III. TRADE POLICIES AND PRACTICES BY MEASURE

(1) OVERVIEW

1. Since its previous Review in 2002, India has continued to reduce barriers to imports. The tariff has become the main instrument of trade policy and remains an important albeit declining source of tax revenue. The Government has continued to reduce applied MFN tariffs on non-agricultural products to meet its goal of reaching ASEAN tariff levels on these products by 2009. As a result, the overall average applied MFN tariff has fallen from over 32% in 2001/02 to less than 16% in 2006/07, widening the already large gap between the average tariffs for non-agricultural products (12.1%) and agricultural products (almost 41%).[1] When *ad valorem* equivalents of non-*ad valorem* rates are taken into account, the overall average tariff is around 17.5%, reflecting these relatively high tariffs. Analysis of effective protection is complicated by the tariff exemptions granted for certain goods and uses. These exemptions (together with drawbacks) are aimed, *inter alia,* at mitigating the adverse impact of tariffs on exports and have continued to be simplified during the period under review. However, the overall average applied tariff based on customs duty collection rates is around 10%, suggesting that the effective rate is considerably lower, in great part due to these exemptions. Such measures also render the administration of the tariff complex, thereby making it susceptible to administrative discretion although, the authorities state that administration is carried out within a framework of clearly laid down rules and regulations and hence discretion is judiciously controlled. In addition to tariffs, additional duty, in lieu of excise (a central tax on domestic manufacture) and a 4% special additional duty to partly compensate for internal taxes such as value added tax, municipal tax, "market committee fees" etc., are charged to provide national treatment to the imported good. Under its growing regional trade agreements, India also offers preferential tariff rates although, with the exception of Sri Lanka and LDC members of SAFTA, these are not substantial.

2. As the overall applied MFN tariff declines, the gap between the bound and applied rates continues to grow. India's bound tariff rates are high, especially for agricultural products. As a result of completing implementation of its Uruguay Round commitments, India's overall bound rate is currently at 48.6%. The difference between the high bound rates and considerably lower applied rates creates uncertainty for importers by giving scope to raise tariffs within the bound rates. During the period under review, the authorities have raised tariffs substantially on 27 agricultural products, contributing in part to the slight increase in the overall average applied MFN rate (from 40.7% in 2001/02 to 40.8% in 2006/07).

3. The use of import restrictions, maintained under GATT Articles XX and XXI has declined, with around 3.5% of tariff lines subject to such measures. India also monitors imports of around 300 sensitive products and its use of state trading for food security, marketing, and domestic supply reasons is unchanged. Imports of second-hand cars over three-years old are also subject to licensing restrictions.

4. Since 2002, India's use of anti-dumping and countervailing measures has declined, although it is still one of the largest users of these instruments. Attempts are being made to harmonize national standards with international norms. Some 73% of Indian standards for which corresponding ISO/IEC standards have been issued are harmonized, while the total of Indian standards harmonized with international norms has risen from 17% to 22% since 2002. India is also trying to consolidate its large number of laws dealing with sanitary and phytosanitary measures to streamline SPS standards and enforcement and a system to carry out pest/disease risk analysis has been in place since July 2001.

[1] This gap is somewhat smaller if *ad valorem* equivalents (AVEs) for non-*ad valorem* rates (all but two specific rates found in textiles and clothing) are included in the tariff analysis, raising the average tariff on non-agriculture to 14.1%.

5. Government procurement continues to be used as a policy instrument, although at the Central Government level significant efforts have been made to enhance transparency and competition in procurement procedures. It seems, however, that preferences remain for products manufactured by the small-scale sector and state-owned enterprises. India is not a party to the WTO's Agreement on Government Procurement.

6. In contrast to barriers to imports, which have been declining gradually, the export regime remains complex with numerous schemes aimed at reducing the anti-export bias inherent in India's trade and internal policies. Since 2002, new schemes have been added, and some incentives or schemes have been removed. The special economic zones (SEZs), to replace the existing export processing zones, offer investors a number of incentives, including tariff exemptions on imports of capital goods and other inputs as well as income tax holidays of up to ten years. The tax revenue forgone from the EPZ/SEZ schemes was estimated at over Rs 280 billion in 2004/05 (around 0.9% of GDP)[2]; there is considerable doubt as to the cost-effectiveness of SEZs in generating investment and employment. Other export measures include prohibitions and trade through designated agencies, which are essentially unchanged, and export taxes on a few lines pertaining to raw hides and skins and semi-finished leather; such measures tend to depress the domestic prices of these products and therefore constitute assistance to their downstream processing.

7. India's industrial policies, which include reservations for the public and small-scale sectors, and industrial licensing requirements, have, by and large, become less restrictive. Currently, three industries (atomic energy, railways, and substances notified by the Department of Atomic Energy) are restricted to the public sector, and industrial licensing is required for five industries; products reserved for manufacture by the small-scale sector have also declined from 799 at the time of the last Review to 326. Less progress has been made in reforming subsidies, especially those regarded as "non-merit" subsidies, which account for 58% of total subsidies, and the public sector, which remains a drain on scarce government resources. The largest share of direct subsidies continues to go to agriculture (including fertilizer and price support) and food, although petroleum (kerosene and liquefied petroleum gas) and the railways also receive a significant share. In addition, there are implicit subsidies, especially through subsidized prices of key services, like electricity and water. With regard to state-owned enterprises (SOEs), efforts were made to identify those that could be restructured and made profitable, while others were to be closed. However, as of July 2006, the privatization programme has been paused, pending a review.

8. Despite moderate tax rates, the pervasiveness of incentives is such that the tax system is also a major instrument of industrial policy as well as a source of revenue. At the same time, it is susceptible to tax avoidance, if not evasion. In recent years, an effort has been made to rationalize the tax structure, including through the removal of incentives with the potential for causing resource misallocation. Attempts to render the income tax system more neutral (by reducing/removing some incentives and thereby broadening the income tax base), while at the same time improving enforcement, have contributed to the increase in direct taxes collected. With regard to indirect taxation, a value-added tax was implemented by most states in April 2005, replacing state-level taxes on purchase or sale of goods. The Central Government levies "excise duty" on goods at the manufacturing stage and a 12% service tax on a number of services. It also levies a central sales tax on inter-state sales of goods, which is collected and appropriated by the states. It is envisaged that the central and state taxes on goods and services will eventually be combined into a goods and services tax (GST).

[2] Nevertheless, according to the Receipts Budget, most of these schemes "may not be termed incentive schemes since they largely represent input tax credit that has to be allowed in order to offer a level playing field to our exporters" (Budget 2006/07).

9. Implementation of the Competition Act 2002 has been delayed due to legal challenges to certain provisions; certain amendments had to be made to the Act, and these are being processed after a detailed examination in Parliament. When it becomes functional, the Act will permit the Competition Commission of India to take action against cartels and other anti-competitive practices, including those originating outside India but affecting the domestic market.

10. Technological progress is one of the main engines driving growth in GDP and productivity (and thus competitiveness) in the long-run; thus, new technologies need to be nurtured and intellectual property rights protected adequately in the domestic market. In this regard, the Patent Act has been amended, ending the ten-year transition period for India to implement its obligations under the TRIPS Agreement. The Act was also amended to permit compulsory licences for exports of patented pharmaceutical products in exceptional cases (following the amendment to the TRIPS Agreement), although it appears that no compulsory licences have been granted. Efforts have also been made to step up enforcement, including through increased police raids and information and training campaigns. However, the lack of data on civilian or criminal prosecutions, and long and cumbersome legal procedures (Chapter II) would suggest that these are insufficient deterrents to IPR violations.

11. An efficient capital market capable of mobilizing domestic savings and channelling them into the most productive investments is essential for improving India's competitiveness and thus its long-term development. Recognizing that good corporate governance is essential for the establishment of such a market, the authorities have been taking steps to improve the framework in this regard.

(2) MEASURES DIRECTLY AFFECTING IMPORTS

(i) Procedures

(a) Registration and documentation

12. There have been no major changes in import and export procedures. Under the Foreign Trade (Development and Regulation) Act, 1992, no person may engage in import or export unless authorized to do so by the Director General of Foreign Trade (DGFT) through an importer-exporter Code (IEC) number.[3] However, under the Foreign Trade Policy procedures, certain goods may be imported without an IEC number, including by Central Government ministries, imports for personal use, and trade with Myanmar and Nepal valued at under Rs 25,000 per consignment.[4]

13. Three documents are required for most goods imports: the invoice, packing list, and bill of lading or airway bill. Import permits for products subject to restrictions and health and sanitary certificates must be obtained prior to import from the relevant Government departments and submitted along with the Customs declaration. Additional documentation may be required, such as a country of origin certificate for goods imported under a preferential trade agreement or for goods entering under an export incentive scheme and qualifying for duty reductions.

14. To speed up customs clearance, the electronic data interchange (EDI) system was introduced in May 1995 and is applied at all major ports and air cargo complexes. It is operational in 34 customs stations, and about 85% to 90% of import/export documents are processed electronically: about 0.25 million importers/exporters are using EDI facilities. According to the authorities, the EDI and a risk management system at major customs ports has significantly reduced the time taken for customs

[3] Foreign Trade (Development and Regulation) Act, 1992 (Chapter III).
[4] The full list of exemptions is available in Ministry of Commerce (2006b).

clearance (section (ii)(b) below). Imports declared under the EDI system do not require a formal bill of entry to be filed with Customs, but the importer is required to file a cargo declaration. The importer must, however, submit the required documents at the time of examination of the goods. For imports not filed under the EDI system, additional documents are required, including: signed invoice, packing list, bill of lading, letters of credit, and relevant import or industrial licences, etc.[5]

(b) Preshipment inspection

15. In October 2004, the Department of Commerce announced that imports of unshredded scrap required preshipment inspection and would be permitted only through designated ports; the list of ports has been gradually expanded to 26.[6] Preshipment inspection is also required for imports of certain types of second-hand and defective items of steel, as well as textiles and textile articles. Imports of certain types of second-hand and defective steel products are permitted only through Mumbai, Kolkata and Chennai ports, while imports of textiles and textile articles must be accompanied by a preshipment inspection certificate stating that they do not contain hazardous dyes prohibited under the Environment (Protection) Act 1986. Preshipment inspection certificates are provided by 99 recognized certifying agencies, including several based outside India.[7]

(ii) Customs valuation and clearance

(a) Valuation

16. There have been no major changes to customs valuation procedures since India's last Review, in 2002. The only statutory change for trade facilitation purposes, was an amendment of Rule 9(2) of the Customs Valuation Rules 1988, which clarified that the cost of moving freight from the port to an inland container depot or a container freight station before customs clearance, would not be included in the cost of transport as it would be considered part of the post-import cost. Valuation is determined under the Customs Valuation (Determination of Price of Imported Goods) Rules, 1988, most recently amended in September 2001. Under these Rules the value of imported goods is the transaction value defined as "the price actually paid or payable for the goods when sold for export to India", which should include costs and services incurred by the buyer as well as the cost of inputs, royalties, licence fees, etc. that are not included in the price paid (Rule 9). If the transaction value cannot be determined the value is based on: the transaction value of identical goods sold for export to India and imported at or about the same time; the transaction value of similar goods; deductive value; computed value; or the residual method.[8] Customs valuation procedures have been improved through the use of online databases (see below). India also uses reference prices to value some agricultural imports (Chapter IV(2)).

17. India continues to maintain reservations under Annex III, paragraphs 3 and 4 of the Agreement on Customs Valuation concerning 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.[9] The Committee on

[5] A full list of documentation required is provided in the Customs Manual. Viewed at: http://www.cbec.gov.in/cae/customs/cs-manual/manual_3.htm, [24 April 2006].

[6] DGFT Public Notice No. 39 (RE-2005)/2004-2009, 16 August 2005. Viewed at: http://dgft.delhi.nic.in/ [7 February 2007].

[7] Government of India, Press Information Bureau, "Preshipment Inspection Certificate for Import of Scrap Made Mandatory", 15 October 2004.

