

## II. TRADE POLICY REGIME: FRAMEWORK AND OBJECTIVES

### (1) GENERAL CONSTITUTIONAL AND LEGAL FRAMEWORK

#### (i) Institutional and legal framework

1. Since India's previous Review in 2002, there have been no major changes in its institutional and legal framework. Executive power at the federal level is vested in the President who is assisted by the Cabinet<sup>1</sup>, while legislative power is held by the Parliament. The head of the Executive, the President is elected for five years by an electoral college comprising elected members of both the upper and lower houses of Parliament and the state legislatures. The Vice President is elected also for a period of five years by an electoral college made up of members of both houses of Parliament. The President is aided by the Council of Ministers, which is headed by the Prime Minister. The Prime Minister is appointed by the President who also appoints the remaining Cabinet members on the advice of the Prime Minister.<sup>2</sup> Members of the Cabinet must be members of Parliament; any Cabinet member who is not a member of Parliament for six consecutive months can no longer be a member of the Cabinet.<sup>3</sup>

2. The Parliament, made up of the Council of States (Rajya Sabha) or upper house, and the House of the People (Lok Sabha) or lower house, holds legislative power. The Council of States may have a maximum of 250 members (of which 12 nominated by the President); the present Council has 242 members (31 October 2006).<sup>4</sup> It may not be dissolved but one third of its members are subject to retirement every two years.<sup>5</sup> The House of the People, which sits for five years, may have a maximum of 550 members, of which 530 are elected from the states and 20 from the Union Territories<sup>6</sup>; there are currently 533 members of the House of the People.<sup>7</sup>

3. All bills, with the exception of money bills, may be introduced in either house; money bills, under Article 109 of the Constitution, may only be introduced in the House of the People. The procedure regarding the passage of bills has remained unchanged since the last Review of India: all bills except bills amending the Constitution, must be passed by a simple majority in both houses of Parliament and be signed by the President in order to become law. The President may request amendments to the bill and withhold assent; however, if the bill is passed again in its original form, the President may not withhold assent. Money bills, once approved by the House of the People, must either be approved or returned to the House of the People with recommendations by the Council of States within 14 days. If the House of the People accepts the recommendations, the bill is deemed to be passed by both houses; if it does not accept the recommendations, the bill is deemed to have been passed by both Houses in the form in which it was passed by the House of the People. If the bill is not returned to the House of the People within 14 days, it is also deemed to be passed by both houses.

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<sup>1</sup> Articles 52 and 53 of Chapter 1, Part V of the Constitution. Neither the President nor the Vice President can be members of Parliament.

<sup>2</sup> Article 75.

<sup>3</sup> Article 75.

<sup>4</sup> Members of the Council of States include not more than 238 representatives of the states, who are elected by the (elected) legislative assembly members of each state, as well as 12 members nominated by the President (Article 80).

<sup>5</sup> Each member is elected for a term of six years. Every two years, one third of these members complete their six-year term resulting in the election of one third of the membership of the Council at the beginning of every third year.

<sup>6</sup> In addition, under Article 331 of the Constitution, the President may, if he believes that the Anglo-Indian community is not adequately represented in the House of the People, nominate not more than two members of that community to the House of the People.

<sup>7</sup> Articles 80 and 81.

4. Under Article 123 of the Constitution, if the President deems it necessary to enact legislation during Parliament's recess, an ordinance may be promulgated. The ordinance has the same force as an Act of Parliament. However, it will expire six weeks after the reassembly of Parliament unless it is enacted into law by both houses.

5. The Constitution also provides for a division of jurisdiction between the Parliament and the legislative assemblies of states and union territories.<sup>8</sup> Under the Seventh Schedule, the Parliament has jurisdiction over international and inter-state trade and entering into treaties with foreign governments.<sup>9</sup> International agreements, including the WTO Agreements, must be incorporated into domestic law in order to be invoked before a domestic court of law.

6. The judiciary is headed by the Supreme Court, consisting of a Chief Justice and not more than 25 other judges, a High Court in each state and district and session courts at the district level. The Supreme Court has jurisdiction over all disputes between the Centre and states or between the states.<sup>10</sup> It is also the final court of appeal on civil and criminal proceedings of a High Court. The Supreme Court may also, at its own discretion, grant special leave to appeal any judgement taken by a national court or tribunal. Its decision is binding on all courts.

7. India's legal system is based on written law. The judiciary is independent and there is a separation of the judiciary from the executive. A recent speech by the Chief Justice of India acknowledges that although the system continues to command high esteem, it suffers from a shortage of staff, infrastructural constraints, and procedural delays.<sup>11</sup> As a result, the number of cases pending increased from nearly 2.8 million in 1999 to 3.5 million in 2005 in the High Courts and from 20 million to almost 26 million in the lower courts. Recent efforts to address this problem include the establishment of fast-track courts to resolve criminal cases and more funding to the judicial system.<sup>12</sup> Other steps include a project on Information and Communication Technology Enablement of the Indian Judiciary, established in October 2005, and a National Legal Literacy Mission in March 2005. The lower courts, however, remain weak and apparently also prone to corruption.<sup>13</sup>

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<sup>8</sup> There are currently 28 states, 6 union territories, and the national capital territory of Delhi.

<sup>9</sup> Other related areas in which the Union has jurisdiction include taxation (except for some taxes, such as on agriculture, land revenue, and minerals, and some excise taxes, which can be imposed by states), transport (railways, highways, maritime shipping, air transport), banking, insurance, and standards.

<sup>10</sup> As India is a union of states, the Constitution specifies certain responsibilities as being the jurisdiction of state governments, while others are in the jurisdiction of the Central Government (the Union list) and others are shared. For example, issues relating to international trade and international agreements are in the Union list of the Seventh Schedule; public health and sanitation, agriculture, water, and land are state subjects; and economic and social planning, criminal and civil procedures, electricity, and price controls are on the "Concurrent list".

