugar, paper, and automobiles) at rates ranging from 0.3% to 3.5% of the value of goods.[153]

121. Replacement of the central excise, the service tax and other taxes with a broad-based value-added tax on goods and services, with few, if any, exemptions, would greatly facilitate tax administration. Moreover, if it were to exempt exports, it would not distort trade either. The CENVAT could evolve into a national VAT.[154]

State sales taxes

122. State sales taxes range from 2% to 20%, although most are between 7% and 16%. The tax incentives offered by states to attract investment, in the form of exemptions, waivers, deferrals and refunds, have eroded state tax revenues. These could be increased by strengthening tax administration and enforcement.

123. In a landmark decision reached in November 1999, state governments agreed to harmonize their sales tax structures. Part of this agreement came into effect in January 2000. In order to curtail tax competition between states, it established uniform floor rates applicable to a uniform set of goods. Furthermore, states undertook to grant no new incentives and to phase out existing ones gradually. They also agreed to prepare for the introduction of a uniform VAT at the state level by 1 April 2001, with technical assistance from the Central Government. The introduction of the VAT was later postponed to 1 April 2002 (except for the special category states and newly formed States, which may convert by 1 April 2003) and most recently to 1 April 2003. The conversion to the VAT appears to be complicated further because the sales tax is subject to state jurisdiction, and the Central Government's role is more that of coordinator and facilitator of the conversion. The postponement appears mainly to be due to a delay in drafting legislation and in preparing the administrative framework in the states to allow for a smooth switchover to the VAT.

124. Other important state taxes include: excises on wine and liquor; a 1.5% turnover tax on traders whose turnover exceeds a certain amount; registration fees; stamp duties; motor vehicles tax (MVT), and passengers and goods tax (PGT); and profession tax and entertainment duty in a few

exports, 90 for textiles and 5 for small-scale industry (SSI). Each exemption had many entries, conditions and lists, with hundreds of items on each list (Planning Commission, 2001b, p. 15).

[151] "An Overview of Service Tax in India". Available online at: http://www.servicetax.gov.in/servicetax/overview1.htm.

[152] Ministry of Finance (2002b).

[153] Central Board of Excise and Customs online information. Available at: http://www.cbec.gov.in/cae/ excise/cx-tariff/cess-sch.htm, [15 August 2001].

[154] Ministry of Finance (2001a), p. 28.

states.[155] The Empowered Committee of State Finance Ministers, which is monitoring sales tax reforms in India, has recommended that some of these be merged into the proposed state VAT.[156]

Direct taxation

125. The direct tax system has a very high rate structure in combination with numerous incentives that greatly erode the tax base. Corporate and personal income taxes, respectively, currently account for around 20% and 18% of total gross taxes collected (Table III.13). The top personal tax rate is 30% and the statutory rate of corporate tax is 35%.[157]

126. While tax rates have come down, India's statutory corporate tax rate in particular is still high relative to many of its South-East Asian neighbours.[158] However, generous tax incentives including full or partial exemptions, accelerated depreciation, and tax holidays have ensured that corporations undertaking eligible investments can pay considerably less than this rate.[159] There are some 200 or so incentives/exemptions in the income tax statute.[160] The authorities maintain that all tax incentives apply to domestic and foreign-owned companies alike. They have also rendered the tax system vulnerable to tax avoidance and tax evasion. As a result, the effective rate of corporate tax has been only around 21%.[161] In order to address these problems, the Central Government levies a minimum alternative tax (MAT) of 7.5% on companies' book profits, thereby imparting an additional element of complexity to the tax system, which entails additional costs to tax administrators and taxpayers alike, and greater uncertainty over tax assessment.[162] Such uncertainty can deter the investment that the incentives were intended to stimulate.[163]

127. The authorities responsible for income taxation are apparently undergoing major restructuring. This involves, *inter alia*, upgrading skills of officials with a view to their providing better service to taxpayers and improving compliance.

[155] In addition, some municipalities levy an "octroi" on goods transferred into the municipality.

[156] Planning Commission (2001b), p. 224. There would also be some merit in greater harmonization as well as broadening of the bases of the CENVAT and state VATs.

[157] An additional 5% surcharge is currently levied on the income tax of resident companies, so that the full rate of corporate tax is 36.75%. (Previously, there was also a 10% surcharge on corporate income taxes (as well on personal income taxes paid by high-income individuals), but this surcharge was removed by the 2000/01 Budget; subsequently, a 2% surcharge was introduced, but this too was abolished by the 2002/2003 Budget.) As a consequence of the 2002/2003 Budget, the tax rate on branches of foreign companies was reduced from 48% to 40%; this rate applies to branches of foreign companies, but not to those of domestic companies. No surcharge is levied on foreign companies or their branches, however.

[158] Corporate tax rates are currently 15% in Hong Kong, China, 26% in Singapore, and 28% in Malaysia.

[159] The personal income tax base also contains many forms of tax relief, often aimed at encouraging saving in specified assets.

[160] These include: incentives for investment in financial assets; incentives for encouraging external borrowing; exemption/concessional treatment of perquisites; incentives for industrial development; incentives for regional development; incentives for non-profit organizations; incentives for social sector; exemption for income of Funds; and other incentives. A full list and description of these tax measures is found in Appendix 4.1 of idem, pp. 125-145.

[161] Planning Commission (2001b), p.11.

[162] See Ernst & Young International Ltd (2001), for computation of back projet for MAT purpose.

[163] Planning Commission (2001b).

(b) Other incentives/subsidies[164]

128. Subsidies continue to be an important policy instrument in India. The Budget, in its non-plan expenditure[165], estimates expenditures on explicit subsidies of 1.2% of GDP for 2001/02.[166] The "Demands for Grants" of the various Ministries under Plan expenditure[167] also show some subsidies, but these are difficult to find and in most instances the outlays are not clear (Table III.14).[168] In addition, there are "implicit" subsidies (e.g. interest or credit subsidies, tax relief, equity subsidies, etc.), which are not accounted for in the Budget but are used extensively[169]; These are, by their nature, difficult to monitor[170]; the authorities estimate that they accounted for some 0.08% of GDP in 2001/02. Subsidies granted at the state level are also important, but detailed information is difficult to obtain. For instance, the State Electricity Boards (SEBs) charge high rates to industrial users in order to subsidize rates in the agricultural sector; this cross-subsidy accounted for 1.1% of GDP in 1992/93 increasing to 1.7% of GDP in 1999/00.[171] The subsidy for selected oil products (i.e. kerosene and LPG), provided through the Administered Price Mechanism (APM), is also extrabudgetary (sections (2)(xiii) and (4)(iv)(b)).[172]

Table III.14
Explicit (plan) subsidies (Budget 2001-2002)
(Rs million)

Ministry	Subsidy	Total planned expenditure (Budget 2001-2002)
Ministry of Agriculture - Department of Agriculture and Cooperation		
Horticulture Development Programme	Provision has also being made for capital investment subsidy for Cold Storage.	650.00
Lump-sum provision for projects/schemes for the benefit of North East Region and Sikkim	Subsidy for the transportation of seeds	10.00
Ministry of Commerce and Industry – Department of Industrial Policy and Promotion		
Development of Backward Areas	Investment Subsidy.	40.20
	Transport Subsidy to Industrial Units.	900.00
	Growth Centres.	400.00

Table III.14 (cont'd)

[164] 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. This section does not cover any export assistance, which is covered in section (3)(iii). The list of subsidies mentioned in the section is non-exhaustive.

[165] Non-plan expenditures are those that are not included in the Five–Year Plans.

[166] Secretariats' own calculation based on Ministry of Finance (2001c), Vol. I.

[167] Plan expenditures are jointly determined by the Planning Commission, Ministry of Finance, central government spending ministries, and – where relevant – state governments. These consist mainly of outlays for development projects, and have both capital and current expenditures components.

[168] Ministry of Finance (2001c), Vol. I.

[169] CAG (undated) "Management of Subsidies" [Online]. Available at: http://www.cagindia.org/reports/civil/2000_book1/chapter6.htm [25 July 2001].

[170] In its annual report the Comptroller and Auditor General (CAG) analyses several implicit subsidies (CAG (undated) "Report of the CAG on the Union Government for the year ended March 2000" [Online]. Available at: http://www.cagindia.org/reports/civil/ 2001_book1/index.htm [25 October 2001]).

[171] IMF (2001).

[172] This subsidy is expected to be placed on the budget once the Administered Price Mechanism is phased out in April 2002 (see section (iv) (b) below).