[8] Rules 5-8 of the Customs Valuation (Determination of Price of Imported Goods) Rules, 1988.

[9] WTO document G/VAL/2/Rev.22, 10 April 2006. Under Article 4 of the Agreement on Customs Valuation, if the customs value cannot be determined under Articles 1, 2 and 3 of the Agreement, it can be determined under Article 5, and Article 6 if it cannot be determined under Article 5. However, if the importer

Customs Valuation concluded its examination of India's legislation on customs valuation in May 2006.[10]

(b) Customs clearance

18. With the introduction of the Risk Management System (RMS) in December 2005, routine assessment, audit, and examination of all imported goods/bills of entry has been discontinued. The focus is now on quality assessment, examination and post clearance audit of bills of entry selected by the RMS. Import declarations filed with Customs are processed electronically and produce an electronic output that determines whether the consignment needs to be appraised or examined or both, or be cleared after payment of duty. Goods may also be examined before assessing the duty liability at the importer's request, in case of incomplete information at the time of import, or, if deemed necessary by the Customs Appraiser/Assistant Commissioner. Where the RMS has identified a cargo as low risk, "self assessment by importer" and "no examination by Customs" is accorded. Imports by clients accredited under the Risk Management Programme are facilitated through "no assessment" and "no examination" facilities. According to the authorities, customs clearance activities account for around 15-18% of the total cargo "dwell time" at ports of entry. The introduction of the RMS in major customs locations, has reduced the time taken by Customs to eight hours (two hours for assessment and six hours for examination). For accredited clients, the clearance ranges from one to four hours.

19. The mid-term review of the Tenth Five-Year Plan called for further trade reforms by, *inter alia*, redoubling efforts to modernize customs, streamlining documentation requirements, and widening the coverage of EDI. According to the review, "the consequent reduction of transaction costs for exports would go a long way in improving competitiveness and in achieving the country's target of doubling exports by 2008-09. These measures would also make the country more attractive for FDI".[11] Since December 2002, the National Import DataBase (NIDB) has been used by the Directorate General of Valuation to speed up valuation procedures. The NIDB permits a comparison with data gathered on the value of recent imports of comparable goods and is used by all 34 EDI stations as well as non-EDI stations through electronic mail. In addition, the RMS is due to be phased in at customs stations by March 2007. The RMS uses a valuation risk assessment module (VRAM) to use a weighted average value of recent like imports of sensitive goods. The list of products considered to be sensitive was not provided as the specifics of risk assessment are confidential. According to Customs, the introduction of these electronic databases has facilitated quicker clearance of imported cargo on the basis of self assessment without requiring any intervention by Customs for "a considerable percentage" of the total cargo; the percentage could not be revealed for enforcement reasons.

20. Under Chapter XV of the Customs Act, 1962, appeals against decisions taken by a Customs officer are heard by the Commissioner (Appeals). Appeals must be made within sixty days from the date of communication of the decision by Customs. Decisions by the Commissioner (Appeals) should be made, where possible, within six months from the date the appeal is filed. The Customs, Excise and Service Tax Appellate Tribunal hears judicial appeals against decisions by the Commissioner of Customs and the Commissioner of Customs (Appeals).[12] Appeals must be filed within three months

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requests, the order of application of Articles 5 and 6 shall be reversed (Article 4 of the Agreement on Implementation of Article VII of the GATT, 1994).

[10] WTO document G/VAL/M/41, 24 May 2006.

[11] Planning Commission (undated), p. 481.

[12] The Tribunal does not have jurisdiction in cases involving goods imported or exported as baggage; goods that are not unloaded at their place of destination; and payment of duty drawback (Section 129A of Article XV of the Customs Act, 1962).

from the date of receiving a communication from the Commissioner of Customs. The Appellate Tribunal must reach a decision, where possible, within three years from the date on which an appeal is filed. Data on the number of appeals were not provided. Final appeals can be made through the High Court and the Supreme Court. An alternative channel for final resolution of assessment disputes, avoiding prolonged litigation, has been created under the Customs and Central Excise Settlement Commission.

(iii) Tariffs[13]

(a) Overview

21. Despite declining from 32.3% to 15.8% (excluding AVEs) since the last Review, Indian tariffs remain a major source of revenue for the Central Government. They are expected to account for over 23% of net tax revenue in 2006/07 (30% in 2001/02). Both the MFN and bound tariffs are based on the Harmonized Commodity Description and Coding System (HS 02) and are applied at the HS eight-digit level. The Government is bringing non-agricultural tariffs down, *inter alia*, to align them with ASEAN rates by 2009; as a result, the current "peak rate" is at 12.5% although some 2.5% (8.8% including *ad valorem* equivalents) remains above this peak rate; the peak rate was reduced to 10% in the tariff announced for 2007/08. While both applied and bound tariffs have declined, they remain high: the applied tariff provides a major source of protection to certain sectors including agriculture, automobiles, and textiles and clothing. The applied tariff is also complex: in addition to being announced with the annual Budget, rates are changed on an ad hoc basis through gazetted notifications, with the approval of Parliament; numerous exemptions render the system complex to administer, and therefore more susceptible to administrative discretion (Annex III.1). A study based on 2001 data, found that India's high import tariffs are equivalent to a substantial export tax and thus a major impediment to its exports.[14] It is likely that the decline in average tariff protection since then has reduced this export tax burden.

(b) Bound tariff

22. Over 75% of India's tariff is bound, 100% for agricultural (WTO definition) and 71.6% for non-agricultural products. In general, bindings range from zero to 40% for non-agricultural products, and to 150% for most agricultural products; some edible oils are bound at 300%. India also renegotiated bindings on some agricultural products (mainly cereals) that were previously bound at 0%; the current average bound tariff for cereals (HS Chapter 10) is 86.3%, and ranges from 60% to 100%. India has not made any commitments in Chapters 3, 42, 46, 64-67, 74, 76, 78-79, 82-83, 92-94 and 97, while partial bindings are mainly in Chapters 48, 51-55 and 85.

23. Implementation of India's Uruguay Round commitments was completed in 2005. As a result, the simple average bound tariff fell to 48.6% in 2006/07 (Table III.1). The bound rate is particularly high in agriculture, averaging 117.2%, while the average for non-agricultural products is 34.7%; textiles and clothing are bound at 29.2%. These averages are also considerably higher than corresponding applied MFN rates, most of which have been declining (Chart III.1). The difference

[13] During the course of this Review the Secretariat received four versions of the applied MFN tariff. The most recent tariff, received in January 2007, contained some 12,300 lines. Some 600 of these are "ex" lines and have been counted only once in the tariff analysis presented in this report. Changes to the applied tariff were announced with the Budget for 2007/08 at the end of February 2007. However, these changes are not included in the tariff analysis presented here.

[14] Based on 2001 data, India's import tariffs were equivalent to an export tax of 31%, one of the highest among the 26 developing countries covered by the study (Tokarick, 2006).

creates uncertainty for importers in India as it gives considerable scope to the Government to raise tariffs; this scope has been used to raise agricultural tariffs in recent years (Table AIII.1).

Table III.1
India's tariff structure
(Per cent)

		MFN			Final bound excluding AVEs[a]
		2001/02 tariff excluding AVEs	2006/07 tariff excluding AVEs	2006/07 tariff including AVEs	
1	Bound tariff lines (% of all tariff lines)	..	75.2	75.2	75.2
2.	Simple average applied rate	32.3	15.8 (15.1)	17.5 (16.8)	48.6
	Agricultural products (HS01-24)	41.7	42.7 (38.2)	42.7 (38.2)	117.6
	Industrial products (HS25-97)	30.8	11.9 (11.8)	13.9 (13.8)	36.4
	WTO agricultural products	40.7	40.8 (36.2)	40.8 (36.2)	117.2
	WTO non-agricultural products	31.0	12.1 (12.0)	14.1 (14.0)	34.7
	Textiles and clothing	31.3	12.3 (12.3)	22.5 (22.5)	29.2
3.	Domestic tariff "peaks" (% of all tariff lines)[b]	1.3	2.7 (2.6)	3.9 (3.7)	7.4
4.	International tariff "peaks" (% of all tariff lines)[c]	93.9	13.8 (12.5)	19.1 (17.8)	72.2
5.	Overall standard deviation of tariff rates	13.0	17.4 (15.0)	20.7 (19.2)	39.1
6.	Coefficient of variation of tariff rates	0.4	1.1 (1.0)	1.2 (1.1)	0.8
7.	Duty-free tariff lines (% of all tariff lines)	1.1	2.6 (2.7)	2.6 (2.7)	2.2
8.	Non-*ad valorem* tariffs (% of all tariff lines)	5.3	6.1 (6.1)	6.1 (6.1)	6.1
9.	Non-*ad valorem* tariffs with no AVEs (% of all tariff lines)	5.3	0.0 (0.0)	0.0 (0.0)	0.0
10.	Nuisance applied rates (% of all tariff lines)[d]	0.0	0.5 (0.5)	0.5 (0.5)	0.0

.. Not available.

a Implementation of the U.R. was completed in 2005. Calculations are based on 8,794 bound tariff lines (representing 75.2% of total lines), of which 8,580 (73.4%) are fully bound and 214 (1.8%) partially bound.
b Domestic tariff peaks are defined as those exceeding three times the overall simple average applied rate.
c International tariff peaks are defined as those exceeding 15%.
d Nuisance rates are those greater than zero, but less than or equal to 2%.

Note: Tariff analysis based on standard tariff rates. The 2001/02 tariff schedule is based on the 6-digit HS96 nomenclature consisting of 5,113 lines; the 2006/07 tariff schedule is based on the 8-digit HS02 nomenclature consisting of 11,695 lines. Data in brackets include exemptions, applicable at the full 8-digit tariff line. AVEs for non-*ad valorem* rates are provided by the authorities. For calculations excluding AVEs the non-*ad valorem* part of alternate rates has been taken into consideration.

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

24. 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 2006.[15]

(c) Applied MFN tariff

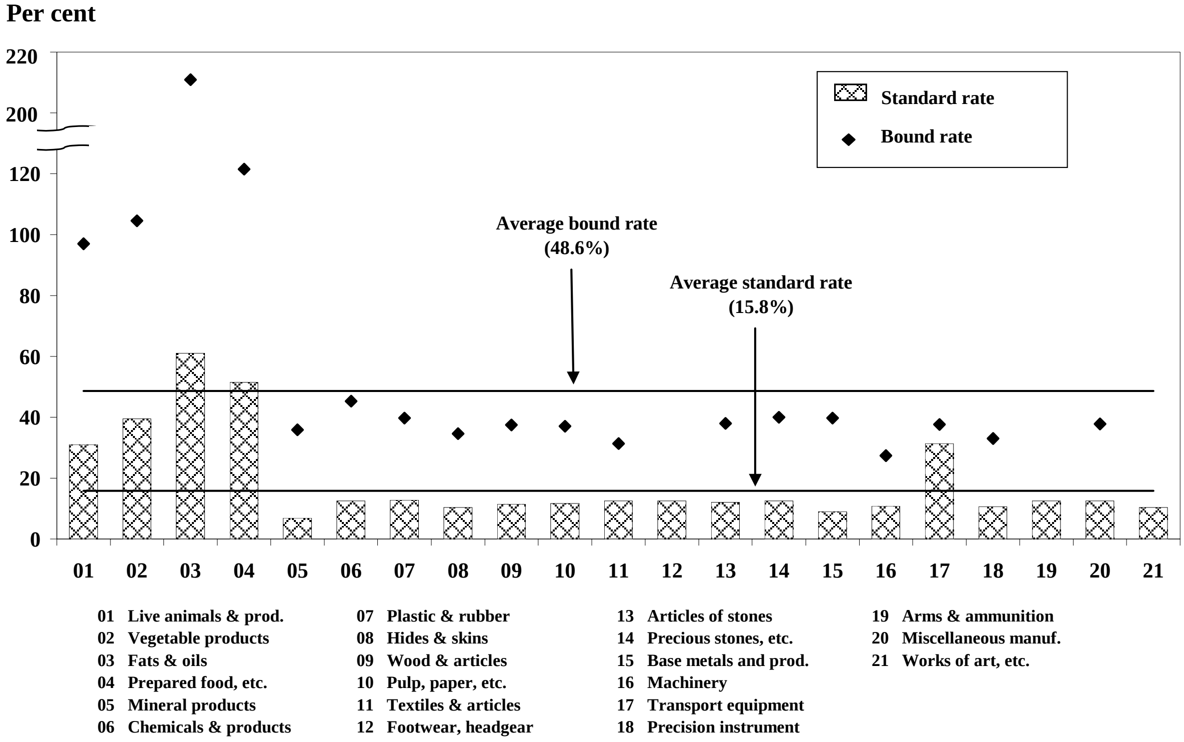
Structure

25. India's MFN tariff is applied at the 8-digit level of the Harmonized System. Under the Customs Tariff Act, 1975, the MFN tariff is based on the standard rate, which is a statutory duty; however, the "effective" tariff may be lower because of general- or industrial-use-based exemptions (Annex III.1 and below). India's tariff is announced in the annual Budget at the end of February; additional changes to individual tariff rates are made through notifications issued during the year. In

[15] WTO document G/MA/166, 2 November 2005.

addition to customs duty, importers are required to pay an additional duty (countervailing duty) and a special additional duty in place of local taxes (Annex III.1).