<sup>11</sup> Speech by Chief Justice of India at the Inauguration of the Joint Conference of Chief Justices and Chief Ministers, 11 March 2006. Viewed at: [http://www.supremecourtindia.nic.in/new\\_links/speech.htm](http://www.supremecourtindia.nic.in/new_links/speech.htm) [27 September 2006]. The main reasons, according to the Department of Justice, include lack of responsiveness and transparency in administration, population growth, changes in the pattern of litigation and inadequate strength of judges and judicial officers (Department of Justice, Ministry of Home Affairs online information. Viewed at: <http://mha.nic.in/justi.htm> [27 September 2006]).

<sup>12</sup> According to the Department of Justice, some Rs 2.8 billion has been released by the Centre to the state governments since 1993/94 for developing infrastructure facilities for the judicial system (Department of Justice, Ministry of Home Affairs online information. Viewed at: <http://mha.nic.in/justi.htm> [27 September 2006]).

<sup>13</sup> A study on corruption in India by Transparency International found in 2005 that, among public services, the lower courts were perceived by the population to be among the most corrupt (Transparency International, 2005b). India was ranked 88<sup>th</sup> out of 158 in the 2005 *Corruption Perceptions Index* (Transparency International, 2005a). Corruption is closely related to lack of transparency and consequent scope

8. In addition, to reduce the burden on the legal system and to enable quicker disposal of claims in some cases, tribunals such as Consumer Forums have been set up. An alternative form of dispute resolution, the Lok Adalat (courts of the people) has also helped to settle a large number of cases out of court, thereby reducing pressure on the already overburdened legal system.<sup>14</sup> There are also provisions for the settlement of disputes under various Acts, such as the Telecom Regulatory Authority of India Act, 1995, which provides for a separate institution to adjudicate disputes between telecommunications operators and/or consumers, with the possibility of appeal to the High Court.

**(ii) Trade policy formulation and implementation**

9. Trade policy formulation and implementation remains with the Department of Commerce, in the Ministry of Commerce and Industry, in consultation with other key ministries such as the Ministry of Finance, Agriculture, as well as ministries relating to services, and the Reserve Bank of India. Trade policy is formulated and drafted in consultation with state and union territory governments, industry and farmers' associations, trade bodies, research and academic institutions, and other stakeholders. The policies are announced for a five-year period, along with annual reviews, in the Foreign Trade Policy (previously known as the Export-Import Policy), which is accompanied by the Handbook of Procedures. The Foreign Trade Policy and Procedures are implemented by the Directorate General of Foreign Trade (DGFT), while advice on tariff and related issues is provided by the Tariff Commission, both based in the Ministry of Commerce and Industry.<sup>15</sup> Other key departments of the Ministry include the Directorate General of Anti-dumping and Allied Duties, which deals with investigations and recommends action to be taken on anti-dumping and countervailing measures; and the Directorate General of Commercial Intelligence and Statistics (DGCI&S), responsible for collecting, compiling, and disseminating data on trade. Coherence and consistency between trade and other economic policies is maintained through inter-ministerial consultations prior to any key Cabinet decisions on policy.

10. The Department of Commerce also deals with policy relating to plantation crops (tea, coffee, rubber, cardamom, and tobacco), special economic zones, and export promotion and credit guarantee schemes through a number of autonomous bodies and state-owned enterprises (SOEs).<sup>16</sup> The SOEs are the State Trading Corporation of India (STC), STCL Limited, MMTC limited, PEC Limited, Export Credit Guarantee Corporation of India Limited (ECGC), and the India Trade Promotion Organization (ITPO). The STC, STCL, and MMTC are also involved in state-trading activities (Chapter III(2)(xv) and (3)(ix)).

11. Exports have been a major policy focus in recent years and the Department of Commerce is assisted in this function by several advisory bodies. These include the Board of Trade, reconstituted in 2005 to maintain dialogue with traders and industry to promote exports, and the Export Promotion

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for administrative discretion. In this regard, India ranks among the most opaque (42<sup>nd</sup> out of 48) countries based on the 2004 *Opacity Index*, which measures the degree to which countries lack clear, accurate, easily discernible, and widely accepted practices governing the relationships among governments, businesses, and investors. This translates into a risk premium of roughly 6.1% (viewed at: [http://www.opacityindex.com/opacity\\_index.pdf](http://www.opacityindex.com/opacity_index.pdf) [17 January 2007]).

<sup>14</sup> According to information provided by the authorities, by 31 December 2005 almost 500,000 such lok adalats had been set up and around 18.6 million cases settled out of court.

<sup>15</sup> The Tariff Commission was established in 1997 in the Ministry of Commerce. It is currently responsible for determining tariff levels, tariff rationalization, and developing the overall tariff structure. The Tariff Commission is also closely involved in analysing market access offers received from trading partners in the context of WTO negotiations (Tariff Commission online information. Viewed at: [http://tc.nic.in/new/new\\_tor.htm](http://tc.nic.in/new/new_tor.htm) [6 October 2006]).

<sup>16</sup> See WTO (2002) for the list of autonomous bodies, which remains unchanged since the previous Review.