Ministry	Subsidy	Total planned expenditure (Budget 2001-2002)
	Capital Investment Subsidy for North-Eastern Region.	50.00
	Central Interest Subsidy Scheme: provides for a subsidy at 3% on working capital loans for a period of ten years to new industrial units in the North Eastern Region after the unit goes into commercial production.	20.00
	Comprehensive Insurance Scheme for North East: provides for comprehensive insurance for the new industrial units set up in the North Eastern Region after 24 December 1997, including Fire Policy "C" (as per All India Fire Tariff). Full premium under the Scheme for a period of ten years would be borne by the Government of India on a reimbursement basis through General Insurance Corporation Ltd.	2.20
Ministry of Non-Conventional Energy Sources		
Solar Energy Programme	Subsidy is provided on solar lanterns, home lighting systems, street lights and solar pumps.	677.50
Other Sources of Energy	Financial support is provided for feasibility studies, detailed preparation for project reports and towards interest subsidy for the installation of these projects.	2,715.00
Ministry of Power	Interest Subsidy to Power Finance Corporation: provides assistance to power utilities at concessional lending rates through the interest subsidy given by Central Government for modernization and renovation of existing thermal power stations and life extension of power stations.	3,500.00
Ministry of Rural Development		
Swaranjayanti Gram Swarozgar Yojana	Subsidy to District Rural Development Agencies: financial assistance through subsidized bank credit and marketing support, etc.	77,450.00
	Rural Housing: the Credit-cum-subsidy Scheme initiated with effect from 1 April 1999 is now in operation and intends to provide funds for construction of houses to rural households having an annual income of not more than Rs 32,000. Subsidy up to Rs 10,000 and loan up to Rs 40,000 is provided to eligible household.	5,067.00
Ministry of Small Scale Industries and Agro and Rural Industries	Small-Scale Industries Schemes: credit linked subsidy for technology upgradation of SMEs.	5.00
	Interest Subsidies Scheme: The Khadi & Village Industries Commission provides subsidised loans at rate of 4% to the Khadi and Polyvastra industries registered with KVIC/KVIBs for their capital investment and working capital. They provide the difference between the Bank PLR and 4% as an Interest Subsidy to the Banks. Under this scheme, KVIC makes an assessment of the requirement of funds of the institution and issues Interest Subsidy Eligibility Certificate (ISEC) to that extent. Banking institutions make available credit to that institution based on the ISEC.	190.00
	Village Industries: margin money is provided under the Rural Employment Generation Programme (REGP). The subsidy consists of 25% of the project's cost for projects of up to Rs 1 million, and for projects of Rs 1-2.5 million the subsidy is Rs 250,000 plus 10% of the project's costs.	50.00
Ministry of Shipping	Subsidy to Shipping Corporation of India: the Shipping Corporation of India runs passenger services between mainland and Andaman Nicobar Islands and mainland and Lakshadweep Islands. The subsidy is provided to meet the operational losses for running these services.	..

Table III.14 (cont'd)

Ministry	Subsidy	Total planned expenditure (Budget 2001-2002)
	Other programmes: grants to develop ship ancillary services, National Ship Design and Research Centre, research and development schemes for ship-building, and subsidy to sailing vessel industry.	2.00
Ministry of Tourism and Culture	Other programmes: The provision is for payment of interest differential subsidy to specific financial institutions on the loans to finance construction of one, two and three star hotels projects.	90.00
Ministry of Water Resources	Command Area Development: grants are given to subsidize loans to small and marginal farmers on the IRDP pattern for land levelling and shaping, sprinklers and drip irrigation.	..

.. Not available.

Source: Ministry of Finance (2001c), *Budget 2001/2002.*

129. Expenditure in explicit (non-plan) subsidies has increased substantially (by 24%) since 1997/98, with expenditure in major and other subsidies increasing almost at the same rate (also by some 24%) (Table III.15).[173] Food and fertilizer (including concessional sales of fertilizers) subsidies continue to be the most important (accounting for 45.9% and 47.6% of total subsidies outlay, respectively).[174]

Table III.15
Explicit (non-plan) subsidies, 1997/98 and 2001/02
(US$ million and per cent)

	1997/98[a]	2001/02[b]	Growth rate (%)
Total subsidies	5,285.6	6,565.2	24.2
Major subsidies	4,941.7	6,134.3	24.1
Food subsidy	2,125.7	3,012.6	41.7
Fertilizer (indigenous and imported)	1,998.1	1,862.9	-6.8
Concessional sales of fertilizers to farmers	699.6	1,258.8	79.9
Export promotion and market development	118.4	n.a.	-
Other subsidies	322.9	399.4	23.7
Price support for copra through NAFED	0.3	5.5	2,054.6
Payments to state governments in lieu of sales tax on aviation fuel sold to international airlines (including Air India)	0.0	n.a.	-
Subsidy for operations of charter flights for Haj pilgrims	20.6	34.0	65.0
Subsidy to the railways for dividend relief and other concessions	141.6	n.a.	-
Insurance schemes for the poor	3.2	n.a.	-
Interest relief to riot victims	1.1	0.1	-94.9
Subsidy for helicopter in North Eastern Region	2.3	2.2	-3.9
Maintenance of buffer stocks for sugar	47.1	0.2	-99.5
Reimbursement to state trading corporation for loss on edible oil imports	5.4	11.0	104.7
Subsidy to Shipping Corporation of India for uneconomic shipping lines	3.0	n.a.	-

Table III.15 (cont'd)

173 Growth rate in real terms in rupees is similar.

174 The Expenditure Reforms Commission (ERC), constituted following the Budget Speech in February 2000, suggested a series of measures to reduce the food subsidy and to rationalize the fertilizer subsidy (Ministry of Finance, 2001a).

	1997/98[a]	2001/02[b]	Growth rate (%)
Subsidy to shipyards	12.8	10.6	-17.1
Cochin Ship Yard Ltd	2.8	4.4	57.3
Hindustan Shipyard Ltd	3.5	0.9	-74.9
Acquisition of Ships - interest differentials	6.5	5.3	-17.9
Handloom subsidy	17.1	0.2	-98.7
Special rebate on handloom cloth	7.9	..	-
Subsidy on Janata cloth	8.1	..	-
Others	1.1	..	-
Compensation for exchange loss	37.4	323.1	763.8
Industrial Development Bank of India	4.9	32.6	571.3
Industrial Credit and Investment Corpn. of India	19.2	12.6	-34.5
National Housing Bank	0.8	1.8	125.2
Housing Development Finance Corpn.	12.6	14.3	14.1
Exchange loss under NRI Bond Scheme	n.a.	1.8	-
Exchange loss on Resurgent India Bonds	n.a.	259.9	-
Write-off of interest and penal interest on Government of India loan outstanding against PDIL	12.1	n.a.	-
Debt Relief Scheme for Borrowers in J & K	13.5	10.1	-24.7
Write off loans Central Electronics Ltd.	5.5	n.a.	-
Subsidy for Assam gas project	n.a.	0.0	-
Guarantee Fee Subsidy	n.a.	2.1	-
Heavy Engineering Corporation	n.a.	0.6	-
Hindustan Cables Ltd.	n.a.	0.2	-
Bharath Bhari Udyog Nigma Ltd.	n.a.	0.1	-
Hindustan Machine Tools Ltd.	n.a.	1.0	-
Praga Tools Ltd.	n.a.	0.1	-
Subsidy to Hindustan Steelworks Construction Ltd. for guarantee fee	n.a.	0.2	-
Interest subsidies	20.9	31.6	50.8

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

a Revised
b Budgeted.

Note: Rupee/US$ exchange rate used for 2001/02 = 2000/01 April-December only (= 45.39244).

Source: Ministry of Finance online information. Available at www.nic.in/indiabudget/budget98-99 and www.nic.in/indiabudget/ub2000.

130. The Food Corporation of India (FCI) purchases foodgrains at fixed procurement prices (also called Minimum Support Price or Levy Price). This grain is distributed by the states at a "Central Issue Price" through the Public Distribution Systems (PDS). The subsidy is the difference between the economic cost (acquisition and distribution costs)[175], and the Central Issue Price. The fertilizer subsidy includes: a subsidy on indigenous and imported urea; subsidized freight rates for the transportation of urea; and the sale of other fertilizers (de-controlled fertilizers) at concessional prices. The subsidy on indigenous urea is intended to provide fertilizer to farmers at a "reasonable"

[175] The acquisition costs include the minimum support price, taxes, packaging, and other incidental charges associated with procuring the grain; the distribution cost includes transportation and storage charges, and administrative expenses of the procuring agency (the Food Corporation of India).

price and at the same time give producers a "reasonable" return on their investment[176] (see sections (2)(xiii) and (4)(iv)(b)). Imports of urea are also subsidized because domestic production is insufficient to meet demand. In addition, phosphatic and potassic fertilizers, whose prices were liberalized in 1992, are sold at a concessionary price to farmers in order to promote the use of a balanced combination of the three types of fertilizer.