Chart III.1
Average MFN (standard) and bound tariff rates, by HS section, 2006/07



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

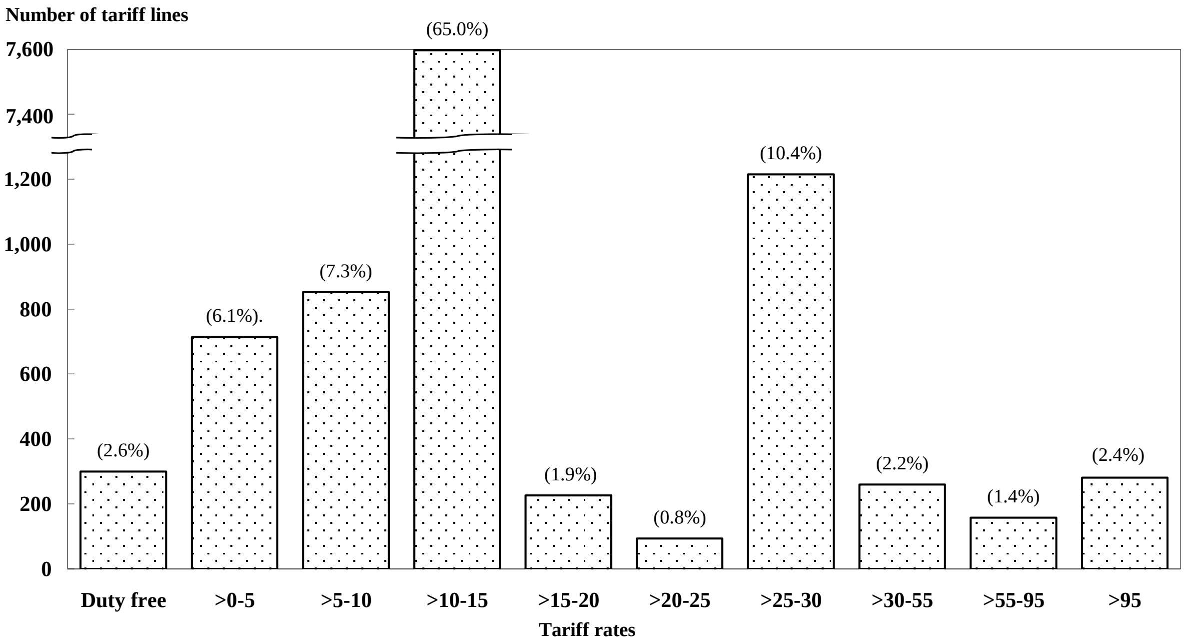
Source: WTO Secretariat calculations, based on data provided by the Indian authorities.

26. The current applied MFN tariff has 11,695 lines, of which 93.9% are *ad valorem*; of the non-*ad valorem* rates, two are specific rates (for almonds, shelled and in shell) while 716 (6.1%) are alternate rates (in textiles and clothing). India also provides a number of exemptions on imported inputs for certain sectors or importers depending on the industrial use of the import. As a result of these exemptions, the effective applied tariff is considerably lower than the simple average standard rate. However, because a large majority of the exemptions relate to industrial use, they cannot be included in the tariff analysis. To the extent that a tariff exemption is related clearly to a particular tariff line, the Secretariat has tried to incorporate the exemption in the tariff analysis. Both rates are reported (see Table III.1). *Ad valorem* equivalents provided by the authorities are also included (Annex III.1 describes the methodology used to calculate the AVEs).

27. In 2006/07, the standard rate of tariff ranged from 2% to 182% (up to 150% if exemptions are included) (from 2% to 354% including AVEs). The largest number of lines (7,519 or 64.3%) are at the "peak rate" of 12.5%, followed by 10.4% of lines at 25-30% (Chart III.2); 300 lines are duty free (2.6% of the tariff). The number of zero rated lines, with the exception of those relating to India's

ITA commitments, is essentially unchanged since the previous Review, except the applied tariff on pulses and lentils, which was recently reduced to zero.[16]

Chart III.2
Distribution of standard tariff rates, 2006/07



Note: Calculations include AVEs provided by the authorities. Figures in parentheses denote the share of total lines.

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

Tariff average, dispersion, and escalation

28. In 2006/07, India's applied MFN tariff averaged 15.8% although the average is 17.5% when AVEs are included (Table III.1). Average tariff protection has declined from 32.3% in 2001/02 (although, as the 2001/02 tariff was at the HS 6-digit level, with only 5,113 tariff lines, the two figures are not strictly comparable). The average applied rate for agriculture is considerably higher, at 40.8% (WTO definition), while the tariff for non-agricultural imports is 12.1%. The tariff on non-agricultural products, especially, has declined as the "peak rate" of tariff has been cut in successive budgets, *inter alia,* to meet India's goal of achieving ASEAN levels of tariff protection for non-agricultural products by 2009. In the 2006/07 Budget, the peak rate for non-agricultural products was cut further from 15% to 12.5%.[17] Despite this, however, 254 tariff lines or around 2.5% (8.8% including AVEs) of the tariff on non-agricultural products (WTO definition) remain above the peak rate. Rates above 12.5% are applied mainly to fish products (Chapters 3, 15, 16 and 23), natural rubber products (Chapter 40), textiles and clothing (Chapters 51-52, 54-55, 57-58, 61-63), and passenger motor vehicles and motorcycles (HS 87). In agriculture (WTO definition), the highest rates

[16] Customs Notification No. 57/2006, Viewed at: http://www.cbec.gov.in/cae/customs/cs-act/notifications/notfns-2k6/cs57-2k6.htm [23 January 2007]. Tariff lines with rates at 12.5% but with part of the line at zero due to the ITA are not included.

[17] The peak rate was further cut to 10% in the 2007/08 tariff although this is not reflected in the tariff analysis.

are found, *inter alia*, in beverages and spirits, oil seeds, fats and oils and their products, grains, and coffee, tea, cocoa, and sugar. The overall average tariff for non-agricultural goods is also higher, at 14.1%, when AVEs are included (12.1% excluding AVEs). Inclusion of the AVEs, which are found in textiles and clothing, raises the average tariff for these products from 12.3% to 22.5%.

29. While the tariff on non-agricultural products has been falling, in part to meet the goal of reaching ASEAN tariff levels, a few agricultural tariffs have increased; India's high bound rates have permitted such increases (Table AIII.1). Tariff rates have been increased, *inter alia*, for tea, coffee, pepper, cloves, cardamom, poppy seeds, garlic, cut flowers, and honey. Partly due to this, the overall average tariff on agricultural products rose slightly from 40.7% in 2001/02 (and from 35.1% in 1997/98) to 40.8% in 2006/07. In addition, tariff rates for some products remain very high, notably some edible oils and alcohol products. The result of these tariff changes is an increase in dispersion, which has more than doubled, from 0.4 in 2001/02 to 1.1 in 2006/07 (dispersion in the tariff, as measured by the coefficient of variation (standard deviation as a share of the average tariff)). The standard deviation has also increased from 13.0 at the time of the last Review to 17.4.

30. The result, in part, of increased protection for agricultural and raw materials, seems to be higher protection for unprocessed than for semi-processed products and in some cases for semi-processed than for final products. While at the time of the last Review, the pattern of de-escalation from semi-processed to processed products was found mainly in paper, printing and publishing, the 2006/07 tariff also exhibits de-escalation from unprocessed to semi-processed products for industries, including food, beverages and tobacco, and textiles and leather (Chart III.3).[18] However, according to the authorities, there are very few cases of de-escalation in MFN rates: in a number of cases, tariffs on specified raw materials have been changed to rectify de-escalation arising out of preferential rates under free-trade agreements.

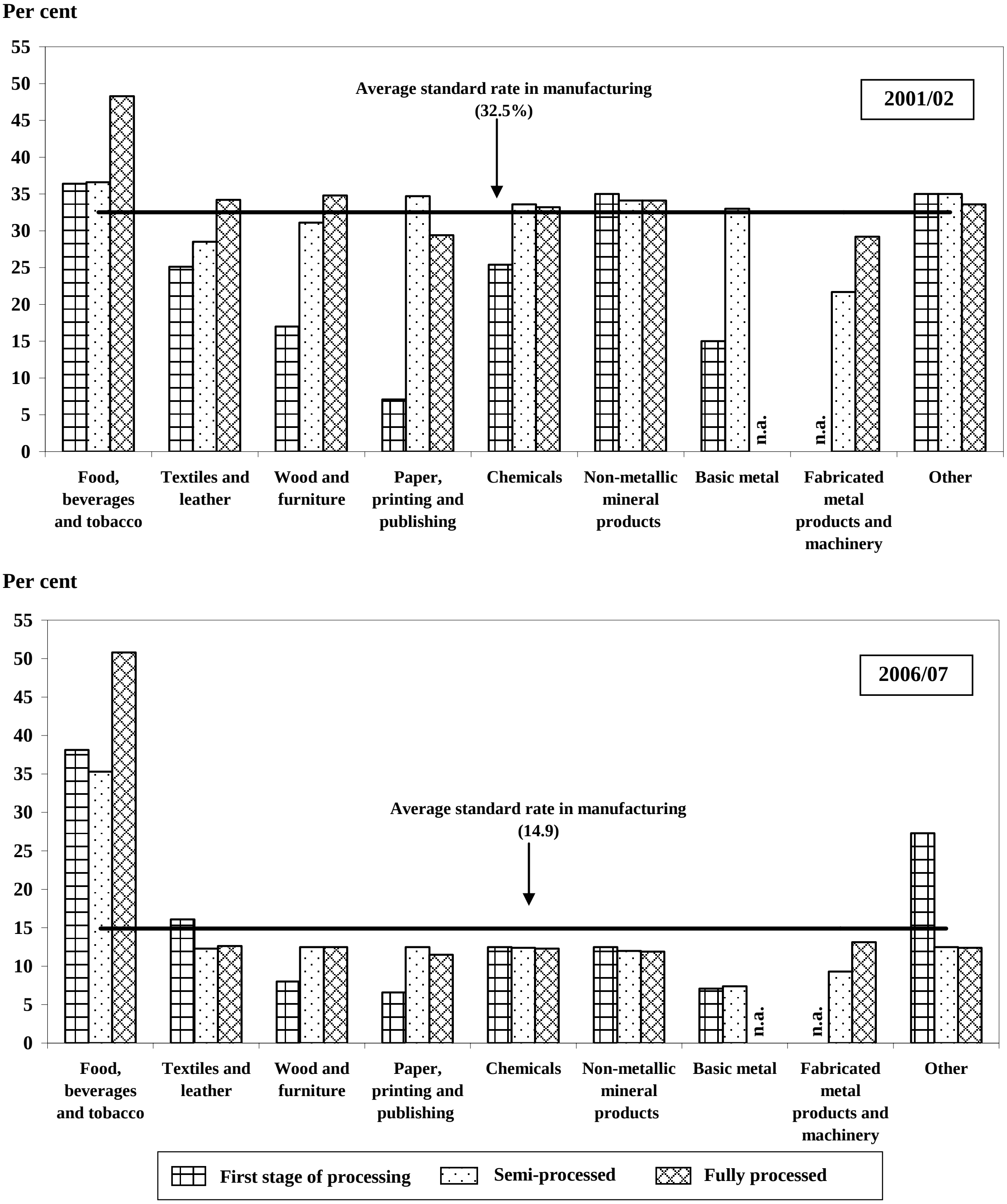
(iv) Tariff exemptions

31. While the average MFN tariff based on the standard rate is still relatively high, the effective applied tariff is likely to be considerably lower due to a wide range of tariff exemptions. The exemptions are both product-specific and based on industrial use. In the Budget speech delivered in February 2006, the Minister of Finance acknowledged the complexity of the tariff exemptions, which are made public through notifications issued throughout the year. It was proposed that many of those that had outlived their usefulness would be removed. To reduce the multiplicity of these exemptions, most have been consolidated under one notification (Notification 21, dated 1 March 2002). Some, nevertheless, continue to be based on industrial use and therefore cannot be included in an analysis of the tariff. As a result, the Secretariat was only able to include exemptions on some 750 tariff lines at the HS 8-digit level (around 6.4% of the tariff).