Board to provide policy and infrastructural support for increasing exports. The Government may also, from time to time, set up ad hoc groups for advice, including on trade and related policies. Dialogue is also maintained directly with industry, through for example, the Chambers of Commerce, including the Confederation of Indian Industry (CII), the Federation of Indian Chambers of Commerce and industry (FICC) and the Associated Chambers of Commerce (ASSOCHAM). The Internet is also increasingly used for soliciting stakeholders' views and comments when formulating laws or policies.<sup>17</sup>

12. Although India does not have an independent authority to review government policy, policy is examined on a regular basis through mechanisms such as parliamentary committees. The Comptroller and Auditor General (CAG) of India, who is appointed by the President and is independent of both the Executive and Legislative branches of government, audits government accounts both at the central and state levels, including those of public sector enterprises and individual government programmes.<sup>18</sup> The CAG audits include a report on whether government programmes have achieved their objectives and provided the intended benefits. The reports are presented to the President (or the President's representative in a State) and then referred to parliamentary committees such as the Public Accounts Committee (PAC) or the Committee on Public Undertakings (CPU) who present their findings and recommendations to Parliament.<sup>19</sup> Government policies are also analysed by taskforces and committees established on an ad hoc basis.<sup>20</sup>

## **(2) TRADE POLICY OBJECTIVES**

13. Trade policy is seen not as an end in itself, but as a tool to further economic growth and development. The Foreign Trade Policy aims to double India's share of global merchandise trade by 2009, over the 2004 level, and to use trade to generate employment.<sup>21</sup> While exports are a key goal, the Foreign Trade Policy acknowledges the importance of facilitating imports required to stimulate the economy and calls for a simplification of import procedures and reduction of import barriers, and coherence and consistency between trade and other economic policies.

14. Nevertheless, exports continue to be a key focus. The Government in its Medium-term Export Strategy, issued in January 2002, targeted compound annual export growth of almost 12% over 2002-07, in order to achieve 1% of world exports by 2006/07. The Export Strategy called for, *inter alia*, further rationalization of tariffs, tax rebates, reducing transaction costs, improving export infrastructure, expanding free-trade agreements, and enhancing the use of export promotion programmes to increase exports further. The goal of doubling India's share of global merchandise trade by 2009 is to be achieved, *inter alia*, through further liberalization of controls and simplification of export procedures, and by "neutralizing the incidence of all levies and duties on inputs used in export products based on the fundamental principle that duties and levies should not be exported".<sup>22</sup>

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<sup>17</sup> Recent examples of such interaction with the general public include the Special Economic Zones Act, which was put on the Internet in draft stage to solicit comments. Suggestions are also solicited at the time of the formulation of the Foreign Trade Policy and the Ministry of Finance holds a series of meetings with stakeholders in the run-up to the annual Budget.

<sup>18</sup> For example, recent CAG reports include performance appraisals of government schemes such as the Accelerated Irrigation Benefit Programme, National AIDS Control Programme, and Empowerment of the Disabled Programme.

<sup>19</sup> Comptroller and Auditor General of India online information. Available at: <http://cag.nic.in/> [11 April 2006].

<sup>20</sup> Recent examples include: the Committee on (direct and indirect) Tax Policy established by the Minister of Finance.

<sup>21</sup> Ministry of Commerce and Industry (2006c), Preamble, Department of Commerce.

<sup>22</sup> Ministry of Commerce and Industry (2006c), Preamble.

15. To implement this policy, there are a number of duty-neutralizing schemes. In addition to measures existing at the time of the previous Review of India, such as the export promotion capital goods scheme, export-oriented units, technology parks, free-trade zones and duty drawback, new schemes have been added. These include sectoral initiatives in agriculture and village industries, handicrafts and handlooms, gems and jewellery, and leather and footwear. By reducing import barriers, through improved and faster customs clearance and reduced or no import duties, it is likely that these schemes are facilitating exports of the targeted products. However, duty forgone from export promotion schemes in 2004/05 was estimated at over Rs 354 billion, suggesting that their cost is high. The new schemes add to the already complex network of measures, which, according to a report by the Planning Commission, resulted in "administrative difficulties in monitoring".<sup>23</sup>

### (3) TRADE AGREEMENTS AND ARRANGEMENTS

#### (i) World Trade Organization

16. India was an original Member of the WTO and provides MFN treatment to all Members and other countries.<sup>24</sup> It has accepted the Fourth and Fifth Protocols and is a Member of the Information Technology Agreement.<sup>25</sup> It is not a party to the WTO Government Procurement Agreement (GPA).

17. Like all Members, India is required to make regular notifications on its trade-related laws and measures (Table AII.1).

18. India is an active Member of the WTO. In the current negotiations, it has submitted proposals relating to, *inter alia*, agriculture, non-agriculture market access (NAMA), services, disputes, competition policy, trade facilitation, rules, TRIPS, and special and differential treatment. A number of these proposals were made jointly with other Members and in many instances with developing countries, including the G-20, G-33, and NAMA-11 groups. India's position prior to the launch of the Doha Round of negotiations placed emphasis on securing the objectives outlined in the mandated negotiations and the implementation issues raised by a number of developing countries. At the Ministerial Conference in Cancun, in September 2003, and in Hong Kong, China in December 2005, India stressed the need to address agricultural subsidies in rich countries and tariff and non-tariff barriers maintained by these countries on products of export interest to developing countries.<sup>26</sup> India believes that the interests of its 650 million rural poor, who are dependent on agriculture for a livelihood, cannot be jeopardized. It is therefore emphasizing special and differential treatment through proportionately lower overall bound tariff reduction commitments by developing countries, coupled with a special safeguard mechanism and a list of special products vital to ensuring livelihoods and food security of farmers in developing countries.<sup>27</sup>

19. With regard to NAMA, India, along with its coalition partners, believes that: progress must be made on achieving a fair, balanced, and development-oriented set of modalities based on the

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<sup>23</sup> This was already a conclusion reached by the Planning Commission's Advisory Group on Tax Policy and Tax Administration in 2001, which noted that although the aim of the schemes was to strip export goods of all duties, "to achieve this there was a multiplicity of schemes and procedures which certainly result in administrative difficulties in monitoring" (Planning Commission, 2001).