131. Interest rate subsidies accounted for 0.5% of total subsidies in 2001/02, having increased by 50% since 1997/98. Under these schemes, the Government grants loans at concessionary interest rates or forgoes interest payments in specific cases, for instance to the PSEs.[177] These interest rate subsidies help to mitigate the effects of India's high real interest rates (Chapter I(1)(i)). Interest rates subsidies are managed by different ministries (e.g. the Ministry of Finance, of Heavy Industries and Public Enterprises, of Steel, and of Information and Broadcasting) and are granted for very different purposes. For instance, the Ministry of Finance provides loans at subsidized rates to Goan Banks and nationalized banks. As part of their revival scheme, the Hindustan Paper Corporation Ltd., the Heavy Engineering Corporation Ltd., and Hindustan Machine Tools Ltd. are granted interest subsidies by the Ministry of Heavy Industries and Public Enterprises. The Steel Authority of India Ltd., as part of its financial and business restructuring agreement signed with the Government, was granted a Rs 5 billion subsidy in 2000 to pay the interest on loans for the implementation of the Voluntary Retirement Scheme (VRS); it also benefits from a waiver on the interest on loans given by the Government to the Indian Iron and Steel Company, a loss making subsidiary of the Steel Authority of India Ltd., which has been referred to the Board for Industrial and Financial Restructuring (BIFR).[178]

(iii) State-owned enterprises

132. State-owned enterprises have traditionally played an important role in the economy, and continued to do so during the Review period; they were set up to carry out industrialization and achieve national development goals, but have become a major burden on public resources (Box III.3). In 2000 (31 March), there were 240 Central Public Sector Enterprises (CPSEs) (8 in construction, 157 involved in manufacturing, and 75 in rendering services),[179] down from 243 at the end of March 1996,[180] and approximately 946 State Level Public Enterprises (SLPEs).[181] In general PSEs continue to perform poorly and constitute a drain on the central and state governments' budgets. Of the 240 CPSEs registered on 31 March 2000, some 44% (106) were loss making, while some 66 (as of 30 June 2000) industrial CPSEs were registered with the Board for Industrial and Financial Restructuring (BIFR) under the provisions of the Sick Industrial Companies (Special Provisions) Act, 1985.[182] At the state level, of the 946 SLPEs existing in March 2000, 551 showed losses, and

[176] The Retention Price cum Subsidy (RPS) Scheme for urea provides for a fixed retention price for individual producers on a per tonne basis, based on the normative capacity utilization rates prescribed by the Government plus average and real costs and expenses. The reasonable rate of return on investment is defined as a pre-tax return on net worth, which corresponds to a post tax return of 12%.

[177] Ministry of Finance (2001c), Vol. I.

[178] For more examples see the Union Budget 2001-02 [Online]. Available at: http://indiabudget.nic.in/ub2001-02/eb/vol2.htm [30 October 2001].

[179] Department of Public Enterprises, Ministry of Heavy Industries and Public Enterprises online information. Available at http://www.dpe.nic.in/ [31 October 2001].

[180] WTO (1998), p. 98.

[181] Ministry of Disinvestment (undated).

[182] Ministry of Heavy Industries and Public Enterprises (2000).

241 were non-operational[183]; some 184 SLPEs have been identified as candidates for disinvestment, restructuring or closing down.[184]

Box III.3: Public sector enterprises

Public sector enterprises (PSEs) were established initially to:

- provide infrastructure for India's industrialization and economic growth needs;
- create employment opportunities and promote balanced regional development;
- promote self-reliance through import substitution and export promotion;
- generate resources for public investment; and
- prevent/reduce concentration of private economic power.

Policy in the 1960s and 1970s was largely guided by the Industrial Policy Resolution of 1956, which gave the public sector a strategic role in economic development. However, according to the authorities, the public sector has now outgrown itself and its shortcomings have become apparent from the low level of capacity utilization, inability to innovate and take timely decisions, as well as interference from government agencies in internal decision-making processes, etc. The PSEs have also become a major drain on government resources. It is estimated that government investment in public sector enterprises had grown from Rs 290 million in 1951 to some Rs 2,526 billion in the year 2000.

Disinvestment/Privatization

The Industrial Policy Statement of 1991 announced that it would begin the process of deregulation and disinvestment in the public sector. The disinvestment would be carried out in stages, starting with a phasing out of industrial licensing requirements. These requirements were withdrawn for all but 18 industries, and liberalization of foreign investment restrictions opened sectors to international competition. PSEs that were identified as weak were to be referred to the Board of Industrial and Financial Restructuring (BIFR) and either restructured or closed down. In other PSEs the Government was to reduce its share of equity or to privatize the company completely. The process, however, has not been easy. Most companies that were registered with the BIFR and which were considered not viable, have yet to be closed down. In addition, the disinvestment programme has been slow to take off and, judging from receipts, appears to have fallen far short of targets in recent years. In 1999/2000 and 2000/01, for example, receipts from disinvestment (Rs 18.3 billion and Rs. 18.7 billion respectively) fell far short of the target of Rs 100 million. It is unclear whether the Government will be in a position to meet its target for 2001/02 of Rs 120 million.

In March 1999, the Government identified strategic PSEs as arms and ammunition and allied industries such as defence equipment, aircraft and warships; atomic energy (except generation of nuclear power and application of radiation and isotopes to agriculture, medicine, and non-strategic industries); and railway transport. All other PSEs are considered non-strategic and the Government in subsequent statements has declared that it would consider reducing its share of equity in these companies to below 26% if necessary. In addition, there appears to be an increased emphasis on selling to strategic buyers.

The main goals of the disinvestment programme remain as before:

- to restructure and revive potentially viable companies and to close down those that are no longer viable;
- to reduce government equity in all non-strategic companies to 26% or below, if necessary;
- to protect the interests of employees and to put into place a mechanism to raise funds to provide an adequate safety net for employees;

Box III.3 (cont'd)

[183] Ministry of Disinvestment (undated (b)).

[184] Of these, it seems that the process of disinvestment, restructuring or closure had been initiated in 30 companies by early 2001 (Department of Disinvestment, undated).

- to establish a Department of Disinvestment to give a fresh impetus to privatization and to formalize the programme;
- to emphasize strategic sales of PSEs; and
- to use the receipts of disinvestment for meeting expenditure in social and infrastructure sectors, closing down PSEs, and retiring public debt.

In 1999 also, the Government created the Department of Disinvestment (later to become the Ministry of Disinvestment). The Ministry under the terms of the original notification (No. CD-551/99, 10 December 1999), would deal with all matters relating to disinvestment of central government equity from CPSEs, make decisions on the recommendations of a Disinvestment Commission, which would lay out the modalities of disinvestment/restructuring, and implement disinvestment decisions (including appointment of advisors, pricing of shares etc.). Final decisions on disinvestment are taken through a three-tier mechanism: the Cabinet Committee on Disinvestment (CCD), chaired by the Prime Minister, which makes decisions on disinvestment upon recommendations of the Core Groups of Secretaries on Disinvestment (CGD); the CGD, which supervises and monitors progress on disinvestment and makes recommendations to the CCD; and the later-Ministerial Group, which is responsible for day-to-day implementation issues.

Source: Based on information provided by the authorities; and Department of Disinvestment (undated), *Disinvestment: Policy and Procedures*.

133. Some of the common reasons for PSEs "sickness" include the use of obsolete technology, the lack of economies of scale, low productivity, a surplus of labour, a general lack of resources, including raw materials, and a heavy interest burden.[185] The business culture in these enterprises has also contributed to their poor performance[186], as has political interference in their management.

134. The Government has implemented several strategies to improve the PSEs' performance and combat "sickness", including periodic performance review meetings with the administrative Ministries, reduction of surplus labour through Voluntary Retirement Schemes, technological improvement, and the restructuring of companies, including their conversion into joint ventures. The introduction of the Memorandum of Understanding (MOU) system in 1987/88, a performance agreement between the PSEs' management and the Government (i.e. the Administrative Ministry), was also aimed at improving PSEs' performance; MOUs stipulate objective criteria to evaluate managerial performance. In addition, the MOUs are an attempt to increase PSEs' autonomy and accountability. In 2000/01, 107 PSEs (163, including the subsidiaries of the PSEs) signed MOUs.[187] The MOUs, according to the authorities, have helped increase the operational autonomy of the PSEs and their ability to compete with the private sector. In addition, quarterly performance reviews have allowed PSEs to better evaluate their achievements as outlined in the MOUs and has boosted employee morale. The financial performance of these companies also appears to have improved in recent years. In 2000/01, it is estimated that of the 107 PSEs that signed MOUs, 77 achieved ratings of "good" to "excellent".

135. In an effort to recognize PSEs that had performed satisfactorily, in 1997 the Government identified 11 well performing PSEs as "Navratnas" (i.e. nine gems).[188] The criteria for selecting these

[185] Ministry of Heavy Industries and Public Enterprises (2000).

[186] Planning Commission (undated (a)), Vol. II.

[187] Ministry of Heavy Industries and Public Enterprises (2000); Ministry of Finance (2001a).

[188] These enterprises are: Indian Oil Company (IOC), Indian Petrochemicals Corp. Ltd. (IPCL), Oil and Natural Gas Commission (ONGC), Bharat Petroleum Corp. Ltd. (BPCL), Hindustan Petroleum Corp. Ltd. (HPCL), National Thermal Power Corp. (NTPC), Steel Authority of India Ltd. (SAIL), Videsh Sanchar Nigam Ltd. (VSNL), Bharat Heavy Electricals Ltd. (BHEL), Gas Authority of India Ltd. (GAIL), and Manhanagar Telephone Nigam (MTNL).

enterprises included factors such as size, performance, nature of activity, and future prospects. Because of their superior performance, enhanced autonomy has been granted to their Boards of Directors. In 1999, 39 enterprises were defined as "mini-ratnas" (mini–gems) (i.e. PSEs that performed well, but not as well as the Navratas). The Government has granted enhanced financial, managerial, and operational autonomy to these profit-making enterprises.[189]

136. Despite the strategies adopted by the Government and the aforementioned success stories, the performance of PSEs continue to be weak and they continue to represent a drain on the Government's budget. Collectively, CPSEs have run a persistent deficit since 1997/98, which is financed by the Central Government budget in the form of equity and loans (Table III.16). Since 1999/00, budgetary support has increased continuously, with non-plan loans accounting for more than 85% of total support to PSEs. However, this does not take into account implicit subsidies provided to PSEs by central and state governments. For example, implicit subsidies by state governments to State Level Public Enterprises (SLPEs) amounted to Rs 63.8 billion.[190] In addition, the Government may write off loans and provide interest rate subsidies; these subsidies are sometimes extra-budgetary.