32. The inclusion of the tariff exemptions in the current applied MFN tariff reduces the average rate to 15.1% (compared with an average based on the standard rate of 15.8%) (Table III.1). The averages are 16.8% and 17.5%, respectively, when AVEs are included. The inclusion of the exemptions makes very little difference to the average for non-agricultural products (12.0% compared with 12.1%), while the average for agriculture drops from 40.8% to 36.2%. However, the average tariff rate based on duty collection is 10%, suggesting that the exemptions play an important role in the economy.

[18] See for example WTO (2002).

Chart III.3
Tariff escalation by 2-digit ISIC industry, 2001/02 and 2006/07



Note: Calculations are based on standard rates. Excluding specific rates and including the *ad valorem* part of alternate rates. AVEs are not included.

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

(v) Tariff-rate quotas

33. There has been no change in policy on tariff-rate quotas, which are maintained on 14 tariff lines at the HS 8-digit level including: milk powder; maize; crude sunflower seed and safflower oil; and refined rape, colza and mustard oil. The quotas, which are allocated by the Directorate General of Foreign Trade, based in the Ministry of Commerce, are: up to 10,000 tonnes per year at the in-quota rate for milk powder; up to 500,000 tonnes for maize; and up to 150,000 tonnes for sunflower seed or safflower oil or fractions thereof and for rape, colza and mustard oil at in-quota rates of duty.[19] Tariff quotas for these products, which are issued on the basis of requests from designated agencies, are assigned pro rata when requests exceed the quota for the year (to 31 March).[20] In practice, however, no tariff quotas have been requested for rape, colza or mustard oil since 2002/03, while a quota of 10,000 tonnes was issued for milk powder only in 2003/04 (Table AIII.2). According to the authorities, other than for sunflower seed or safflower oil, there is no demand for the quotas. No data are available on the extent to which the quotas issued are filled. While TRQs were not issued for some of these products for certain years, imports have occurred over recent years, presumably at out-of-quota rates.[21] India has not notified these tariff-rate quotas to the WTO but plans to do so as soon as possible. Under its free-trade agreement with Sri Lanka, India also maintains tariff-rate quotas on clothing and tea imports (Chapter II). No data were available on the extent to which these preferential tariff-rate quotas have been filled in recent years.

(vi) Other charges affecting imports

34. In addition to tariffs, imports are subject to an additional duty (CVD) in lieu of an excise duty, which is a tax on domestically manufactured goods; as of 1 March 2006, all imports are subject to a special duty of 4% so that they are taxed at similar rates as domestically produced goods subject to internal taxes such as value-added tax, municipal tax, "market committee fees", etc. (section (4) below); the VAT, which has been implemented by a majority of the states, is not levied on imports or exports. It appears that the nomenclature difference between the excise tax and the customs tariff at the time of the previous Review has now been reconciled, as the two schedules are now identical. However, there is still a difference between the special duty and other domestic taxes, which may have rates that are higher or lower than the 4% special duty rate and that vary from state to state for certain products (section (4) below).

(vii) Tariff preferences

35. India offers tariff preferences to selected countries under its regional trade agreements (Table III.2). The agreements in force are: SAFTA (which replaced the SAPTA), Asia Pacific Trade Agreement (previously the Bangkok Agreement), preferential areas tariff (Seychelles, Mauritius, and Tonga) and the agreements with Sri Lanka and with Singapore. However, apart from the agreement with Sri Lanka and concessions for least developed country members of the SAFTA, the tariff lines covered by these agreements are less than 50% of the tariff. There is also very little in the way of tariff concessions, with the overall average ranging from 15.5% to 10.6% (the latter for SAFTA LDC members) compared with the overall MFN average of 15.8%; the overall average for imports from Sri Lanka, in contrast, is 3%. Tariff concessions are especially low in sensitive sectors, such as agriculture, again with the exception of Sri Lanka, and in textiles and clothing. It appears that India is considering granting unilateral tariff preferences to least developed countries in Africa.[22] The

[19] Department of Commerce (2006b), pp. 45-46.

[20] The full list per product is given in Department of Commerce (2006b), pp. 46-47.

[21] For example, although no TRQs were issued for milk powder (HS040210) in 2004/05 and 2005/06, India imported 233,620 kg in 2004 and 243,798 kg in 2005.

[22] *The Hindu online*. Viewed at: http://www.thehindubusinessline.com/2005/10/27/stores/2005102703050100.htm [24 November 2006].

Secretariat was unable to obtain clarification on the application and coverage of such unilateral tariff preferences.

Table III.2
Summary analysis of the Indian preferential tariff, 2006/07
(Per cent)

	Preferential lines[a] (% of all lines)	Overall average	WTO agriculture	WTO non-agriculture	Fish & fishery products	Textiles & clothing
Standard rate		15.8	40.8	12.1	30.0	12.3
Preferential Agreements						
APTA[b]	10.8	15.3	40.6	11.6	10.4	12.2
Preferential Areas[c]	2.7	15.5	38.8	12.1	30.0	12.3
SAFTA I[d]	23.7	15.0	37.2	11.7	27.6	12.2
SAFTA II[e]	84.4	10.6	30.0	7.8	14.8	7.1
Sri Lanka FTA[f]	88.5	3.0	7.6	2.4	0.0	9.8
Singapore FTA	41.7	14.6	40.2	10.9	23.7	11.9
Bangladesh[g]	83.6	10.5	29.9	7.7	5.3	7.3
Sri Lanka[h]	89.5	3.0	7.5	2.4	0.0	9.8

a Only items corresponding to an 8-digit tariff line and inferior to their respective standard rate are taken into account.
b Asia-Pacific Trade Agreement: preferential rates are applicable to Bangladesh, China, the Republic of Korea, and Sri Lanka.
c Seychelles, Mauritius, and Tonga.
d South Asian Free Trade Area.
e South Asian Free Trade Area tariffs for LDC members (Bangladesh, Bhutan, Maldives, and Nepal).
f Calculations include out-of quota rates and exclude in-quota rates.
g Including South Asian Free Trade Agreement and APTA.
h Including South Asian Free Trade Agreement, APTA, and Sri Lanka FTA.

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

Source: WTO Secretariat calculations, based on Arun Goyal (2006), *Bigs Easy Reference Customs Tariff 2006-2007*, Academy of Business Studies, New Delhi, and Indian Government tariff notifications No. 38/2006, No. 67/2006, No. 68/2006 and No. 89/2006; and information provided by the authorities.

(viii) Rules of origin

36. India generally applies preferential rules of origin under its bilateral and regional trade agreements through a combination of minimum local content and value addition, and a change in the HS tariff heading. Minimum value addition requirements under existing agreements range from 30% to 50% of the f.o.b. value of the finished good. Under the SAFTA and the agreement with Singapore, there are also product specific-rules of origin for some 180 and 380 products, respectively (Table III.3).

Table III.3
Preferential rules of origin

Agreement	Rules of origin
Regional	
SAFTA	Up to 40% of the f.o.b. value of the finished good for India and Pakistan, 35% for Sri Lanka; 30% for LDCs with change in tariff heading (CTH) if produced in a single country and 50% for regional cumulation. Product specific rules exist for 180 products.
APTA	Not less than 45% of the f.o.b. value of the finished good for developing member countries, 35% for LDCs and 60% aggregate content for regional cumulation
Preferential Areas	Not less than 50% of the ex-factory cost of the finished good
GSTP	Not less than 50% of the f.o.b. value of the finished good, 60% for regional cumulation

Table III.3 (cont'd)

Agreement	Rules of origin
Bilateral	
Bhutan	No specific rules
Nepal	Twin criteria of change in four-digit tariff and 30% value addition at ex-factory price
Myanmar	No specific rules
Singapore	At least 40% of the f.o.b. value of the product must originate in parties to the agreement; change in HS four-digit code. Product specific rules exist for some 380 products (including food products, chemicals, plastics, paper and paperboard, books, nuclear reactors, boilers and machinery parts, electrical machinery and parts, railway or tramway locomotives, photographic and cinematographic products, and apparatus).
Sri Lanka	Minimum local value-added content of 35% with CTH (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
Afghanistan	Not less than 50% of the f.o.b. value of the finished product and CTH

Source: Department of Commerce online information. Viewed at: http://commerce.nic.in/ [13 June 2006]; and WTO (2002), *Trade Policy Review: India.*

(ix) Import prohibitions, restrictions, and licensing

(a) Import prohibitions

37. Import prohibitions are maintained under Section 11 of the Customs Act 1962. Under the Act, the Government may, by notification in the *Official Gazette*, impose absolute or conditional import (or export) prohibitions. Such measures can be maintained for, *inter alia*, security, public order and standards of decency or morality, prevention of smuggling or shortage of goods, foreign exchange and balance of payments reasons, prevention of agricultural surpluses, standards, intellectual property, and the conservation of exhaustible resources.[23]

38. The main change since India's previous Review is the introduction of import prohibitions on some livestock and livestock products, including domestic and wild birds, meat and meat products from avian species, and live pigs and pig meat products (except processed pig products) (Table III.4).[24]

Table III.4
Import prohibitions, 2006 and 2001

Product prohibited on 1 April 2006	Products prohibited on 1 April 2001
Tallow, fat and/or oils, rendered or otherwise of any animal origin including:	Tallow, fat and/or oils, rendered or otherwise, of any animal origin including:
(i) Lard stearin, oleo stearin, tallow stearin, lard oil, oleo oil and tallow oil not emulsified or mixed or prepared in any way	(i) Lard stearin, oleo stearin, tallow stearin, lard oil, oleo oil and tallow oil not emulsified or mixed or prepared in any way
(ii) Neats-foot oil and fats from bone or water	(ii) Neat's-foot oil and fats from bone or water
(iii) Poultry fats, rendered or solvent extracted	(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-cosahexainoic acid	(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
(v) Margarine, imitation lard and other prepared edible fats of animal origin	(v) Margarine, imitation lard and other prepared edible fats of animal origin
(vi) Degras (residues from the treatment of fatty substances or animal or vegetable waxes)	

Table III.4 (cont'd)

[23] Section 11(2) of the Customs Act, 1962.

[24] Import of domestic and wild birds including captive birds (excluding poultry); processed meat and meat products from avian species including wild birds (except poultry) and semen of domestic and wild birds was prohibited with effect from 11 August 2005. This measure was taken in view of reported outbreak of Highly Pathogenic Avian Influenza (HPAI).