<sup>24</sup> India does not receive MFN treatment from Pakistan, whose list of items that can be traded with India has expanded from 600 at the time of the previous Review of India to 1,075 (Taneja, 2006).

<sup>25</sup> India accepted the Fourth and Fifth Protocols, respectively, on 10 November 1997 and 9 December 1998.

<sup>26</sup> WTO documents WT/MIN(03)/ST/7, 10 September 2003 and WT/MIN(05)/ST/17, 14 December 2005.

<sup>27</sup> WTO document WT/MIN(05)/ST/17, 14 December 2005.

mandated principles of placing development concerns at the heart of the negotiations; ensuring less than full reciprocity in reduction commitments for developing countries; achieving a comparable level of ambition with regard to agricultural market access; and appropriate flexibilities to manage adjustment costs and address development needs.<sup>28</sup> On services, India seeks increased market access especially through liberalization of professional services trade in modes 1 and 4, while securing a balance in the outcome of commitments across all modes and sectors and the negotiations on domestic regulations. As the current round is considered to be a development round, India emphasizes that meaningful and effective special and differential treatment must be integral to the negotiations in accordance with the mandate, and that issues of particular concern to developing countries should be addressed.

20. Since 2002, India brought complaints with regard to Members' anti-dumping and countervailing measures, rules of origin, and tariff preferences to developing countries in the WTO. It has also been involved in five cases as defendant covering issues relating to the automotive sector, import restrictions, and anti-dumping measures (Table AII.2). In addition, India has been involved as third party in 16 cases brought to the DSB since 2002.<sup>29</sup>

## (ii) Regional trade agreements

### (a) Overview

21. Although India has been a firm supporter of multilateral liberalization, it has also sought out regional trade agreements in recent years. While India continues to attach primacy to the multilateral trading system to improve living standards, it believes that RTAs are building blocks that supplement the gains from multilateral trade liberalization. Since signing the Bangkok Agreement in 1975, India has signed agreements mainly with other developing countries (such as the GSTP) and within the region (SAFTA), and with some of its neighbours. Current negotiations include strengthening regional ties, for example, through the South Asian Association for Regional Cooperation and the BIMST-EC, but India is also seeking to develop ties with other regional groupings, such as ASEAN and MERCOSUR. Recent trade agreements, including with Singapore, go beyond negotiations on goods, to include services and investment (Table II.1).

**Table II.1**  
India's commitments under regional trade agreements, 2007

Agreement	Trade in goods	Trade in services	Other areas
SAFTA	Non-LDC members, including India are to reduce tariffs to 20% within two years, followed by a reduction to 0-5% in five years (six years for Sri Lanka) and three years for imports from LDC members. India has a negative list of 744 imports from LDCs and 865 items from non-LDC members that are excluded from tariff reduction commitments. <sup>a</sup> The first tariff reductions came into effect on 1 July 2006.	n.a.	n.a.
Asia Pacific Trade Agreement (Bangkok Agreement)	Tariff preferences for 570 HS six-digit tariff lines and an additional 48 tariff lines for LDC members with margin of preference ranging from 5% to 100%. Special concession on some items have also been extended to the LDCs.	n.a.	n.a.

Table II.1 (cont'd)

<sup>28</sup> WTO document TN/MA/W/79, 6 July 2006.

<sup>29</sup> WTO documents DS244; DS257; DS264; DS265; DS266; DS267; DS270; DS283; DS287; DS290; DS294; DS315; DS320; DS321; DS322; and DS335.

Agreement	Trade in goods	Trade in services	Other areas
BIMST-EC	Framework Agreement signed in February 2004 to form a free-trade area by 2012 with an additional five years given to the LDC members. Negotiations on trade in goods were to be completed by the end of 2005, but are yet to conclude. Negotiations on services and investment have commenced and must be concluded by 2007.	n.a.	n.a.
GSTP	Tariff concessions of 10%-50% on 53 tariff lines at the HS six-digit level. Tariff concessions of 50% apply to three tariff lines and are available only to Bangladesh, Benin, Guinea, Haiti, Mozambique, Sudan, and Tanzania.	n.a.	n.a.
Special preferential areas	Tariff preferences for certain imports from Mauritius, Seychelles, and Tonga.	n.a.	n.a.
Afghanistan	Tariff reductions on 38 HS six-digit tariff lines, with margins of preferences of 50% or 100% of the MFN tariff in force from 13 May 2003.	n.a.	n.a.
Nepal	Tariff exemptions for all goods subject to rules of origin. Imports of certain goods (vanaspati, copper products, acrylic yarn and zinc oxide) are subject to annual quotas.	n.a.	n.a.
Singapore (CECA)	Zero duty as of 1 August 2005 for 506 HS eight-digit products covered by the early harvest programme. Phased reduction and elimination of duty by 1 April 2009 for 2,202 HS eight-digit products and phased reduction of duty by 50% by 1 April 2009 for 2,407 HS eight-digit products. Some 6,500 HS eight-digit products are excluded from duty reductions.	Services included are: business services, communication (telecommunications and audiovisual), construction, distribution, financial (banking), health, tourism, recreational and transport (maritime) services. Temporary movement of natural persons and media are addressed in separate chapters.	Investment, standards, SPS, intellectual property rights, science and technology, education and dispute settlement.
Sri Lanka	Zero duty as of 1 March 2000 for over 1,000 tariff lines and a 50% margin of preference for all other items except 429 items on a negative list. Tariff concessions on textiles are 25% below the MFN rate. Tariff quotas apply to tea and garments and vanaspati. Total quantum of import restricted to 250,000 tonnes per annum.	n.a.	n.a.
Thailand	Early harvest scheme for 82 products at the HS six-digit level; tariffs to be reduced in phases from 1 September 2004 and to be eliminated by 1 September 2006.	n.a.	n.a.

n.a. Not applicable.

a India has offered Bangladesh market access for 8 million pieces of garments, of which 3 million using fabrics of Indian origin, three million using fabrics either of Indian or Bangladesh origin and two million unconditionally. These are part of India's sensitive list.