Table III.16
Budgetary support to public sector enterprises, 1997-02
(Rupees million and per cent)

	1997/98	**1998/99[a]**	**1999/00**	**2000/01**	**2001/02[a]**
Total support	549,589.9	713,982.8	617,526.4	708,110.5	811,365.8
(% of GDP)	(3.6)	(4.1)	(3.2)	(3.7)	(3.9)
			Per cent of total		
Equity	9.1	8.5	11.2	11.3	11.0
Loan	4.6	3.7	3.5	3.5	1.8
Non-plan loans	86.3	87.8	85.3	85.2	87.2
Memorandum item:					
Deficit of Central Public Enterprises (% of GDP)	-1.8	-1.4	-1.8	-1.7[a]	1.6[a]

a Budget.

Source: Government of India online information. Available at: http://www.indiabudget.nic.in/; and IMF (2001), *Recent Economic Developments and Selected Issues,* October.

137. While the imperative for privatization (divestment) of the public sector appears to have arisen largely from fiscal considerations[191], a strong divestment programme is also believed to be necessary to improve PSEs' governance and efficiency[192]; the authorities also state that disinvestment is crucial for better utilization of resources and to improve prospects for employment and economic regeneration. Nevertheless, progress in divesting PSEs has been slow (and often far short of targets). Since 1991/92, there have been 14 rounds of disinvestment; however, disinvestment has actually taken place in only 42 PSEs; of these, until 2000, when the Government changed its strategy to sell to strategic investors rather than solely through share issues, most involved the sale of a small

[189] For an enterprise to qualify as "mini-ratna" it should have earned profits continuously for the last three years, have positive net-worth, does not seek budgetary support or guarantees from the Government, and have not defaulted in the repayment of loans/interests to the Government (Ministry of Heavy Industries and Public Enterprises, 2000).

[190] This includes support to six states: Karnataka, Kerala, Madhya Pradesh, Maharashtra, Rajasthan, and West Bengal (Ministry of Disinvestment, undated (c)).

[191] Report of the High Level Committee on Competition Policy and Law [Online]. Available at: http://www.nic.in/dca/comp/mainfile.htm#ch1 [17 September 2001].

[192] IMF (2000).

percentage of equity.[193] Disinvestment proceeds during 1997/98–2001/02 amounted to some Rs 156 billion.[194] In 2000, 47 additional PSEs were approved for disinvestment at the central level.[195]

138. The Government announced a new disinvestment policy in March 1999, under which up to 74% (and even more, if necessary) of its stake in non-strategic PSEs (i.e. other than defence, railways, and atomic energy) could be disinvested (Box III.5). The decision to disinvest would be on a case-by-case basis taking into account whether the presence of the public sector is required as a countervailing force to prevent concentration in private hands or whether the industrial sector requires the establishment of a proper regulatory mechanism to protect consumer interests before PSEs are privatized.[196] The authorities acknowledge that effective legislation on competition policy would ensure protection of consumers even in cases where present public sector monopolies became private sector monopolies; however, the present law (the Monopolies and Restrictive Trade Practices Act (section (iv) below)) does not have provisions to address monopolistic practices or mergers and therefore cannot address the impact on the consumer of a public monopoly becoming a private monopoly. A new competition policy is currently being drafted. For the present, therefore, the authorities maintain that there is a need for government intervention and monitoring on these issues.

139. In order to expedite the disinvestment process, the Government constituted the Cabinet Committee on Disinvestment (CCD), headed by the Prime Minister, and the Department of Disinvestment (created in December 1999), which subsequently became the Ministry of Disinvestment. However, the authorities do not consider these efforts to be adequate. Accordingly, it had been proposed that the management of all PSEs earmarked for disinvestment be transferred to the Ministry of Disinvestment.[197] In the event, it was decided that closer cooperation between the Ministry of Disinvestment and individual ministries would ensure a more efficient disinvestment process.

140. Although the need to arrest the drain on its budget has apparently provided a major impetus to central government's drive to privatize state-owned enterprises and thereby increase the private sector's role in the economy, privatization would also promote competition, particularly in a number of basic infrastructure services, notably energy, communications and transport, which are essential for the smooth functioning of the economy (Chapter IV(4)(vi)). By and large, these services have been provided by state monopolies, most of which are inefficient, and therefore often loss-making, with outdated capital, and unable to meet the essential needs of the economy.

[193] Department of Disinvestment (undated), pp. 18-19. The decision to sell to strategic investors was made mainly because the authorities found that: management control could not be transferred, with the result that efficiency gains could not be made; if a limited share of equity was divested, a subsequent decision to sell the rest of the company to a strategic investor may not be possible if the remaining Government share of equity was too small; and sales of a small percentage of equity also gave the impression that the Government was divesting in order to finance its fiscal deficit (Ministry of Disinvestment, *Disinvestment Till Now,* undated (d)).

[194] Ministry of Finance (2002a).

[195] For the status of these companies please see the Ministry of Disinvestment (undated (e)).

[196] Department of Disinvestment (2001b).

[197] The Ministry would be granted five years to execute the privatization programme. Initially, the Ministry will only be in charge of the PSEs referred to the Disinvestment Commission (formed in 1996 as an independent, non-statutory, advisory body to make its recommendations on the PSEs referred to it), and then it will be expanded to include the entire public sector.

(iv) Competition policy and regulatory issues

(a) Competition policy

141. Competition policy in India continues to be regulated by the Monopolies and Restrictive Trade Practices Act, 1969 (MRTP Act), and a parallel law, the Consumer Protection Act, 1986 (COPRA).[198] The latter provides for the protection of consumers' interest through the establishment of consumer councils, which settle grievances regarding, *inter alia*, quality and pricing of goods and services. Under this Act, consumers have the right to seek redress against "unfair trade practices" (as defined in 36A of the MRTP Act)[199] and "unscrupulous exploitation of consumers", and are entitled to receive compensation.

142. Originally the thrust of the MRTP Act was directed towards: the prevention of concentration of economic power; the control of monopolies; and the prohibition of monopolistic trade practices, restrictive trade practices, and unfair trade practices. Major amendments were made to the MRTP Act in 1991. Provisions relating to pre-entry restrictions with regard to prior approval of the Central Government for establishing a new undertaking, expanding an existing undertaking, amalgamations, mergers and take-overs were all deleted from the statute. As a result of these amendments, the emphasis of the Act shifted from the prevention of concentration of economic power to curbing monopolistic, restrictive, and unfair trade practices.

143. The MRTP Commission, a quasi-judicial body established in 1970, receives complaints both from registered consumer and trade associations and from individuals, either directly or through various government departments. Complaints regarding restrictive or unfair trade practices are referred to the Director General of Investigation and Registration (DGIR) for preliminary investigation. The Commission can also order a preliminary investigation by the DGIR when a reference on a restrictive trade practice is received from the Central/State Government, or when the Commission's own knowledge warrants a preliminary investigation. Enquiries are instituted by the Commission after the preliminary investigation.

144. Promotion of competition through competition law can only be realized with effective enforcement. However, the Commission's performance in this regard appears to be rather weak. For instance, during April-December 2000 the Commission received 1,554 enquiries related to restrictive trade practices, of which 102 cases were settled, and 1,424 enquiries regarding unfair trade practices, of which 92 cases were dealt with.[200] These cases involved only Indian companies, including state-owned in sectors such as real estate, automotive industries, and pharmaceuticals. The authorities noted that the substantial difference between the cases dealt with and the enquiries received was because a large number of the received enquiries were dismissed at the outset since they were not covered by the MRTP Act.

145. In addition to the MRTP Commission, the Securities Exchange Board of India (SEBI) has put in place a regulatory framework to ensure equal opportunities for investors, and to deeper capital markets. Regulations dealing with unfair practices, like insider dealing, have, according to the authorities, been enforced according to international standards. The Board has laid down a take-over code to ensure competitive bids and free transferability of company shares so that shareholders get the

[198] There is some overlap in the coverage of the two Acts. However, there are several distinctive features in regard to the constitution of the adjudication machinery, jurisdiction, type of persons who may seek relief, nature and scope of relief, administrative procedure, etc.

[199] Unfair trade practice means any practice that, for the purpose of promoting the sale, use or supply of any good or service, causes loss or injury to the consumer.

[200] Ministry of Law, Justice, and Company Affairs (2001).

choice, as well as the right price for their shares. The idea behind the code is to provide greater transparency in the acquisition of shares and the take-over of a company.