Product prohibited on 1 April 2006	Products prohibited on 1 April 2001
Animal rennet	Animal rennet
Wild animals including their parts and products and ivory	Wild animals including their parts and products and ivory
Beef and products containing beef in any form	Beef and products containing beef in any form
Natural sponges	
Fish waste (HS 05119110, 05119120, and 05119130)	
Domestic and wild birds including captive birds; live pig and pig meat products (except processed pig products); meat and meat products from avian species including wild birds (except processed poultry meat and poultry meat products); semen of domestic and wild birds; products from animal origin from birds intended for use in animal feed or for agricultural or industrial use	Not prohibited
Imports of the following products from countries reporting the outbreak of highly pathogenic avian influenza:	Not prohibited
(i) day-old chicks, ducks, turkey and other newly hatched avian species	
(ii) hatching eggs	
(iii) eggs and egg products	
(iv) meat and meat products from avian species including wild birds	
(v) feathers	
(vi) pig meat products	
(vii) pathological material and biological products from birds	

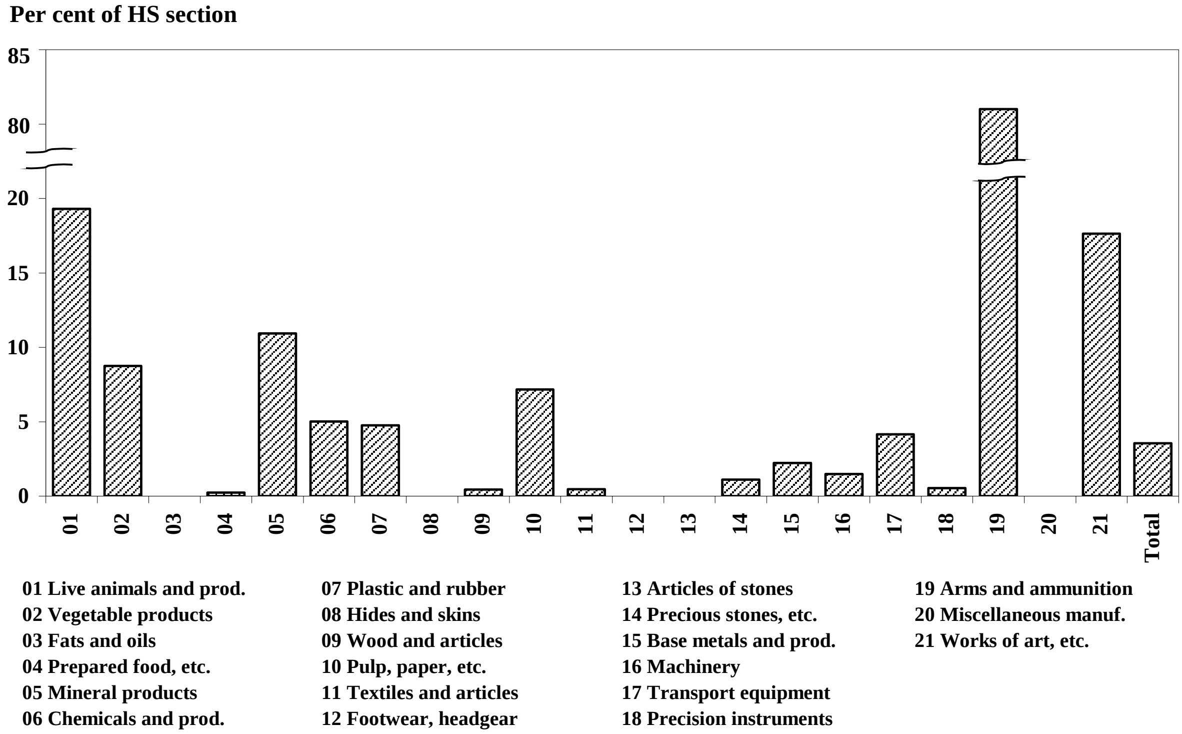
Source: Ministry of Commerce and Industry (2006), Department of Commerce, *Foreign Trade Policy 2004-2009*; and information provided by the authorities.

(b) Import restrictions and licensing

39. Import restrictions can be imposed under the Customs Act, 1962 and the Foreign Trade (Development and Regulation) Act, 1992. Some 415 tariff lines (around 3.5% of the tariff) at the HS 8-digit level are currently subject to import restrictions under Articles XX and XXI of the GATT. The items are mainly in sections 19 (arms and ammunition), 1 (live animals), 21 (works of art), 5 (mineral products) and 2 (vegetable products) (Chart III.4).

40. India also monitors imports of some 300 items that are considered to be sensitive. The monitoring mechanism was set up after the removal of quantitative restrictions on imports in 2002. The products, which are monitored by a committee chaired by the Secretary of the Department of Commerce, include edible oil, cotton, silk, milk and milk products, cereals, fruit and vegetables, spices, automobiles, tea, coffee, alcoholic beverages and products produced by the small-scale industry. Imports of certain items, including second-hand cars (over three-years old) and imports from Sri Lanka subject to preferential tariffs (such as tea), must be imported through specified ports (Mumbai for second-hand cars, Kochi and Kolkata for tea and Chennai, Mumbai and Jawaharlal Nehru Port Mumbai for garments).

Chart III.4
Import restrictions/licensing by HS section, 2006/07



Source **: Ministry of Commerce and Industry (2006), Department of Commerce, *Foreign Trade Policy 2004-09.***

(x) Contingency measures

(a) Anti-dumping and countervailing measures

Overview

41. There have been no changes in India's anti-dumping and countervailing legislation during the review period. Anti-dumping measures may be taken under the Customs Tariff Act, 1975, as amended by the Customs Tariff (Amendment) Act, 1995, and the Customs Tariff (Identification, Assessment and Collection of Anti-Dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995.[25] Under Article 5 of the Customs Tariff Rules, an anti-dumping investigation can be initiated by the Directorate General of Anti-Dumping and Allied Duties (DGAD) in the Ministry of Commerce and Industry upon a written application by, or on behalf of, domestic industry[26], or on its own initiative if it is satisfied that there is justification to launch an investigation. The DGAD must inform the government of the exporting country and issue a public notice containing details of the initiation and the time limits for interested parties to make their views known. The public notification is usually issued within 45 days of receipt of proper documentation, and the time limit for interested

[25] 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.

[26] No investigation can be initiated if the producers making the application account for less than 25% of total domestic production of the like article. The DGAD must also examine the accuracy and adequacy of the evidence provided and determine that there is sufficient evidence of dumping, injury, where applicable, and a causal link between the dumped imports and the alleged injury, where applicable, before initiating an investigation.

parties is a further 30 days. A preliminary finding regarding export price, normal value, and margin of dumping would normally be issued in a public notice within 150 days of the initiation, following which the Department of Revenue in the Ministry of Finance may impose a provisional duty not exceeding the dumping margin.[27] The provisional duty may not be imposed until 60 days after the date of the public notice launching the investigation, and may remain in place only for six months; this may be extended to nine months, upon the request of exporters representing a significant percentage of trade. Final findings must be notified to the Central Government within one year of the investigation unless the investigation is extended (by a maximum of six months) under special circumstances. The dumping margin for each known exporter or producer is determined by the DGAD, following which the Department of Revenue may, within three months of publication of the final findings, impose the anti-dumping duty by notification in the *Official Gazette*. The anti-dumping duty would remain in place for five years unless extended (for five-year periods) by the DGAD.[28]

42. Countervailing measures may be imposed under the Customs Tariff Act, 1975 (Part 9) and the Customs Tariff (Identification, Assessment and Collection of Countervailing Duty on Subsidized Articles and for Determination of Injury) Rules, 1995. The decision to initiate an investigation must be notified through a public notice, with relevant information to be provided by interested parties within 30 days of the notice. Provisional duties may be imposed, but only after six months from the date of initiation of the investigation, and may remain in force for a maximum of four months. Final findings must be published by the DGAD within one year of the date of initiation; the period may be extended by the Central Government in exceptional circumstances for a further six months. Definitive countervailing measures must be imposed by the Central Government on the recommendation of the DGAD within three months of the final findings being published. Final measures may stay in force up to five years.

43. Appeals against anti-dumping and countervailing measures imposed by the Central Government can be made under Chapter XV (Section 129) of the Customs Act, 1962 to the Customs, Excise and Service Tax Appellate Tribunal (CESTAT). The CESTAT can only handle appeals made against measures taken by the Central Government. The appeal must be filed within 90 days of the final duty being notified by the Central Government. Since 2002, 54 appeals have been made to the Appellate Tribunal of which 32 cases had been settled by end December 2005. In 19 of the 32 cases the measures imposed were upheld, in 8 cases they were modified, 3 cases were rejected and 2 cases referred back to the DGAD. The CESTAT decision can be appealed to the Supreme Court.

Measures

44. Between January 2002 and December 2005, India initiated 176 anti-dumping investigations and took final measures in 163 cases; an additional 20 investigations were initiated in January-June 2006, with measures taken in 8 cases. During 2002-05, the products involved included chemicals and products thereof (41.5%); plastics and rubber and products thereof (16.5%); base metals (13.1%); and textiles and clothing (10.8%).[29] The majority of investigations were targeted at China (21.6%), the EC (13.6%), Chinese Taipei (9.1%), and Korea (8%) (Chart III.5).[30] As at

[27] The investigation can be terminated at any time: if there is a written request from or on behalf of domestic industry; if there is insufficient evidence of dumping or injury or if the injury is negligible; if the margin of dumping is less than 2% of the export price; or if the volume of the dumped imports is less than 3% of imports of the like product unless the countries accounting for 3% individually account for over 7% collectively of imports of the like product (Article 14 of the Customs Tariff (Identification, Assessment and Collection of Anti-dumping Duty on Dumped Articles and for Determination of Injury) Rules 1995).

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

[29] Up to June 2006, these percentages were: 39.3%, 18.9%, 12.8%, and 9.7%.

[30] Up to June 2006, these percentages were: 23.5%, 12.2%, 9.7%, and 7.7%.

June 2006, 177 anti-dumping measures were in force. India did not take any countervailing actions during this period.

(b) Safeguards

Legislative and administrative framework

45. Safeguard legislation is contained in Sections 8B and 8C of the Customs Tariff Act, 1975, with Section 8C relating specifically to imports from China. The Customs Tariff (Identification and Assessment of Safeguard Duty) Rules 1997 and the Customs Tariff (Transitional Products Specific Safeguard Duty) Rules 2002, describe the procedures to be followed for the application of safeguard measures. Investigations on safeguards are carried out by the Director General of Safeguards, based in the Department of Revenue, Ministry of Finance. A request for a safeguard investigation must be made in writing to the Director General, by, or on behalf of, the domestic industry. The investigation must be completed and notified publicly within eight months of the date of initiation of the investigation, or within such extended period as the Central Government may allow following which a provisional duty may be imposed for up to 200 days. The final safeguard may be in place for four years, but can be extended by the Central Government, if deemed necessary, for a maximum of ten years. A safeguard in place for longer than one year must be progressively liberalized at regular intervals.

46. Although the Director General's decisions on safeguards cannot be appealed under the legislation[31], appeals may be made to the High Court and the Supreme Court.

Measures

47. During January 2002 to December 2005, India initiated four safeguard measures; it imposed final measures in only one of these cases (Epichlorohydrin) for a period of one year (up to 29 October 2003). In addition, one safeguard investigation was initiated on 13 August 2002 for industrial sewing machine needles imported from China.[32]

(xi) Standards and other technical requirements

(a) Standards

48. The Bureau of Indian Standards (BIS) (formerly the Indian Standards Institution) established under the Bureau of Indian Standards Act, 1986, and operational since 1 April 1987, is responsible for formulating and enforcing standards for 14 sectors.[33] It has also been designated by India as the WTO-TBT Enquiry Point, while the Ministry of Commerce and Industry is responsible for implementing and administering the WTO Agreement on Technical Barriers to Trade.[34] India accepted the Code of Good Practice on 19 December 1995.[35] In addition to the standards developed by the BIS, these are sector-specific standards for the automobile industry, pollution, food, drugs and cosmetic, as well as atomic energy and civil aviation.