Source: Ministry of Commerce and Industry online information. Viewed at: [http://commerce.nic.in/India\\_rta.htm](http://commerce.nic.in/India_rta.htm), [16 May 2006].

(b) South Asian Association for Regional Co-operation

22. The SAARC, an agreement for regional cooperation among Bangladesh, Bhutan, India, Maldives, Nepal, Pakistan, and Sri Lanka, was established at the first SAARC Summit in Dhaka on 7-8 December 1985. In April 1993, the members of SAARC signed the SAARC Preferential Trading Arrangement (SAPTA), which provided limited preferential market access. The Agreement on a South Asia Free Trade Area (SAFTA) was signed during the 12<sup>th</sup> SAARC Summit, held in Islamabad, Pakistan, on 4-6 January 2004. The preferences exchanged under SAPTA will continue to be available to SAPTA members until the tariff liberalization under SAFTA is complete (2008 for non-LDC member preferences for LDCs and 2012 for LDC members).

23. Following three rounds of SAPTA negotiations, in which India offered tariff concessions at the HS six-digit level on 2,576 lines, additional concessions were given on 364 HS six-digit level lines in the fourth round. Special concessions are granted for least developed country members (Bangladesh, Bhutan, Maldives, and Nepal). Tariff reductions under the SAFTA are expected to be phased in by 2008 for non-LDC member preferences for LDCs (including India) and by 2012 for LDC members of SAFTA (Table II.1). SAFTA members have also excluded certain products from tariff reductions: India has notified 744 imports from LDC members and 865 from non-LDC members.<sup>30</sup> The first tariff reductions under SAFTA came into effect on 1 July 2006.<sup>31</sup>

(c) Asia Pacific Trade Agreement

24. The Asia Pacific Trade Agreement (APTA), originally known as the Bangkok Agreement, was signed on 31 July 1975 by Bangladesh, India, Lao PDR, Republic of Korea, Philippines, Sri Lanka, and Thailand; China acceded to the Agreement in April 2001.<sup>32</sup> The APTA entered into force on 1 September 2006 under an amendment to the original agreement.<sup>33</sup> India offers tariff preferences on some 570 tariff lines at the six-digit level, and an additional 48 tariff lines to LDC members.

(d) BIMST-EC

25. The Bay of Bengal Initiative for Multisectoral, Technical and Economic Cooperation (BIMST-EC), originally known as BIST-EC was signed on 6 June 1997 by Bangladesh, India, Sri Lanka, and Thailand; Myanmar joined the agreement in 1997, and Nepal and Bhutan joined in 2004. In February 2004, BIMST-EC members signed a Framework Agreement to form a free-trade area by 2012. Although this agreement provides for negotiations to be concluded on goods by December 2005, and on services and investment by 2007, these deadlines have not been met due to the complexity of issues involved and economic and political developments in member states.

(e) Agreement with Sri Lanka

26. India signed a free-trade agreement with Sri Lanka on 28 December 1998, which entered into effect on 1 March 2000. Under the FTA India reduce tariffs in phases, and eliminate them completely in March 2003, except for a negative list comprising 429 items including garments, plastics and rubber, alcoholic spirits, and coconut oil.<sup>34</sup> India also maintains tariff quotas on tea and garments under the FTA. The tariff quota for tea is currently 15 million kg per year, at a preferential rate of 50% of the MFN duty. The tariff quota for garments is 8 million pieces per year, of which 6 million should be manufactured using fabrics of Indian origin and enter at zero rates of duty; the remaining two million pieces receive a margin of preference of 75% of the MFN rate. In addition, imports of tea may only enter through the ports of Kochi and Kolkata, while garments may be imported only through

<sup>30</sup> Least developed country members (Bangladesh, Bhutan, Maldives, and Nepal) are to reduce existing tariffs to 30% by 1 January 2008; tariffs already below 30% will be reduced annually by a 5% margin of preference for each of the two years followed by a reduction of remaining tariffs to 0-5% by 1 January 2016.<sup>30</sup> (SAARC Secretariat online information. Viewed at: <http://www.saarc-sec.org/main.php?t=1> [26 September 2006]).

<sup>31</sup> Tariff notifications 67-69 of 2006. Viewed at: <http://www.cbec.gov.in/cae/customs/cs-act/notifications/notfns-2k6/cs-notfns-tarr06.htm> [2 October 2006].

<sup>32</sup> WTO document WT/COMTD/N719, 29 July 2004.

<sup>33</sup> UNESCAP online information. Viewed at: [http://www.unescap.org/tid/apta/ta\\_amend.pdf](http://www.unescap.org/tid/apta/ta_amend.pdf) [27 September 2006].

<sup>34</sup> Sri Lanka was expected to eliminate its tariffs on imports from India by 2008 (Ministry of Commerce and Industry online information. Available at: [http://commerce.nic.in/India\\_rta.htm](http://commerce.nic.in/India_rta.htm), [16 May 2006].



the ports of Chennai, Mumbai, and Jawaharlal Nehru Port, Mumbai. Furthermore, according to a Public Notice issued by the Directorate General of Foreign Trade on 21 November 2006, imports of vanaspati, including bakery shortening and margarine, are subject to an "overall quantitative limit" of 250,000 tonnes per year under the Indo–Sri Lanka Free Trade Agreement.<sup>35</sup> The agreement also has provisions for the use of anti-dumping and safeguard measures as well as provisional suspension of preferences in case of balance of payments difficulties.