146. According to the High Level Committee on Competition Policy and Law (the Committee), the present MRTP Act is limited in its scope and hence fails to fulfil the need of a competition law in an age of growing liberalization. For instance, the Act has no definition of certain trade practices that are restrictive in character. These include: abuse of dominant market position; cartels, collusion, and price fixing; bid rigging; boycotts and refusal to deal; and predatory pricing.[201] In addition, its provisions do not apply to specific sectors such as banking and insurance; instead, specific provisions related to competition exist in the Reserve Bank of India Act, State Bank of India Act, and Insurance Act. Unless otherwise stipulated by the Central Government, public sector enterprises are not covered by the MRTP Act.[202]

147. In view of the limitations of the MRTP Act, the Indian Cabinet introduced a Competition Bill, 2001 in Parliament on 6 August 2001.[203] This Bill, if enacted, would replace the MRTP Act, 1969 and would create a new regulatory body, the Competition Commission of India (CCI), with branches in different Indian cities.[204] The CCI would replace the MRTP Commission. The Bill is aimed at checking the abuse of anti-competitive agreements and dominant market position, and regulating procedures related to mergers and acquisitions.[205]

(b) Price controls

148. Various types of price control are still in place for essential commodities such as fertilizers, petroleum and petroleum products, food, and pharmaceuticals. The 2000/01 Budget announced the phasing out of some of these price controls. The Retention Price-cum-Subsidy Scheme (RPS) for fertilizers will be phased out and the price of urea freed by 1 April 2006, and replaced by a "Group Concession Scheme"[206]; the Administered Pricing Mechanism (APM) in the petroleum sector will be eliminated by March 2002 (as planned in 1997); as a first step to liberalize the price of sugar, a futures market will be introduced for this commodity and is expected to be in operation by the end of 2002; and the number of drugs subject to price controls is scheduled to be reduced. It is not clear whether price controls on items mentioned in the previous TPR have been removed (cattle fodder, coal, automobile components and accessories, paper, including newsprint paperboard and strawboard, cement, textile machinery, household appliances, exercise books, insecticides and fungicides, tea, seeds of food and horticultural crops, switches, plugs and socket outlets). The authorities noted, however, that price controls on textiles, and on iron and steel items were withdrawn.

149. At present, urea (a nitrogenous fertilizer) is the only fertilizer subject to price and distribution controls.[207] In 1992, after the liberalization of the price of phosphatic and potassic fertilizers, a

[201] While complaints relating to anti-competitive practices can be tried under the generic definition of restrictive trade practice (which prevents, distorts, or restricts competition), the absence of specification of identifiable anti-competition practices may give room for different interpretations by different courts of law, with the result that the law may not be enforced (Report of the High Level Committee on Competition Policy and Law [Online]. Available at: http://www.nic.in/dca/comp/mainfile.htm#ch1 [17 September 2001]).

[202] Section 3, the Monopolies and Restrictive Trade Practices Act, 1969.

[203] *Financial Times*, 27 June 2001.

[204] The authorities expect the Bill to be passed around March-April 2002.

[205] The Competition Bill, 2001.

[206] Ministry of Finance (2001c), Part A.

[207] In 1994, low analysis nitrogenous fertilizers were decontrolled.

concession scheme was introduced for these products. Under this scheme Maximum Retail Prices (MRP) are fixed by the Central Government/State Governments.[208]

150. Minimum Support Prices (MSP) are fixed for 25 major agricultural commodities including rice, wheat, pulses, and oil seeds (Chapter IV(2)(iv)(b)). Prices of some petroleum products are still determined through the Administered Price Mechanism (APM), which has changed considerably over the years. The APM was implemented in the early 1970s when prices of petroleum products were delinked from import prices and were instead set according to a "cost-plus mechanism" with the Government fixing prices and rates of returns. The APM provides for a cross-subsidy system within the petroleum sector. Thus, some products like LPG, kerosene, and diesel were cross-subsidized by overpricing other oil products. In 1998, a four-year transition plan, aimed at completely phasing out government controls in the sector by 1 April 2002, was put in place. Since April 1998, the cost-plus formula for compensating the national oil companies (for refining indigenous crude oil) was abolished and replaced by a price as a percentage of f.o.b. price of imported crude oil.[209] Products such as naphta, fuel oil, low sulphur heavy stock (LSHS), bitumen, paraffin wax, and aviation turbine fuel were removed from the APM, so that their prices are now determined by the market. However, major retail products such as petrol, diesel, kerosene for public distribution, and domestic LPG remain under the APM[210]; kerosene and domestic LPG not destined for the public distribution system are not subsidized and are freely marketed through parallel marketers. Under the existing mechanism, the refineries are paid on an import price parity basis for the products currently subject to price controls. It is expected that the subsidy for kerosene and domestic LPG distributed through the public distribution system will decline to 33% and 15% respectively, of the import parity price by 1 April 2002; the cost of this subsidy is expected to be met out of the central government budget instead of through cross-subsidies from other petroleum products.[211] The Budget of 2002/03 confirmed the dismantling of the APM as of 1 April 2002.[212]

151. The current drug policy is aimed at ensuring the availability of quality drugs at "reasonable prices". Prices of 74 bulk drugs listed in the First Schedule of Drugs (Prices Control) Order, 1995 and the formulations thereof are fixed/revised under provisions of this Order; the trade margin to retailers on scheduled formulations is prescribed as 16% of Maximum Retail Price (MRP) exclusive of excise duty.[213] Under the 1996 drug policy, the price of a drug is controlled if it has an annual turnover of Rs 40 million or more. For drugs of popular use in which there is a monopoly situation (i.e. 90% of the market share) the threshold is Rs 10 million or more.

152. Under the new Pharmaceutical Policy 2002, announced on 5 February 2002, the Government is considering phasing out some of these price controls, but it will retain the power to intervene (including through the reinstitution of price controls) if prices behave "abnormally" or rise "unreasonably".[214] The Government may determine ceiling prices beyond which an increase in prices

[208] This concession scheme was introduced so that nitrogenous, phosphatic, and potassic fertilizers continued to be used in the correct proportion; when the prices of phosphatic and potassic fertilizers were liberalized, they increased and farmers used urea instead (whose price was still controlled). (Economic Survey and Fertilizers [Online]. Available at: http://www.directorier-today.com/i_fertilizers.htm [22 October 2001]).

[209] Payments to crude producers were fixed at 75% of (f.o.b.) import prices in 1998-99; 77.5% of (f.o.b.) import prices in 1999-00; 80% of (f.o.b.) import prices in 2000-01; and 82.5% of (f.o.b.) import prices in 2001-02. Ministry of Petroleum and Natural Gas (undated).

[210] Ministry of Petroleum and Natural Gas (2001).

[211] Ministry of Petroleum and Natural Gas (undated).

[212] Ministry of Finance (2002b).

[213] Drugs and Pharmaceuticals [Online]. Available at: http://www.directories-toda.com/i_drugs.htm [19 October 2001].

[214] Ministry of Finance (2001c).

would not be permissible. The National Pharmaceutical Pricing Authority (NPPA), which fixes drug prices in India, will present a list of some 35 drugs to be kept under control to the Ministry of Chemicals.[215] The new policy stipulates that bulk drugs with an annual turnover of Rs 250 million per year and market share of over 50%, as well as those produced by a company with annual turnover of Rs 100-250 million, and with a market share of 90%, should remain controlled.[216]

(v) Intellectual property rights

153. Since its previous Review, India has joined the Paris Convention (7 December 1998) and the Patent Cooperation Treaty.[217] In order to comply with its WTO commitments, India has amended the Trade Mark Act and the Design Act, and enacted new legislation to protect geographical indications, integrated circuits, and plant varieties.[218] A new amendment to the Patents Act, 1970 has been introduced in Parliament, as has a Biological Diversity Bill.[219] India has notified several laws to the Council for TRIPS.[220]

154. The amendment of old laws and introduction of new ones is an attempt to put Indian legislation in conformity with the TRIPS Agreement as well as to extend protection to formerly unprotected rights. The patent law still requires some amendments, and most laws, despite extending protection to different areas, also provide for either a broad compulsory-licence system or for a vast list of limitations and exceptions to the exclusive right. This is the case for the patent, copyrights and integrated circuits laws, which seem to have been designed to maintain protection for key Indian industries, namely the pharmaceutical and software industries. In addition, it has been suggested that enforcement is poor[221], although the Government has taken various steps to improve enforcement, including the formation of a Copyright Enforcement Advisory Council in the Ministry of Human Resource Development, which makes recommendations on enforcement and monitors their implementation; and the organization of seminars on IPR-related subjects to raise public awareness about the importance of IPRs and their enforcement. Because enforcement is the responsibility of state governments, the Central Government has requested them to set up special cells for copyright enforcement, headed by senior police officers; these cells also handle enforcement issues relating to other IPR issues. Training programmes in enforcement are also organized for senior administrators, senior police officers, and customs officers.

[215] This would reduce the number of drugs under price control from 74 to 35.

[216] *The Economic Times*, "New drug policy delayed to mid November" [Online]. Available at: http://economictimes.indiatimes.com/today/19econ04.htm [19 October 2001], and Pharmaceutical Policy –2002.

[217] India is also a member of WIPO (1975), the Berne Convention, the Phonograms Convention (Geneva, 1971) (12 February 1975), the Nairobi Treaty on the Protection of the Olympic Symbol (19 October 1989), and the Washington Treaty on Integrated Circuits (WTO, 1998); and WIPO online information. Available at: http://www.wipo.org).