[31] Directorate General of Safeguards online information. Viewed at: http://www.dgsafeguards.gov.in/legal_framework_provisions.html [20 July 2006].

[32] WTO document G/SG/N/6/IND/14, 10 September 2002.

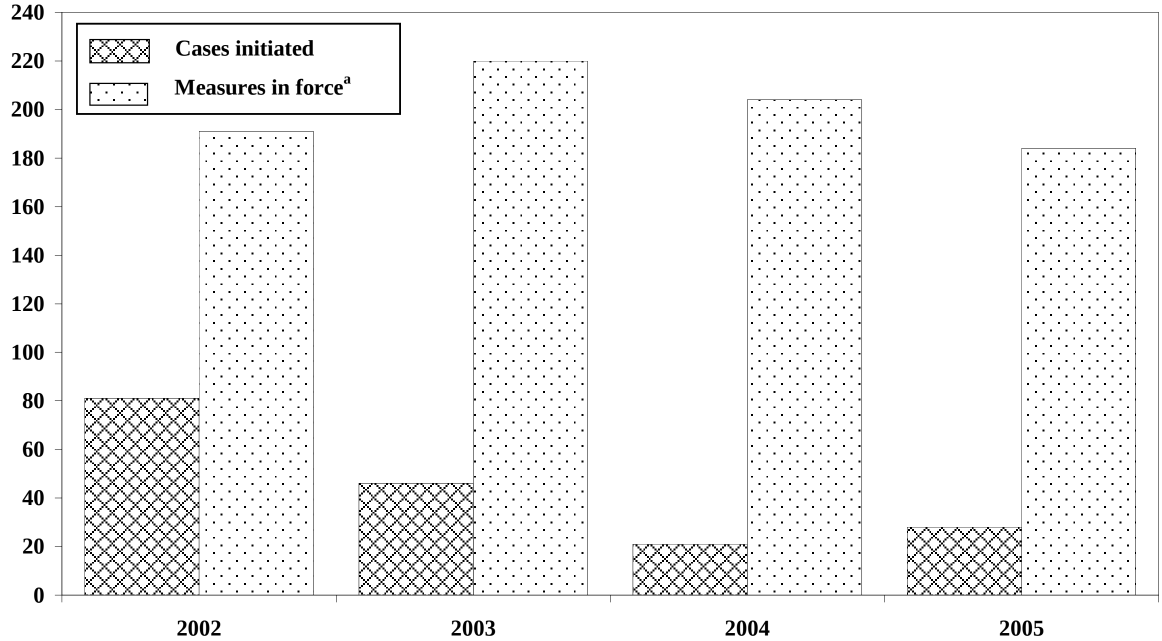
[33] These are: production and general engineering; chemicals; civil engineering; electronics and information technology; electrotechnical standards; food and agriculture; mechanical engineering; management and systems; medical equipment and hospital planning; metallurgical engineering; petroleum, coal and related products; transport engineering; textiles; and water resources (BIS online information. Viewed at: http://www.bis.org.in/sf/sfp1.htm) [19 May 2006]).

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

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

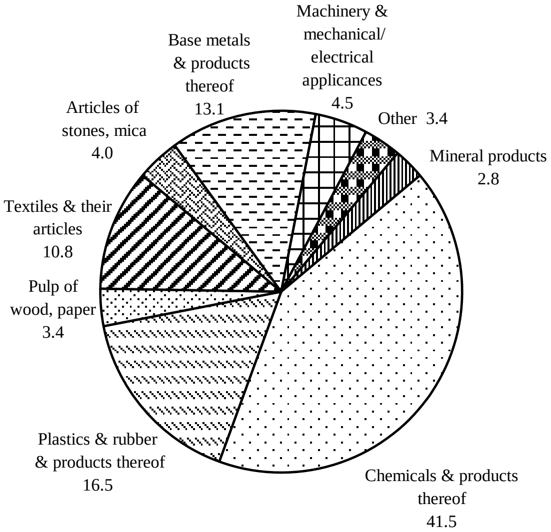
Chart III.5
Anti-dumping measures, January 2002 - December 2005

(a) Number of cases initiated and measures in force

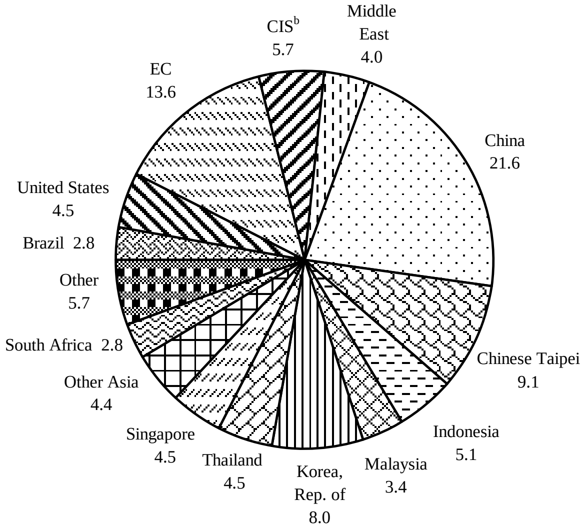


a Anti-dumping measures in force on 31 December.

(b) Initiations by product
Per cent



(c) Initiations by origin
Per cent



b See Table AI.3 for member countries.

***Source*: Notifications to the WTO.**

49. The BIS is a founder member of the International Organization for Standardization (ISO) and is an active participant in its standardization activities. It participates in the ISO's policymaking committees such as on Developing Country Matters (DEVCO), on Conformity Assessment (CASCO), on Consumer Policy (COPOLCO) and 62 technical committees. The BIS is also an active participant in the activities of the International Electrotechnical Commission (IEC) and participates in 34 of its technical committees.

50. As the national standards setting body, the BIS plays an important role in regional cooperation programmes such as the SAARC and the BIMST-EC with regard to discussions on standards and conformity assessment. In addition, the BIS has signed bilateral cooperation agreements in the fields of standardization, conformity assessment, quality assurance, and training with national standards organizations in several trading partners. The bilateral cooperation covers exchange of information and personnel. In some cases, there are provisions of mutual acceptance of inspection reports and test reports. The agreement with the ISO covers the utilization of the National Institute of Training for Standardization (NITS) as a Regional Training Centre of ISO. The BIS has memoranda of understanding with, Cuba, Germany, Israel, Mauritius, Russian Federation, Turkey, Bhutan, Nepal, Ukraine, Armenia, Sri Lanka, Afghanistan, Brazil, and the United States (ANSI).

51. To increase awareness of the importance of standards amongst domestic companies and consumers, the BIS provides training, both to industry and government and also to its own staff. BIS employees are also provided training on a regular basis, while consumer awareness programmes are conducted to inform them about the BIS standard mark as well as penalties and grievance redressal mechanisms.[36]

52. Standards are formulated through 14 Division Councils set up to oversee standards in each of the sectors. The Standards Monthly Additions gives details of the status of new or draft standards or standards being withdrawn. There have been no basic changes to the process of formulating standards since 2002. Proposals for establishing new standards, or modifying old ones, may be submitted in writing to the BIS by agencies of the central and state governments, industry and consumer associations and professional bodies and members of the BIS and of its technical committees. Draft standards are published for comments on the BIS website for not less than one month. On average, it takes between 12 and 28 months to issue a new standard or harmonize an existing national standard with an international one. Some standards are fast tracked and developed within 12 months to meet industry demands. Standards are also reviewed and updated on a regular basis; reviews generally take place at least once in five years.

53. India currently has around 18,300 standards; according to the authorities, 5,821 have corresponding ISO/IEC standards and 4,307 of these (around 73%) are harmonized with ISO/IEC standards (Table AIII.3). Some 53% of standards issued between July 2002 and October 2006 are harmonized with ISO/IEC standards. According to the authorities, the process of reviewing identified standards where ISO/IEC standards exist, is being expedited. In addition, a greater percentage of sectoral standards, for example, in chemicals, petrochemicals, electrical and electronic industries, tend to be aligned with ISO/IEC standards.

(b) Product certification

54. The BIS operates a product certification scheme under the Bureau of Indian Standards Act, 1986 and its accompanying regulations and rules. The Bureau of Indian Standard Mark (ISI) is granted to products meeting the requirements of relevant Indian standards. Although ISI certification is voluntary, it has been made compulsory for 66 products related to health and consumer safety

[36] Bureau of Indian Standards (2005).

(133 at the time of the last Review).[37] It is not clear, which products have been removed from the list. Both imported and domestically produced goods on this list must conform to certification requirements. The BIS has eight laboratories that provide conformity testing for imported and domestically produced goods. In addition, a number of other accredited independent laboratories having a demonstrated system complying with ISO/IEC Guide 17025:1999 and laboratories under the control of central and state governments have been approved by the BIS, which uses them for conformity testing.[38] Product certification can also be granted outside India once the manufacturer's production facilities have been approved and licensed by the BIS. More than 60 licences have been granted under this Foreign Manufacturer's Scheme in some 15 countries. The licence fees include the cost of the inspector's visit and stay, an annual fee of Rs 1,000 (US$20) and an annual marking fee of US$2,000 to be paid by the manufacturer. The licence is initially valid for one year and can be renewed annually (at a fee of Rs 500 or around US$10).[39] Indian importers may also be granted a BIS licence provided they have the required infrastructure to test each consignment when it reaches India. The BIS operates IEC international certification schemes and has been designated the national certification body for recognizing and issuing certificates under the IECEE-CB and IECQ schemes.[40] In addition to product certification, the BIS grants licences and ECO MARK to environmentally friendly products.

55. The BIS also operates certification schemes for management systems, including quality management, environmental management, occupational health and safety management and hazard analysis critical control point (HACCP). The quality management systems certification scheme was launched in 1991 and covers a number of industries and services.[41] Over 20 major economic activities have been accredited by the Raad voor Accreditatie (RvA).[42] The Environmental Management Systems (EMS) Certification scheme is operated according to the ISO 14000 series of standards. The BIS also operates the Food Safety Management System (FSMS) according to IS/ISO 22000:2005, launched in 2006, and Certification of Public Service Organizations for Service Delivery according to IS 15700:2005 (to be launched by 31 March 2007).

(xii) Sanitary and phytosanitary measures

56. SPS standards are governed and enforced through a number of laws and agencies. The Prevention of Food Adulteration Act, 1954 is the main law on food safety and quality. Imports and quarantine are regulated through additional legislation such as the Livestock Importation Act, 1898

[37] Appendix III of ITC(HS).

[38] For a full list of recognized laboratories, see BIS online information. Viewed at: http://www.bis.org.in/lab/osladd1.htm [13 June 2006].

[39] BIS online information. Viewed at: http://www.bis.org.in/cert/fm.htm [13 June 2006].

[40] IEC System for Conformity Testing and Certification of Electrical Equipment and IEC Quality Assessment System for Electronic Components, respectively.

[41] The sectors covered include engineering; chemicals; pharmaceuticals; cement; ceramics; food; textiles; automobiles; machinery; metallurgical industries; electrical; electronics; aeronautics; hospitals; financial services; banking; construction; wholesale and retail trade; education and training; hotels; power; printing; telecommunications; testing laboratories; and information technology.