27. India and Sri Lanka are currently negotiating a Comprehensive Economic Partnership Agreement (CEPA), which would include trade in services and economic cooperation in other areas. According to the authorities, no date has been set for completion of the negotiations.

(f) Comprehensive Economic Cooperation Agreement with Singapore (CECA)

28. The CECA was signed on 29 June 2005 and became effective on 1 August 2005. The agreement was the first signed by India that covered not only goods, but also services and investment. Tariff concessions are to be phased in between 1 August 2005 and 1 April 2009 (Table II.1). Products excluded from commitments, including agricultural products, alcoholic beverages, minerals, chemicals, rubber products, and textiles and clothing products (6,551 tariff lines or over half of the tariff), will remain subject to MFN duties. Currently, India offers tariff preferences at the HS eight-digit level on some 5,111 lines, although the MFN tariff on several of these lines is already zero, implying that preferences are effectively offered on only 4,884 tariff lines (Chapter III).

29. India's commitments on financial services go beyond its commitments in the GATS, including commitments in life insurance services, additional commitments in non-life insurance, commercial presence for three banks from Singapore (DBS Group, United Overseas Bank Limited, and Overseas Chinese Banking Corporation Limited) including up to 15 branches over four years, subject to certain limitations and higher equity limits in local banks (Chapter IV(5)(iii)(a)).

30. In the investment chapter, commitments were made to protect investment, including through specific commitments on expropriation and compensation for any expropriation. The CECA also exempts investment from Singapore from capital gains taxation.<sup>36</sup>

(g) Framework Agreement for Establishing a Free Trade Area with Thailand

31. The Framework Agreement for establishing a Free Trade Area was signed by India and Thailand on 9 October 2003. Although the text of the agreement covers trade in goods, services and investment, specific commitments were made only with regard to trade in goods. An early harvest scheme includes phased tariff elimination for 82 products at the HS six-digit level, by 1 September 2006.

(h) Other regional trade arrangements

32. Consultations between India and ASEAN Economic Ministers were held on 15 September 2002 when it was decided to establish an ASEAN–India Economic Linkages Task Force (AIELTF) to prepare a draft Framework Agreement to enhance bilateral trade. The first ASEAN–India Summit was held on 5 November 2002 in Cambodia, where India committed,

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<sup>35</sup> DGFT notification No. 32 (RE 2006). Viewed at: <http://dgft.delhi.nic.in/> [2 October 2006] and DGFT Public Notice No. 69 (RE-2006)/2004-09. Viewed at: <http://dgft.delhi.nic.in/> [18 January 2007].

<sup>36</sup> According to the authorities, the concession to Singapore on capital gains taxation coexists with the India–Mauritius double tax avoidance agreement and will be available to Singapore only as long as India continues to extend a similar concession to Mauritius.

*inter alia*, to provide special and differential treatment to ASEAN members based on their level of development, and to aligning its peak tariffs to east Asian levels by 2005.

33. The Framework Agreement on Comprehensive Economic Co-operation was signed by India and ASEAN heads of state on 8 October 2003. The agreement includes trade in goods, services, and investment. The early harvest programme, including exchange of tariff concessions, was expected to commence on 1 January 2007. Closer trade and investment ties are also sought with the European Union and the United States, through the India–EU Strategic Partnership signed on 7 September 2005 and the US–India Trade Policy Forum, which held its first meeting on 12 November 2005. Under the former, a High Level Trade Group was established to explore ways to deepen trade and investment relations and reported to the next summit meeting in October 2006. A decision was taken to negotiate a broad-based trade and investment agreement. The first meeting of the US–India Trade Policy Forum discussed tariffs and non-tariff barriers to trade, agriculture, investment, services, intellectual property, and the Doha Round. It agreed to establish focus groups on agriculture, tariffs and non-tariff barriers, services, investment, and innovation and creativity. The meetings of the Trade Policy Forum are held at regular intervals several times during a year.

34. India is exploring the possibility of establishing a Comprehensive Economic Cooperation Agreement with the Southern African Customs Union (Botswana, Lesotho, Namibia, South Africa, and Swaziland), and has signed preferential agreements with Afghanistan (6 March 2003), MERCOSUR (19 March 2005), and Chile (8 March 2006). India's commitments under the PTA with Afghanistan include 38 tariff lines at the HS six-digit level, with preferences ranging from 50% to 100% of the MFN tariff rate. The PTA has been in operation since 13 May 2003. A Framework Agreement to Promote Economic Co-operation, which aims to identify the potential for cooperation in trade in goods and services, investment, and other areas, was signed with MERCOSUR on 25 January 2004. As a first step, India has offered commitments on 450 tariff lines at the HS eight-digit level, with preferences ranging from 10% to 100% of the MFN rate. Under a Framework Agreement to Promote Economic Co-operation signed with Chile, on 20 January 2005, India's offer includes 178 tariff lines at the HS eight-digit level, with preferences ranging from 10% to 50% of the MFN rate.<sup>37</sup> In parallel, a meeting of the joint study group was held during the preferential trade agreement negotiations in November 2005 to explore the possible next steps. The PTAs with MERCOSUR and Chile are not yet in force.

35. The bilateral agreement with Nepal was extended up to 5 March 2007, apparently without change. India's free-trade agreement with Bhutan, conducted in local currency, was extended on 29 July 2006 for ten years, while its bilateral trade cooperation agreement with Bangladesh was extended for three years, from 1 April 2006. India also maintains transit agreements with Bangladesh and Nepal.

36. India is negotiating a number of trade agreements including with the Republic of Korea, Mauritius, and the Gulf Cooperation Council, and has also set up joint study groups to explore the feasibility of comprehensive economic cooperation agreements with China, Japan, Indonesia, Malaysia, Australia, and the Russian Federation.