[218] The Plant Variety Protection and Farmers Rights Bill was passed by Parliament on 9 August 2001. This legislation protects the rights of both plant breeders and farmers. Under the legislation, plant breeders will have full control over production and commercialization of seeds. Violation of breeders' rights will invite a fine of up to Rs 1 million and a two-year jail term. The bill recognizes the rights of farmers to save and sell seeds produced on their farms, provided they are sold under a generic name (*Wall Street Journal*, 4 October 2001).

[219] The Biological Diversity Bill addresses the basic concerns of access to, and collection and utilization of, biological resources and knowledge by foreigners, and the sharing of benefits arising out of such access. The legislation provides for a National Authority, which will grant approvals for access, subject to conditions that ensure equitable sharing of benefits. The Biodiversity Bill also includes provisions for the protection of traditional knowledge through the registration of traditional knowledge and the development of a *sui generis* system (WTO document IP/C/W/198, 14 July 2000).

[220] See WTO documents IP/N/1/IND/L/1, 11 January 2001 and IP/N/1/IND/2, 24 October 2001.

[221] USTR (various years) and International Intellectual Property Alliance (various years).

155. The Department of Industrial Development, within the Ministry of Commerce and Industry, is concerned with industrial property rights. The Department also administers the office of the Controller General of Patents, Designs & Trade Marks. The latter supervises the working of the Patents Act, 1970, the Designs Act, 2000, the Trade and Merchandise Marks Act, 1999, and the Geographical Indications of Goods (Registration and Protection) Act, 1999, and provides advice to the Government on matters relating to these subjects. The Copyright law is dealt with by the Ministry of Education, while the Protection of Plant Varieties and Farmers' Rights Act, and the Semiconductor Integrated Circuit Layout Design Act are administered, respectively, by the Ministries of Agriculture and Information Technology.

156. In India, the protection of intellectual property rights is on the basis of reciprocity as stipulated in various laws. India grants national treatment to other WTO Members and to members of the Paris and Berne conventions.

(a) Patents

157. Patents in India are granted under the provisions of the Patents Act, 1970, amended in 1999. The amendment provided for a mailbox facility for pharmaceuticals and agriculture chemicals, and for granting exclusive marketing rights, in accordance with India's obligations under Articles 70.8 and 70.9 of the TRIPS Agreement.[222] An amendment to the Patents Act, the Patents (Second Amendment) Bill, 1999, was introduced in Parliament in December 1999. This Bill is presently under consideration by a Joint Committee of Parliament. According to the authorities, this Bill seeks to comply with other obligations under the TRIPS Agreement, and to simplify procedures. The Bill provides for stronger protection to patent holders. It includes a 20-year uniform protection and a narrower framework for compulsory licensing. It also provides for the deletion of some sections, such as the provision seeking to oblige patentees to manufacture their inventions in India and the section concerning "licences of right". However, the Bill does not include product patents for drugs and chemicals. India is taking the full transition period (i.e. until 2005) to meet its obligations, as allowed under the TRIPS Agreement, for countries that did not provide patent protection prior to the entry into force of the TRIPS Agreement (Article 65.4).[223]

158. At present, the Patent Act, 1970, as amended in 1999, allows for the patentability of products and processes with certain exceptions: inventions related to atomic energy; and inventions intended for use or capable of being used as food, medicine, or drug, or relating to substances prepared or produced by chemical processes. Processes to make such substances are patentable; however, the patent term for processes in respect of food, medicines, or drugs, is limited to five years from when the patent was granted or seven years from the date at which the patent application was filed, whichever is shorter. Product patents expire 14 years from the date of patent filing (Section 53). Protection is for a shorter term than that required by TRIPS. Exclusive marketing rights are granted for a period of five years from the date the Controller approves the application (Section 24B).

159. Patent applications are filed at the Patent Office. The Controller General of Patents, Designs and Trade Marks refers the application and specification of the patent to an examiner, who should make a report within 18 months (Section 12). The Controller may refuse or require an amended application if the invention claimed in the specification is not an invention or if the invention could be used in any manner contrary to law. Once the Controller has accepted the complete specification, the

[222] This amendment was introduced to implement the recommendations and rulings adopted by the DSB as a result of the disputes initiated by the United States and the European Union regarding patent protection for pharmaceutical and agricultural chemical products by India (WT/DS50/R, WT/DS50/AB/R, and WT/DS79/R).

[223] *The Hindu*, 13 September 2001.

applicant is notified and the acceptance is advertised in the *Official Gazette* for public inspection (Section 24).[224] Average time for advertisement of acceptance in the *Gazette* is one month. Within four months from the date of advertisement, any interested party may give notice to the Controller of their opposition, specifying the grounds (Section 25). The Controller will notify the applicant if any notice is taken into consideration, so that the applicant has an opportunity to be heard.

160. Currently it is difficult to obtain a patent as the Patent Office has a backlog of 30,000 applications (of the 33,230 patents filed in 1998/99 only 2,931 have been examined)[225]; and there is a severe shortage of patent examiners.[226] For instance it takes about three years to grant a patent for food and drug inventions, and about six years for other inventions. The Government is currently modernizing its patent offices and increasing the number of patent examiners in order to clear the backlog of applications.[227] While the number of patents granted has increased since 1995-96, the number of patents in force has declined (Table III.17).

Table III.17
The number of patents granted and in force, 1995-00

	1995-96	1996-97	1997-98	1998-99	1999-00
Patents granted					
Indians	415	293	619	645	557
Foreigners resident abroad	1,118	614	1,225	1,155	1,324
Total	1,533	907	1,844	1,800	1,881
Patents in force					
Indians	2,098	2,003	2,047	2,088	2,200
Foreigners resident abroad	6,994	7,202	6,882	6,691	6,458
Total	9,092	9,205	8,929	8,779	8,658

Source: Technology Information, Forecasting and Assessment Council online information. Available at: http://www.tifac-org.in/do/pfc/stud/comm.htm.

161. A patent may, on the petition of any person or of the Central Government, be revoked by the High Court on various grounds, including: that the patent was wrongfully obtained; that the subject is not an invention or does not involve any inventive step; or that the patent was obtained upon false suggestion or representation (Section 64). The Central Government may also revoke a patent on grounds of "public interest" (Section 66). According to the authorities from April 1998 to March 2000 no patents were revoked under either grounds. No data were made available for the rest of the period under review.

162. Three years after the date a patent is sealed, (two years from the date of approval by the Controller), anyone may apply to the Controller to obtain a compulsory licence to work the patent alleging that the reasonable requirements of the public have not been satisfied[228], or that the patented invention is not available to the public at a reasonable price (Section 84). The Central Government may, in the "public interest", decide that a compulsory licence should be granted at any time (Section 97). Compulsory licensing may also be applied in respect of exclusive marketing rights (Section 24C). Two years after the granting of the first compulsory licence anyone may apply to the

[224] The average time taken for intimation to the applicants of acceptance of application is five days.
[225] TIFAC News, "Mahastra tops list of patents filed by Indians" [Online]. Available at: http://www.tifac.org.in/news/press09.htm [24 September 2001].
[226] USTR (various years).
[227] The modernized Delhi and Chennai Patent offices became operational in July and August 2001.
[228] Article 90 of the Act defines in detail when it is that the reasonable requirements of the public are deemed not to be satisfactory.

Controller for an order to revoke the patent (Section 89). The authorities indicated that no compulsory licences have been granted since 1998. The Indian Government has co-sponsored a submission by a group of developing countries to the TRIPS Council on issues concerning TRIPS and public health[229], as well as a draft Ministerial declaration on the matter.[230] These underlined, *inter alia*, the importance the authorities attached to compulsory licensing and parallel importation as instruments to protect public health, in particular with a view to the post-TRIPS era, when pharmaceuticals will be a patentable subject-matter.

163. Three years from the date a patent is sealed, the Central Government may ask the Controller to endorse a patent with the words "Licences of right" on the grounds that the reasonable requirements of the public have not been satisfied or that the patented invention is not available at a reasonable price (Section 86). Patents for inventions relating to food, drugs or medicines, and chemicals are automatically endorsed with the words "Licenses of right", after a period of three years from the date of sealing of the patent (Section 87). Between April 1998 and March 2000, 1,336 patents were endorsed with the words "Licences of right". The Central Government may also acquire an patented invention for a public purpose. The Government would pay compensation to the applicant or the patentee (Section 102).

164. Any person may institute a suit for infringement of patent in any domestic court not inferior to a district court (Section 104). Failure to comply with the court's decision may result in imprisonment of up to two years, or a fine.

(b) Trade marks

165. Trade marks are regulated by the modified Trade Marks Act, 1999. The Act extended protection to well known marks, service marks, and collective marks, as well as the length of the protection period. The definition of infringement has also been expanded.[231] However, the authorities noted that this Act has not yet been "operationalized" (i.e. regulations have not been put in place).

166. To register a trade mark in India an application in the prescribed form with the required fee must be filed in one of the five offices of the Trade Marks Registry.[232] The application is examined to ascertain whether the trade mark is distinctive and to ensure that it does not conflict with existing registered or pending trade marks; an examination report is then issued.[233] If a trade mark is found to be acceptable, it is advertised in the *Trade Marks Journal* to allow others to oppose the registration. If there is no opposition or if a decision is made in favour of the applicant, then the mark is registered and a certificate of registration is issued.