[42] Textiles and textile products; chemicals, chemical products and fibres; rubber and plastic products; non-metallic mineral products; concrete, cement, lime, plaster, etc.; basic metals and fabricated metal products; machinery and equipment; electrical and optical equipment; other transport equipment; wholesale and retail trade; repair of motor vehicles, motorcycles, and personal and household goods; food products, beverages and tobacco; leather and leather products; wood and wood products; pulp, paper and paper products; printing companies; manufacturing not elsewhere classified; transport, storage and communication; other services; hotels and restaurants; electrical supply; pharmaceuticals; manufacture of coke and refined petroleum products; and financial intermediation, real estate, renting (limited to NACE 65). (BIS online information. Viewed at: http://www.bis.org.in/cert/qsintro.htm [13 June 2006]).

most recently amended in 2001; the import of plants and plant materials is regulated under the provisions of the Plant Quarantine (Regulation of Import into India) Order 2003, issued under the Destructive Insects and Pests Act, 1914. Implementation of these Acts and subordinate legislation is carried out by different central government ministries, making the system relatively complex (Table III.5). India's enquiry points under the SPS Agreement are: the Ministry of Health and Family Welfare for human-health-related issues; and the Departments of Animal Husbandry, Dairy and Fisheries, and Agriculture and Cooperation in the Ministry of Agriculture, respectively, for animal health and plant health issues.[43]

Table III.5
Principle SPS legislation and implementing agencies, 2006

Legislation	Subject	Implementing agency
Prevention of Food Adulteration Act, 1954	Food safety and quality	Ministry of Agriculture, Ministry of Food Processing, Ministry of Health
- Fruit Products Order, 1955	Quality of processed fruit products	Ministry of Food Processing
- Meat Food Products Order, 1973	Quality of processed meat products	Ministry of Food Processing (up to 2004 Department of Agriculture and Cooperation, Ministry of Agriculture)
- Milk and Milk Products Order, 1973 (last amended 1992)	Quality of milk and milk products	Department of Animal Husbandry, Dairying and Fishing, Ministry of Agriculture
Essential Commodities Act, 1955	Consumer protection	State government agencies
Livestock Importation Act, 1898 (amended in 2001)	Procedures for import of livestock	Department of Animal Husbandry, Dairying and Fishing, Ministry of Agriculture
Destructive Insects and Pests Act, 1914	Procedures for import of plants and plant materials	Directorate of Plant Protection, Quarantine and Storage, Department of Agriculture and Cooperation, Ministry of Agriculture
Drugs and Cosmetics Act, 1940	Regulation of import, manufacture, and sales of drugs	Ministry of Health
Export (Quality Control and Inspection) Act, 1963	Regulation of quality control for exports	Exports Inspection Council, Ministry of Commerce and Industry

Source: WTO Secretariat, based on Government of India online information and information provided by the authorities.

57. In an attempt to streamline SPS procedures and enforcement, the Food Safety and Standards Act was passed by Parliament in August 2006 although it is yet to be enforced; this Act consolidates 13 laws and establishes the Food Safety and Standards Authority (FSSA). The regulations and rules to implement the Act are currently being formulated.

58. Imports of primary agricultural material require a phytosanitary import permit, issued by the Department of Agriculture and Cooperation under the Plants, Fruit and Seeds (Regulation of Import into India) Order, 2003. The Plant Quarantine (Regulation of Import into India) Order was promulgated in 2003 (under the Destructive Insects and Pests Act, 1914).[44] It has been amended several times, most recently in July 2006. Imports of plants or plant products into India (with the exception of those listed under Schedule VII of the Plant Quarantine (Regulation of Import into India) Order 2003) require a permit issued under this Order. The permit is issued only after completion of a pest risk analysis. The analysis is based on a comparison of pest profiles in the exporting country and India in line with the IPPC guidelines on pest risk analysis; the Department of Agriculture and Cooperation is assisted by research institutes, such as the Indian Council of Agricultural Research

[43] WTO document G/SPS/ENQ/19, 25 January 2006.

[44] The Plant Quarantine (Regulation of Import into India) Order, 2003 repealed the: Rules for regulating the import of insects in India notified under notification No. F 193/40-A, 3 February 1991; Rules for regulating the import of live fungi into India notified under notification No. F 16-5(I)/43-A, 10 May 1943; import of cotton into India Regulations, 1972; and the Plants, Fruits and Seeds (Regulation of Import into India) Order, 1989.

(ICAR), in conducting this analysis. Pest risk analysis has been carried out for some 2,000 commodities since the process began in 2004. All applications for a permit must be made to the relevant authority seven days in advance of importation.[45] The permit is valid for six months and permits multiple shipments of imports. Import permits are ordinarily issued within two working days. Each consignment must also be accompanied by a phytosanitary certificate issued by the relevant authority in the originating country. All imports of plants, plant material, and other plant products must be carried out through designated sea and airports and land frontier stations.[46]

59. Imports of livestock and meat products are regulated, respectively, under the Livestock Importation Act, 1898 (amended last in 2001) and the Meat Food Products Order, 1973 and require an import permit issued by the Department of Animal Husbandry, Ministry of Agriculture. The livestock permit is valid for six months and can be used for multiple consignments. All imports of livestock must enter through designated ports.

60. Quarantine facilities for plants and seeds must be established at the importer's cost following guidelines prescribed by the Plant Protection Advisor. The period of quarantine is stated in the permit issued under the Plant Quarantine (Regulation of Import into India) Order. Samples of the imported products are examined by the relevant inspection authority (as listed in Schedule XI of the Order), and if found to be free of pests and diseases, are cleared to be imported. Any fumigation required must be carried out by an approved agency at the importer's cost. Fumigation should normally take two days. Appeals against decisions by the inspection authority may be made to the Plant Protection Advisor within seven days of communication from the inspection authority. There is no prescribed limit for the disposal of an appeal by the Plant Protection Advisor. A second appeal cannot be made. However, the Plant Protection Division of the Department of Agriculture and Cooperation is allowed to relax conditions in the Plant Quarantine (Regulation of Import into India) Order 2003 in the public interest.

61. In the WTO Committee on Sanitary and Phytosanitary measures, Members have raised several questions regarding India's policy on, *inter alia,* restrictions on imports of live birds, fresh poultry meat, and meat products, due to avian influenza. According to the authorities, this has been resolved amicably, as well as a ban on the use of food grade wax under the Prevention of Food Adulteration Act. With regard to the ban on the use of food grade wax, India has consequently permitted two varieties of edible waxes to be used for coating fresh fruits up to the level of GMP subject to labelling of the type of wax used and the best before date. Some Members also expressed concerns about the lateness of India's notifications on new fumigation requirements in place since January 2004, as this did not allow sufficient time for comment; there was also concern that the measures deviated from international standards. Non-notification of various SPS measures was also raised by several Members.[47] According to the authorities, all WTO Members were given sufficient time to comment on the Plant Quarantine (Regulation of Import into India) Order 2003 issued in February 2004 after it had been notified to the WTO-SPS Committee. The Order was made operational only on 1 August 2004 after all comments received had been considered. The authorities note, furthermore, that fumigation requirements for preshipment quarantine are according to international standards and that all phytosanitary notifications are being issued and adopted only after careful consideration by technical experts of comments or suggestions received from WTO Members.

62. The Drugs and Cosmetics Act, and its rules, which regulate the quality and safety of drugs (including those based on traditional Indian medicine) and cosmetics, is administered by the Central Drugs Standard Control Organization (CDSCO) in the Ministry of Health and Family Welfare. The

[45] The issuing authority depends on the expected point of entry (see Schedule X of the Order).
[46] The full list is provided in Schedule I of the Order.
[47] WTO documents G/SPS/GEN/204/Rev.2 to Rev.6.

overseas manufacturers' manufacturing sites and the drugs to be imported are registered under the provisions of the Drugs and Cosmetics Rules, 1945. All merchant importers and domestic manufacturers of drugs require import licences issued by the CDSCO.[48] It takes approximately 2-3 weeks to issue an import licence, which is valid for three years.[49] For renewal of an import licence, a fresh application must be made three months before the expiry of the existing licence; the current licence is deemed to remain in force until the renewal. Appeals against CDSCO decisions may be made to the Secretary, Ministry of Health and Family Welfare within 30 days of receiving the rejection.

63. All drug imports must enter through designated ports of entry[50] and must have a remaining shelf life of at least 60% from the date of import. Upon import, the Customs official may, if he has reason, send a sample for testing to the CDSCO.

(xiii) Labelling

64. Packing and labelling of food products is regulated by the Prevention of Food Adulteration Rules (Part VII). All food product labels should include: the name, trade name or description of food contained in the package; the ingredients used, in descending order of their composition by weight or volume; name and address of manufacturer or importer; net weight or measure of volume of contents; month and year of manufacture or packaging; date of expiry, which, for products containing aspartame, should not be more than three years from the date of packing; purpose of irradiation and licence number where relevant; and best before consumption date. In addition, for products containing artificial flavouring the chemical names of the flavourings should not be used and for products containing natural flavouring substances, the common name of the flavours should be mentioned on the label. The label should also indicate the animal origin of gelatine in products containing gelatine. More specific labelling requirements are specified for other products, such as infant milk substitutes and infant foods, bottled mineral water, and milk products. Furthermore, the Ministry of Health and Family Welfare has recently notified the quantitative ingredient declaration (QUID) requirement as a percentage of the ingredient at the time of manufacture of the food.

65. There appear to have been no changes to labelling requirements since 2002. Mandatory labelling of quantities has been notified, but is to be implemented at a later date. The Ministry of Health and Family Welfare, has issued a comprehensive labelling requirement for genetically modified food. This proposed regulation (notified as a draft (GSR 152(E), dated 10 March 2006)), broadly requires that all packages of food/food ingredients of GM origin, subject to the approval of the Genetic Engineering Approval Committee (GEAC), should be labelled indicating that they are of GM origin; and that the product has been cleared for sale in the exporting country, so that verification, if needed, can be discussed with the exporting country without the need for testing. Documents supporting this approval must be provided at the time of import.

(xiv) Government procurement

(a) Introduction

66. A transparent and competitive system of government procurement is necessary to ensure value for money as regards public expenditure programmes, and to improve India's fiscal situation.

[48] Under the Drugs and Cosmetics Rules, 1945, all licence applicants must pay a fee of Rs 1,000 for a single drug and an additional Rs 100 for each additional drug to be imported (Paragraph 24 of the Drugs and Cosmetics Rules, 1945).
[49] Paragraph 28 of the Drugs and Cosmetics Rules, 1945.
[50] Paragraph 43A of the Rules.

Such a system can bring important developmental benefits, particularly in promoting the efficient use of scarce resources in the provision of infrastructure and other economically and socially important goods, services, and public works. India has recently implemented significant reforms in its procurement procedures at the central government level, including enhanced use of electronic technologies and other steps to increase transparency. Similar reforms have been carried out in certain states. Extension and deepening of these reforms promises further benefits.

67. The procurement system is decentralized in India, comprising a multiplicity of entities at the central, state, and local levels in addition to numerous public sector enterprises. Consolidated data are not available on the economic significance of government procurement, including a breakdown of the value of contracts by tendering method. Data from cross-national studies suggest, however, that government procurement typically constitutes in the range of 10-15% of total economic activity or more.[51] In India, the percentage may be significantly higher given the role of public companies in key sectors such as railways, and in the economy generally.

(b) Procurement procedures and institutional framework[52]

Procedures and institutions at the central government level

68. Central government procurement is governed by the General Financial Rules (GFRs), which are promulgated by the Ministry of Finance. These rules were extensively overhauled in 2005, to enhance administrative flexibility and ensure full accountability for the use of public funds and transparency mechanisms appropriate to the scale of relevant activities. They have the status of subordinate legislation. Chapter 6 of the rules deals with procurement of goods and services and Chapter 8 with contract management. All government purchases must be in accordance with the principles outlined in the GFRs. Organizations that have their own website must publish their tender notices and enquiries on those websites. Central government organizations that do not have their own website must post the notices on the National Information Centre (NIC) website.

69. The GFRs provide for purchases based on advertisements (open tender), direct invitation to a limited number of firms (limited tender), invitation to one firm only (single tender), and negotiation with one or more firms. The normal procedure for procurement over Rs 2.5 million is through open tender. Department heads have discretion in deciding whether to advertise tenders abroad. The GFRs also provide for purchase of goods without quotation (up to Rs 15,000) and purchase of goods by local purchase committee (up to Rs 100,000). Limited tendering is allowed for procurement up to Rs 2.5 million and above only in cases: of urgency and where justification is provided by the Ministry/Department; where it is considered not to be in the public interest to procure goods through open tender; and where the possibility of additional suppliers being tapped is deemed to be remote (Rule 151 GFR).