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<sup>37</sup> India's offer covers meat and fish products, rock salt, iodine, copper ore and concentrates, chemicals, leather products, newsprint, paper and particle boards, some industrial products, and wool (Ministry of Commerce and Industry online information. Available at: [http://commerce.nic.in/India\\_rta.htm](http://commerce.nic.in/India_rta.htm), [16 May 2006]).

**(iii) Other trade arrangements**

37. India is a participant in the Global System of Trade Preferences (GSTP) among developing countries. Under the GSTP, which entered into force in India on 19 April 1989, India offers tariff preferences for a limited number of products. Two rounds of negotiations have been completed and a third is expected to be completed by 2007.<sup>38</sup> It appears also that India is considering giving duty-free and quota-free market access to least developed countries, but no further details are available. Under the Generalized System of Preferences (GSP), India receives preferential access to the markets of Bulgaria, Canada, the European Communities, Japan, New Zealand, Norway, Russian Federation, Turkey, Switzerland, and the United States.<sup>39</sup>

**(4) FOREIGN INVESTMENT REGIME****(i) Overview**

38. India has continued to liberalize its foreign investment regime gradually since its last Review. Procedures for applying for and obtaining FDI approval are essentially unchanged; the main changes in policy have been to the entry route and a relaxation in equity restrictions in a number of sectors. FDI policy is formulated by the Department of Industrial Policy and Promotion (DIPP) in the Ministry of Commerce and Industry. The Investment Promotion Desk and the Foreign Investment Implementation Authority, under the Secretariat for Industrial Assistance (SIA) in the DIPP, are concerned with investment promotion and facilitating implementation of approvals. The Foreign Investment Promotion Board (FIPB), based in the Ministry of Finance, is responsible for granting approval for FDI in sectors/activities where prior government approval is required.

39. A May 2002 report on reforming the investment approval and implementation procedures concluded that, despite economic liberalization, FDI had not entered India to the degree expected; and this was due to several constraints, including in the complexity of procedural requirements of several laws and regulations, as well as transparency in the approval procedures.<sup>40</sup> In response, the Foreign Investment Implementation Authority (FIIA) was established in August 1996. The FIIA, which is based in the DIPP, provides assistance to foreign investors encountering approval or operational difficulties. The FIIA is assisted by a Fast Track Authority in each sector, and includes representatives across the Government, including state governments, and agencies involved in the particular project. India also continues to streamline foreign investment regulations, and reduce or remove equity restrictions. In the latest move to rationalize policy further, in February 2006 equity restrictions were lifted in several activities, including brewing and distillation of alcohol; manufacturing activities in products subject to industrial licensing within 25 km of large cities; and in sensitive sectors such as the manufacture of explosives and hazardous chemicals, and "greenfield" airports, where investment has been permitted under the automatic route subject to sectoral regulations and, where applicable, an industrial licence under the Industries (Development and Regulation) Act.<sup>41</sup>

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<sup>38</sup> Ministry of Commerce online information. Available at: [http://commerce.nic.in/india\\_rta.htm#h16](http://commerce.nic.in/india_rta.htm#h16) [16 May 2006]. Details of the tariff lines covered can be found in Customs notification No. 239/89, 1 September 1989, as amended by notification No. 135/2001-Customs, 31 December 2001 (Viewed at: <http://www.cbec.gov.in/cae/customs/cs-act/notifications/notfns-before2k/cs236-89c.htm> and <http://www.cbec.gov.in/cae/customs/cs-act/notifications/notfns-2k1/cs135-2k1.htm> [19 January 2007]).

<sup>39</sup> UNCTAD (2005).

<sup>40</sup> Department of Industrial Policy and Promotions (2002).

<sup>41</sup> Department of Industrial Policy and Promotions (SIA), "Press Note No. 4 (2006 Series)". Viewed at: <http://siadipp.nic.in/policy/changes.htm> [29 September 2006].

**(ii) Legislation and approval procedures**

40. Although there is no specific FDI legislation, FDI policy is incorporated in the Foreign Exchange Management (Transfer or Issue of Security by a Person Resident Outside India) Regulations, 2000, notified under the Foreign Exchange Management Act, 1999. Foreign investment is at present permitted up to varying levels of equity in most sectors, but it is prohibited in: retail trading (except single brand product retailing); atomic energy; lottery business; and gambling and betting (Table AII.3).

41. There are two routes for FDI. FDI up to 100% may take place through the automatic route, requiring only a notification to the regional office of the Reserve Bank of India (RBI) within 30 days of receipt of the investment and within 30 days of issuing shares to foreign investors. The automatic route is permitted for all activities except: investment in two industries subject to compulsory industrial licensing (manufacture of cigars and cigarettes of tobacco products, and defence-related items); equity investment above 24% for manufacture of items reserved for the small-scale sector; where the foreign partner has an existing venture in India in the same field on 12 January 2005 (except where investment is by a venture capital fund registered with the Securities and Exchange Board of India (SEBI); where investment by either party is less than 3% in the existing joint venture; and if the existing joint venture is defunct or sick); and investment in certain sectors, as specified, above the overall permitted foreign equity ceilings (Table AII.3).