167. Registration of a trade mark confers on the registered proprietor the exclusive right of use and to obtain relief in case of infringement. Registration is not compulsory; however, without registration, the owner cannot bring an action for infringement.

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[229] WTO document IP/C/W/296, 29 June 2001.

[230] WTO document IP/C/W/312, 4 October 2001.

[231] IndiaIP.com news services, "New Trade Marks Act still not notified – Rules being framed" [Online]. Available at: http://www.indiaip.com/main/news/india/09may03.htm [26 April 2001].

[232] The appropriate office means the office within whose territorial limits the applicants resides or has his principle place of business in India. In case of foreign applicants, the place mentioned as the address for service in India will determine the appropriate office at which the application should be filed.

[233] It is not possible to register a trade mark that could be confused with another already in use, or a trade mark that describes the character or quality of goods, which other traders may reasonably want to use in the course of their business. The sign constituting a trade mark should not conflict with a mark already registered or pending registration. Also some signs are prohibited from registration under the directions of the Government.

168. Registration is valid for an initial period of ten years and can be renewed for further periods of ten years on payment of a prescribed fee.[234] By paying the renewal fees every ten years, the mark can be kept in force indefinitely. However, if the registered mark is not used for a continuous period of five years and three months from the date on which it was entered in the registry, it is liable for removal from the registry on the grounds of non-use. If the renewal fee is not paid within the prescribed period, the mark is removed from the registry.

169. The definition of infringement has been expanded in the new Act. This is no longer limited to use of the mark in respect to identical goods; use of an identical or similar mark in respect of similar goods could constitute infringement. Use of an identical or similar mark in respect of goods or services, even on completely unrelated goods or services, could constitute infringement if: the registered trade mark has a reputation in India, and the use of the mark without due cause takes unfair advantage of or is detrimental to, the distinctive character or repute of the registered mark. Use of a registered trademark as a trade name or part of a trade name could also constitute infringement. Applying a registered trade mark to labelling or packaging materials, on business paper or for advertising goods or services constitutes infringement. In the case of word marks, even spoken use of the words can constitute infringement.[235] No data on infringement cases were available, as the authorities state that the Trade Marks Registry maintains no centralized records.

170. Minimum penalties of a six-month imprisonment term and Rs 50,000 have been prescribed for trademark violations. The maximum penalties have been increased from two-years imprisonment to three years and a fine of Rs 2 million. No data were available on seizures at borders, or penalties imposed.

171. Police officers (not below the rank of Deputy Supt. of Police) are empowered to search and seize without warrant the goods, dies, blocks, machines, plates, or other instruments used to commit the offence. However, an officer is obliged to obtain an opinion of the Registrar of Trade Marks on the facts involved in the offence.

(c) Geographical indications

172. The Parliament of India enacted the Geographical Indications of Goods (Registration and Protection) Act, 1999 on 30 December 1999. Applications for geographical indications of goods are received at the Geographical Indications Registry. The Controller General of Patents, Designs and Trade Marks is the Registrar of geographical indications. A geographical indication may be registered for all goods originating in a definite territory of a country, or a region or locality in that territory (Article 8). Goods that cannot be registered as a geographical indication include: those which are likely to deceive or cause confusion; those which could be contrary to law; those which contain scandalous or obscene matter; those which comprise any matter likely to hurt religious susceptibilities; or those which are determined to be generic names or indications in their country of origin.[236] Moreover, nothing in the Act shall apply in respect of a geographical indication with respect to goods or classes of goods for which such geographical indication is identical with the form

[234] Registration used to be for seven years.

[235] IndiaIP.com news services, "New Trade Marks Act still not notified – Rules being framed" [Online]. Available at:http://www.indiaip.com/main/news/inida/09may03.htm [26 April 2001].

[236] "Generic names or indications" in relation to goods, means the name of a good which, although it relates to the place or the region where the goods were originally produced or manufactured, has lost its original meaning and has become the common name of such goods and serves as a designation for or indication of the kind, nature, type or other property or characteristic of the goods. In determining whether the name has become generic, account shall be taken of all factors including the existing situation in the region or place in which the name originates and the area of consumption of the goods (Article 9).

customary in common language as the common name of such goods in any part of India on or before 1 January 1995 (Article 26(2)).

173. Applications to register a geographical indication must be in writing to the Registrar and accompanied by the required fees. The Registrar is in charge of examining each application, and accepting or refusing it. In case of refusal the grounds should be stated in writing. If the application is accepted it has to be advertised. Any person may oppose the registration within three months of the advertisement.[237] No geographical indications have as yet been registered nor are there any pending registrations.

174. Registration of a geographical indication is for ten years with possible renewal for a further ten-year period. Registration for an authorized user is also for ten years or until the date at which the registration of the geographical indications expires, whichever is earlier. An authorized user has the exclusive right to use the geographical indication. Geographical indications, or authorization to use them, might be removed due to failure to pay fees. Registration gives the proprietor and the authorized user or users the right to obtain the relief specified in the Act in case of infringement.

175. India considers that the additional protection for geographical indications under Article 23 of the TRIPS Agreement should be extended to products other than wines and spirits. Relevant products of export interest to India are, for example, Basmati rice, Darjeeling tea, Alphonso mangoes, and Kohlapuri slippers.[238] In India, the Central Government has the discretion to specify that certain goods or classes of goods require additional protection (Article 22(2)). In this case the use of expressions such as "kind", "style", "imitation" is considered an infringement (Article 22(3)).

176. Infringement occurs when an unauthorized person uses a registered geographical indication either by indicating or suggesting that such goods originate in a geographical area other than the true place of origin, or uses any geographical indication in a manner that constitutes an act of unfair competition.[239] The falsification of geographical indications, the representation of a geographical indication as registered, and the sale of goods with a false geographical indication, are subject to penalties of imprisonment of six months to three years, and to fines of Rs 50,000–200,000. If the offender is a company, the company as well as every person in charge of its management are considered guilty. No data are available regarding infringement, seizures or penalties imposed.

177. To provide information to the consumer, the Central Government may require that the country or place of origin is indicated on goods imported into India (Article 71(1)). This requirement may be imposed if a dealer, manufacturer, producer, or user of the goods concerned requests it; or if the Central Government is convinced that it is necessary in the "public interest" (Article 71(3)).

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[237] A geographical indication may not be registered as a trade mark. Nevertheless, if a trade mark contains or consists of a geographical indication and has been registered under the Trade Mark Law before the enactment of the Geographical Indication Act, the trade mark should remain valid until it expires (Article 26).

[238] India has presented or co-sponsored several papers regarding this issue to the Council for TRIPS, as well as proposals for the 1999 Ministerial Conference regarding this issue (WTO documents IP/C/W195, 196, 204/Rev.1, 247/Rev.1, and 308/Rev.1, July 2000–May 2001).

[239] An "act of unfair competition" means any act of competition contrary to honest practices in industrial or commercial matters (Geographical Indication Act, p. 10).

(d) Copyright

178. The Copyright Act of 1957 was last amended in 1999. Copyright is provided to original literary[240], dramatic, musical, and artistic works, cinematographic films, and sound recordings; the Act also provides broadcast reproduction rights to broadcasters (Section 37) and performers (Section 38). Copyrights are granted if the work was first published in India or if the author was an Indian citizen; in the case of unpublished works, the author has to be a citizen of India or domiciled in India at the time that the work was done; architectural works are protected if located in India. National treatment to foreign works is provided under Articles 40-43 of the Copyright Act, where the Government, through an International Copyright Order, extends protection to nationals or organizations of countries that are members of international copyright conventions to which India is also a party (Berne Convention, Universal Copyright Convention, Phonograms Convention, and the WTO).[241] The International Copyright Order is amended from time to time to update the list of countries to which it applies; it was most recently updated in 2000.[242] However, if the Central Government suspects that adequate protection is not given to Indian authors in a specific country, India does not grant protection to the nationals of that country (Article 42). This provision has not been applied according to the authorities.

179. Copyright protection for published literary, dramatic, musical, and artistic works (other than photographs) is for the author's lifetime plus 60 years (Section 22). Anonymous and pseudonymous works are protected for 60 years from the year following their first publication (Section 23), the same protection period is granted for photographs, cinematographic films, and records (Section 25-26). A broadcast reproduction right is granted for 25 years from the beginning of the calendar year following the year of the broadcast (Section 37); performers rights are granted for a period of 50 years (Section 4 of the Copyright (Amendment) Act, 1999).

180. Compulsory licences may be issued if work is withheld from the public (Section 31), and if an author of an "Indian work" is dead or unknown or a copyright owner cannot be found.[243] In such an instance, anyone may apply to the Copyright Board for a licence to publish or translate the work. Moreover, seven years after first publication, anyone may apply to the Copyright Board for a licence to produce and publish a translation of a literary or dramatic work (Section 32). The Copyright Board may advise the Copyright Registrar to grant a compulsory licence under certain conditions.[244]

181. The law stipulates which acts constitute an infringement of a copyright but also includes an extensive list of acts that do not constitute an infringement. This list was extended in 1999 to include further exceptions to the protection of computer programs, namely; the decompilation of computer programs; the reproduction of programs to observe their functionality; and the making of multiple copies and adaptation of programs for non-commercial personal use (Section 7).

[240] Literary works includes computer programs, tables, and compilations including computer data bases (Article 2).

[241] These are the Berne Convention, the Universal Copyright Convention, and the Phonograms Convention (International Copyright Order, 24 March 1999 amended by the International Copyright (Amendment) Order, 12 December 2000).

[242] The first International Copyright Order was issued and came into force in January 1958.

[243] The Act defines "Indian work" as: an artistic work authored by an Indian citizen; and a cinematographic film or sound recording made or manufactured in India (Article 31).

[244] The conditions include: proof by the applicant (to the satisfaction of the Board) that a request to the copyright holder to reproduce and publish such works had been made and denied, or that the holder could not be traced; and that the applicant is competent to produce and publish the work at a price reasonably related to the price normally charged for similar works, as fixed by the Board. The licence may not be granted unless a certain period has expired (six months for works of the natural or physical sciences, mathematics or technology and three months for all others) between the grant of copyright protection and the application.

182. Infringement of copyright is punishable with penalties of imprisonment of six months to three years and fines between Rs 50,000 and Rs 200,000. The police (not below the rank of Sub-inspector) can seize, without a warrant, all infringing copies of a work and all the materials ("plates") used to make the infringing copies; all such seized material must be produced before a magistrate as soon as possible. The minimum jail term is doubled to one year and the minimum fine increased to Rs 100,000 for a second or subsequent offence. "Use" of an infringing computer program now carries a minimum jail term of seven days and a minimum fine of Rs 50,000. No centralized records are maintained regarding the infringement of copyrights, seizures, or penalties imposed. However, according to the National Crimes Records Bureau (NCRB) in 2000 there were 1,211 cases of copyright infringement and the value of seizures amounted to some Rs 82.6 million.

183. India's copyright legislation is generally strong, but enforcement is inadequate to deal with piracy (Table III.18).[245] The major obstacles are lack of resources and an overcrowded and ineffective court system that prevents the conclusion of cases. In addition, according to a study on copyright piracy commissioned by the Ministry of Human Resource Development, the police often lack the required knowledge to enforce the copyright legislation. Piracy pervades all the copyright industries both domestic and international. For instance, according to the International Intellectual Property Alliance, the piracy rates of Indian motion pictures remains high, around 80%; however, the rate for foreign films has dropped somewhat. Piracy of software in India has also declined, from 78% in 1995 to 63% in 2000; it is concentrated in the end-users category with major Indian companies not purchasing legitimate software. A further reduction in piracy would only benefit India's software industry, which is the world's largest producer of business software applications. Regarding books, it has been estimated that for each genuine copy sold in India, four unauthorized copies are sold. Enforcement at the border also seems to be weak.[246]

Table III.18
Estimated trade losses due to piracy and levels of piracy, 1995-00
(US$ million and per cent)

Industry	1995		1996		1997		1998		1999		2000	
	loss	level (%)	loss	level (%)	loss	level (%)	loss	level (%)	loss	level (%)	loss	level (%)
Motion pictures	58.0	99	66.0	85	66.0	80	66.0	80	66.0	80	47.0	60
Sound recordings/ musical compositions	10.0	30	7.0	30	6.0	40	6.0	30	8.0	40	6.0	40
Business software applications[a]	114.6	78	182.4	78	148.7	69	158.0	65	160.2	61	195.2	63
Entertainment software[b]	25.8	76	31.4	78	35.9	82	36.8	84	42.8	86	..	80
Books	25.0	..	25.0	..	22.0	..	30.0	..	35.0	..	36.0	..
Total	233.4	-	311.8	-	278.6	-	296.8	-	312.0	-	284.2	-

.. Not available.
\- Nil.

a BSA loss numbers for 2000 are preliminary.
b IDSA estimates for 2000 are preliminary.

Source: International Intellectual Property Alliance.

245 USTR (various years).
246 International Intellectual Property Alliance (various years).

184. While acknowledging that piracy is of concern, the Government suggests that rates of piracy have declined.[247] Nevertheless, enforcement is being stepped up. The Government has established a Copyright Enforcement Advisory Council (CEAC) based in the Ministry of Human Resource Development to advise the Government on enforcement; the Council includes representatives of the administration, industries for which copyright enforcement is important, heads of police forces in the states and other concerned central government ministries. State governments have also been advised to establish special police cells to handle IPR enforcement issues. In addition, a public education programme has been launched to improve awareness of intellectual property rights.

(e) Industrial designs

185. The Designs Act, 2000 replaced the Designs Act, 1911, for protection of industrial designs. Applications to register a design must be filed with the Patent Office.[248] Prior to registering the design, the Controller refers the application to an examiner. The Controller may refuse to register any design if its use could be contrary to public order or morality; any person aggrieved by such refusal may appeal to the High Court. After registration, the design has to be published and open to public inspection. The Patent Office keeps a registry of designs.[249]

186. Designs are protected as a copyright for a period of ten years, renewable for a further five years. The registration of a design may be cancelled at any time if the design has been previously registered or published in India; or in any other country prior to the date of registration; or if it is not a new or original design; or if it is not a design. Since 1998, 16 designs have been cancelled because they had previously been registered in India or had been published prior to the date of registration. The owner of a design may at any point assign a licence to someone else for the use of the design.

187. Piracy of a registered design is punishable with a fine of Rs 25,000-50,000 payable to the registered proprietor. Piracy is defined as a fraudulent imitation, importation of any article that has a fraudulent imitation of a design, or the sale of an article containing a fraudulent design. No data on infringement cases were made available to the Secretariat since the authorities state that no centralized records are maintained for this purpose.

(f) Semiconductor integrated circuits layout-designs

188. The Semiconductors Integrated Circuits Layout-Design Act, 2000 was enacted on 4 September 2000 to give effect to Section 6, Article 35 of the TRIPS Agreement. However, protection seems to be weak with many loopholes and broad compulsory licensing provisions.

189. Applications to register a layout-design should be made in writing to the Registrar and filed at the office of the Semiconductors Integrated Circuits Layout-Design Registry. The Registrar may

[247] A detailed study conducted by the National Productivity Council, commissioned by the Ministry of Human Resource Development puts the figure at some 20% in 1996/97; the estimates, however, exclude key sectors, namely cinema, software exports and print media (National Productivity Council, 1999).

[248] A design may not be registered if: it is not new or original; or it has been disclosed to the public anywhere in India or in any other country by publication or has been used prior to the filing date, or it is not significantly distinguishable from known designs or a combination of known designs; or it comprises or contains scandalous or obscene matter (Article 4).

[249] Members of the Paris Convention or parties to the TRIPS Agreement enjoy a priority right for the registration of a design in India, provided that the application is made within six months of the date of application in another member country; but the proprietor may not recover damages for piracy that occurred prior to the date on which the design was registered in India (Article 44).

refuse an application, accept it absolutely, or subject it to amendments.[250] If an application is accepted the Registrar must publish it within 14 days. Opposition to registration must be filed within three months of the advertisement. Foreign nationals may also oppose a registration even if they do not reside in India. Applications may be amended at any time; when there has been no opposition to the application for registration, or this has not been accepted, the registration of the layout-design is as of the date of the application.

190. Registration is for a period of ten years, from the date the application was filed or from the date of first commercial exploitation in India or anywhere else, whichever is earlier. The registration of a layout-design gives the registered owner the exclusive right to its use and to obtain relief in case of infringement. No person may institute proceedings to prevent or to recover damages for the infringement of unregistered layout-designs (Article 16).

191. Infringement of a layout-design refers to: the reproduction of a registered layout-design; or the importation, sale, or distribution for commercial purposes of a registered layout-design (unless the person is unaware of the act). However, layout-designs may be reproduced for scientific evaluation, analysis, research, or teaching. If a person creates, another original, layout-design on the basis of scientific evaluation or analysis of a registered layout-design that person has the right to reproduce, sell or incorporate this layout-design in a semiconductor, and this will not be considered to be an infringement. In addition, if by application of independent intellect someone creates a layout-design that is identical to a registered one, that person may use it as desired without infringing (Article 18(8)). According to the authorities this has never occurred.

192. A registered layout-design right may be assigned and transmitted with or without the owner's approval. The authorities noted that this has not been the case so far. If the registration of a layout-design is prohibited, or the assignment or transmission is contrary to law, anyone may apply to the Appellate Board for the cancellation of the registration or of the assignment or transmission (Article 42). However, this has not occurred.

193. A person other than the registered proprietor may be registered as the user of the layout-design.

194. The infringement of a layout-design right is punishable with imprisonment for up to three years or with fines of Rs 50,000-1 million. If a person is convicted for infringement, merchandise may be seized. The authorities state that there have been no cases of infringement of layout-designs since 1998.

[250] A layout-design that is not original, or that has been commercially exploited anywhere in India or in any country that affords to Indian citizens similar privileges as granted to its own citizens (Article 93); or that is not inherently distinctive; or that is not inherently capable of being distinguishable from any other registered layout-design may not be registered as a layout-design.