42. In such cases, prior approval is required by the Government. Proposals are considered by the FIPB in the Ministry of Finance, Department of Economic Affairs (DEA). Applications seeking FIPB approval are received in the DEA, except for investment proposals by non-resident Indians, for single-brand product retailing or in an export-oriented unit, which are received and processed by the DIPP. Investments in an Indian company under the Portfolio Investment Scheme are not covered by the FDI policy and require prior approval from the Securities and Exchange Board of India (SEBI), while foreign investors setting up branches, liaison or project offices would be covered by the provisions of the Foreign Exchange Management (Establishment of a branch/liaison office or project office in India) Regulations 2000, under the Foreign Exchange Management Act (FEMA).<sup>42</sup>

43. Foreign investment proposals must be accompanied by details of all investors; existing or proposed activities; details of the project, including cost, proposed employment, and exports and foreign exchange requirements; and financial details of the company, such as paid up capital, percentage held by foreign or non-resident investors, and any shares to be issued or already issued. FIPB decisions must normally be made and communicated to the investors within 4-6 weeks unless additional information on the proposal is required. According to the authorities, normally these deadlines are met on 90% of proposals, provided information is complete. The FIPB works within established guidelines, considering, *inter alia*, whether the project meets certain norms such as value added or export earnings (for export-oriented units or the small-scale sector), and whether it involves technical collaboration, along with the nature of the technology to be transferred.<sup>43</sup> Approval by the FIPB is subject to clearance being obtained under relevant national and state laws and regulations. Once approval has been granted, the investor must obtain clearance from other central or state government agencies, including those responsible for foreign exchange, pollution control and environmental clearance as well as land acquisition, power, etc. The number of clearances required from individual agencies, and the time taken for each, were among the major bottlenecks identified by

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<sup>42</sup> Ministry of Commerce and Industry (2006b).

<sup>43</sup> Guidelines to be considered by the FIPB when examining FDI proposals are contained in Ministry of Commerce and Industry (2005), Annexure I.

the Committee to examine investment procedures and implementation in September 2001.<sup>44</sup> To address this problem, several states have established single-window approval systems for investment proposals made within the state. In addition, sectoral guidelines are being reviewed to streamline them and render them more transparent.

### (iii) Incentives

44. While no incentives are targeted specifically at foreign investors, both central and state governments provide investment incentives for domestic and foreign investors. The Central Government's incentives include a 100% tax exemption on profits for infrastructure development and operation; a tax exemption for exports for a period of ten years; a tax exemption for the first five years and a 50% exemption for the next five years, for investors in the Special Economic Zones. There are also capital investment subsidies for new industrial units and for expansion of these units in the north-eastern region and states that are covered by a special package scheme, introduced in January 2003; the incentives include a subsidy of 15% of investment in plant and machinery, up to a maximum of Rs 3 million for all new units and for expansion of existing units. Similar schemes also exist for the state of Jammu and Kashmir. State governments offer investment incentives mainly in the form of exemptions on the payment of charges for electricity, registration fees, and stamp duty, as well as reservation of land, *inter alia*, for export-oriented units and foreign investors.<sup>45</sup>

### (iv) Investment agreements

45. Since 1 January 2002, India has signed 16 bilateral investment agreements, of which 8 are yet to be ratified. Of the agreements signed before 1 January 2002, 10 have entered into force since 1 January 2002.<sup>46</sup>

46. India has signed seven treaties on avoidance of double taxation since 2002, of which three are revisions or amendments to previous treaties.<sup>47</sup> Some of these treaties have "tax sparing" provisions.

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<sup>44</sup> For example, Annex IX shows the downstream approval requirements for a company, involving different state and central government agencies (Government of India, 2002, p. 81).

<sup>45</sup> Ministry of Commerce and Industry (2004).

<sup>46</sup> Argentina (12.08.2002), Belarus (23.11.2003), Chinese Taipei (25.02.2005), Croatia (19.01.2002), Cyprus (12.01.2004), Finland (09.04.2003), Hungary (02.01.2006), Indonesia (22.01.2004), Kuwait (28.06.2003), Lao PDR (05.01.2003), Mongolia (29.04.2002), Portugal (19.07.2002), Tajikistan (14.11.2003), Turkmenistan (27.02.2006), Ukraine (12.08.2003), and Yemen (10.02.2004) (Ministry of Finance online information. Viewed at: [http://www.finmin.nic.in/the\\_ministry/dept\\_eco\\_affairs/investment\\_div/invest\\_index.htm#Background\\_and\\_salient\\_features](http://www.finmin.nic.in/the_ministry/dept_eco_affairs/investment_div/invest_index.htm#Background_and_salient_features) [8 June 2006]).

<sup>47</sup> The treaties were signed with: Armenia (31.10.2003), Hungary (revision: 03.11.2003), Malaysia (revision: 14.05.2001), Singapore (amendment: 29.06.2005), Slovenia (13.01.2003), Sudan (22.10.2003), and Uganda (30.04.2004).

### **Annex II.1: Trade-related technical assistance<sup>1</sup>**

1. Since 2002, India has been the beneficiary of trade-related technical assistance provided both bilaterally and through the WTO. Since 2002, some 140 technical assistance projects on trade policy and regulations, and over 130 on trade development were reported by Members, multilateral agencies, and the WTO Secretariat. Officials from the Indian Government have also participated in the WTO trade policy courses.

2. Assistance by the WTO Secretariat has been mainly related to the WTO Agreements, including through national seminars on technical barriers to trade, and sanitary and phytosanitary issues. Members and other multilateral institutions have provided the bulk of trade development assistance, including for business development and management, trade and investment promotion, and trade promotion strategies. India looks forward to receiving technical assistance in capacity-building activities and would like to raise the awareness of its scientists and technicians on the trade-related implications of SPS and TBT requirements. India would also like to build a world-wide database on SPS and TBT requirements in other countries. With regard to TRIPS, India would like to sharpen the skills of its patent examiners.

3. India has also hosted a number of regional seminars and workshops (provided by Members and the WTO Secretariat) on a range of issues related to the WTO Agreements, including trade mainstreaming in development plans, technical barriers to trade, sanitary and phytosanitary measures, customs valuation, regional trade agreements, dispute settlement, trade-related intellectual property rights, agriculture, services, tariff negotiations, and rules.

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<sup>1</sup> This section is based largely on the Doha Development Agenda Trade Capacity Building Database established by the WTO jointly with the OECD.