70. Commonly used goods required by central government entities on a recurring basis typically are purchased under rate contracts administered by the Directorate-General of Supplies and Disposals (DGS&D) in the Department of Commerce. These contracts are intended to allow the procurement of goods from reliable sources without the need for recurrent tenders. In principle, there is no preference for domestic as opposed to imported goods for such procurement. Foreign manufacturers may be registered, with or without Indian agents. However, both Indian and non-Indian suppliers must be

[51] OECD (2001).

[52] This section draws on insights and material contained in Hoda (2006); ADB/OECD (undated); various materials prepared for a "National Seminar on Government Procurement". Viewed at: http://www.unctadindia.org/displaymore.asp?Gr=&chkey=&subitemkey=771&itemid=378&subchnm=Past&subchkey=56&chname=Events; and information provided by the Government of India.

able to provide after sales support in India, and the products purchased must be "suitable for use" in India.

71. Tender notices are generally publicized through the *Indian Trade Journal*, a monthly bulletin issued by the DGS&D, and are available on the NIC-NET of the National Informatics Centre (NIC). For global tenders, notices may also be published or disseminated through Indian embassies. Tender specifications are drafted on the basis of national or international standard specifications. The DGS&D registers interested firms as approved contractors. It has a comprehensive website, which provides, *inter alia:* specifications of products on rate contracts; notices, agendas, and minutes of consultative meetings with stakeholders; downloadable tender notices and enquiries; complete text of parallel rate contracts; DGS&D manual; important circulars; and the names of registered suppliers.

72. Recently, the Central Government has entrusted to the DGS&D a mandate for a project on e-government procurement under the National e-Governance Plan (NeGP). This reflects the government's determination to implement electronic tools to ensure transparent and competitive procurement processes across all government entities.

Preferential policies at the central government level

73. India retains preferential policies for central public-sector and micro and small enterprises. Central public-sector enterprises are permitted to submit fresh bids in response to private sector bids. For tenders valued between Rs 50 million and Rs 1 billion, a central public-sector enterprise whose bid is within 10% of that of a large private unit is allowed to revise its price downward and is eligible for a contract or parallel-rate contract. This system has been extended until 31 March 2008.

74. Micro and small enterprises (MSEs) receive purchase and price preferences in procurement by central government ministries and departments and public-sector enterprises. Under the purchase-preference system, 358 specified items must be procured exclusively from MSEs. The price preference system provides that if the price offered by the micro or small enterprise is not more than 15% above the price offered by a large enterprise, the product must be purchased from the former. MSEs are also assisted by way of: (i) issue of tender sets free of cost; (ii) exemption from payment of "earnest money" (deposits); and (iii) waiver of security deposits up to the monetary limit for which the unit is eligible, based on certain transparent criteria. The National Small Industries Corporation (NSIC) serves as a single point of negotiation for eligible MSEs for government purchasing preference schemes.

Procurement at the state government level

75. For the most part, the state GFRs that govern procurement are based on the old GFRs of the Central Government, which were updated in 2005. State governments make extensive use of procurement systems as an instrument of industrial policy, and tend to make less extensive use of electronic procurement tools. There are, however, important exceptions: the state government of Andhra Pradesh has pioneered the use of electronic procurement tools[53]; and Karnataka, Uttarakhand, and Chattisgarh have also moved ahead in this area. Efforts are under way to encourage similar reforms in other states.[54]

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[53] See Aggarwal, R.P. (undated), *e-Procurement in GoAP*, slide presentation. Viewed at: http://www.unctadindia.org/displaymore.asp?Gr=&chkey=&subitemkey=771&itemid=378&subchnm=Past&subchkey=56&chname=Events.

[54] See Gupta, M.P. (2006), New Procurement Policy of Government of India: State Government Policies and Tasks Ahead, slide presentation. Viewed at: http://www.unctadindia.org/displaymore.asp?Gr=&chkey=&subitemkey=771&itemid=378&subchnm=Past&subchkey=56&chname=Events.

Procurement in the railway and other specialized sectors

76. Procurement in the railway, postal system, telegraph, and defence sectors is subject to specialized procedures developed by the responsible ministries, within the overall framework of the GFRs. In general, competition from foreign suppliers is allowed in respect of high technology or high value items. For procurement in the railways sector, foreign firms are free to participate in tenders advertised in India only, but payment against such contracts must be made in Indian rupees at par with indigenous suppliers. Global tendering is frequently used in procurement of rolling stock, wheels, machinery and plant equipment, including technology transfer.

(c) Anti-corruption measures in public procurement

77. Recently, a number of initiatives have been taken by the Central Government (and certain state governments) to promote greater transparency and accountability in public procurement and thereby deter corruption. For example, central government procurement procedures are covered by the Right to Information Act, 2005. Under this legislation, information on any decision by public authorities, including on procurement, can be accessed within a prescribed time frame. All procurement decisions are also subject to audit by the Comptroller and Auditor-General of India, and to legislative review and judicial scrutiny. India is a signatory to the United Nations Convention against Corruption. The ratification of the Convention will proceed once implementing legislation is in place. A joint working committee is considering the requisite legislation to be framed in this regard. India is also participating in the ADB/OECD Anti Corruption Action Plan for the Asia Pacific and has made a commitment to develop "appropriate transparent procedures for public procurement that promote fair competition and deter corrupt activity, and adequate simplified administration procedures".[55]

(d) Agreement on Government Procurement

78. An issue for the future is whether and/or at what stage it might be to India's advantage to consider participation in the WTO Agreement on Government Procurement (GPA).[56] Traditionally, India has firmly rejected such participation on various grounds, including the extent of changes that (it was perceived) might be required in its domestic procurement systems and scepticism regarding the extent of benefits to its suppliers from GPA-ensured access to foreign procurement markets.[57] However, the reforms to date have moved India towards a more transparent and competitive procurement framework. Another factor to be considered is that other major developing countries such as China and Saudi Arabia have made commitments eventually to seek accession to the GPA, in their WTO accession protocols.[58]

(xv) State trading

79. India's last notification to the WTO on state trading was made in October 2001. According to this notification, the reasons for maintaining state trading include food security and to enable better marketing and pricing of state traded products, ensure steady domestic supply, and conservation and

[55] ADB/OECD (undated).

[56] The Agreement on Government Procurement provides a vehicle for the progressive opening of parties' markets to international competition through legally enforceable provisions on non-discrimination, which apply to procurements *"covered"* by the Agreement (i.e. those set out in each party's schedules). In addition, various provisions of the Agreement relating to the provision of information to potential suppliers, contract awards, qualification of suppliers and other elements of the procurement process aim to ensure transparency and non-discriminatory conditions of competition between suppliers.

[57] Srivastava, Vivek (2003), pp. 235-267.

[58] WTO document GPA/89, 11 December 2006.

proper utilization of some metal ores and rare earths for export.[59] The major change since 2002 is the removal of ammonium sulphonitrite from the list of products subject to state tendering; these currently include petroleum products, urea, coconut oil and products, and some cereals (Table III.6). Data on the share of imports of these products by state-trading enterprises are not available.

Table III.6
Imports subject to state trading, 2001 and 2006

October 2001	1 April 2006	Agency
Wheat	Unchanged	Food Corporation of India
Rye	Unchanged	
Oats	Unchanged	
Maize	Unchanged	
Rice	Unchanged	
Grain sorghum	Unchanged	
Buckwheat, millet, canary seed, jawar, bajra, ragi, other cereals	Unchanged	
Copra	Unchanged	State Trading Corporation of India Limited and Hindustan Vegetable Oils Corporation Limited
Crude coconut oil (coconut oil and its fractions)	Unchanged	
Other	Unchanged	
All types of motor spirit (gasoline)	Unchanged	Indian Oil Corporation Limited
All types of aviation spirit	Unchanged	
All types of spirit type (gasoline type) jet fuel	Unchanged	
Kerosene type jet fuels (aviation turbine fuel)	Unchanged	
Diesel gas oil	Unchanged	
Other gas oil	Unchanged	
Urea, whether or not in acqueous solution	Unchanged	Minerals and Metals Trading Corporation of India Limited; Indian Potash Limited; and State Trading Corporation of India Limited
Ammonium sulphonitrite	Not subject to state trading	Minerals and Metals Corporation of India Limited

Source: WTO document, G/STR/N/7/IND, 8 October 2001; and Ministry of Commerce Foreign Trade Policy.

(xvi) Other measures

80. There has been no change in the policy on countertrade during the period under review. At the time of India's last Review in 2002, it was stated that while no law required Indian exporters to enter into countertrade agreements, global tenders sometimes provided preference to companies who agreed, ceteris paribus, to countertrade operations. The main SOEs involved in countertrade in the past were the MMTC and the STC.[60]

(3) MEASURES DIRECTLY AFFECTING EXPORTS

(i) Procedures

81. Exporters must register with the Directorate General of Foreign Trade (DGFT) and obtain an IEC number to be eligible to carry out commercial imports or exports. If goods are to be exported under an export promotion scheme this must be declared on the shipping/export bills filed with Customs at the time of export.

82. The shipping bill must be filed with supporting documents (including invoice, packing list, etc.) at Customs. Once it has been processed, goods are examined by Customs before they can be exported. Goods subject to export restrictions and quotas must also be accompanied by licences issued by the relevant Government departments. Shipping bills can be filed seven days in advance of the presentation of goods to Customs (15 days in advance for exports by sea). Upon presentation of

[59] WTO document G/STR/N/7/IND, 8 October 2001.
[60] WTO (2002).

goods for export, a "let export" order is given, on an average within 2-3 hours, for exports by air and within 8 hours for 90% of exports by sea.

(ii) Quality control and preshipment inspection

83. Since its previous Review in 2002, India has not made any major changes to its quality control and preshipment inspection measures for exports. Under the Export (Quality Control and Inspection) Act, 1963, the Export Inspection Council of India (EIC) carries out quality control and preshipment inspection to ensure minimum standards for exports. The Act empowers the Central Government to notify commodities along with minimum standards for their export. Although more than 1,000 products have been notified, export certification is mandatory for fish and fish products, dairy, poultry, egg, meat and meat products, and honey. No new products have been notified since 2002. The EIC has five export inspection agencies (EIAs) located across major cities in India, supported by 38 sub-offices and laboratories to carry out the preshipment inspection and certification. They also issue preferential certificates of origin for exports, as required. In addition, other preshipment inspection agencies have been approved for inspection of minerals and ores, mainly iron ore, manganese ore, etc. under the EIC Inspection Agency Recognition Scheme, 2002, which is based on ISO/IEC 17020; 35 such agencies have been notified.

84. The EIC's main systems of export inspection and certification include: consignment-wise inspection (CWI), a systems-based approach for in-process quality control (IPQC), self-certification (SC) and food safety management systems based certification (FSMSC). Residue monitoring plants (RMPs) are being set up in various sectors including dairy, poultry, marine, egg products, and honey. Over 98% of certified exports, by value, were covered in 2005/06 by mandatory export certification under the FSMSC system.[61] The FSMSC is based on international standards of food safety management, such as HAACP/GMP/GHP, and involves approval and surveillance of food processing units. Currently, around 450 units are approved under the FSMSC. The EIC, through the EIAs, also issue certificates, *inter alia*, for health, non-GMOs, and authenticity of basmati rice. A scheme for issuing non-GMO certificates commenced in 2006/07. The EIC's certification has been recognized for a range of food and non-food products.

(iii) Export taxes

85. With the exception of tanned and untanned hides, skins and leathers (except manufactures of leather), all other exports otherwise subject to tax have been exempted through notifications.[62] The export tax rates for leather range from 10% to 25% of the f.o.b. value of the product.[63] An export cess applied to various products including coffee, spices, tobacco and other agricultural commodities has been repealed by the Cess Laws (Repealing and Amending) Act, 2005 enacted in 2006. No information was provided to the Secretariat on which exports remain subject to cess.[64]

(iv) Minimum export prices

86. The authorities state that no minimum export prices are imposed under the current Foreign Trade Policy.

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[61] Department of Commerce (2005), Chapter 11.

[62] Customs Notifications 100 of 1989, amended by Notifications 48 of 1990, 133 of 1992, 91 of 1993, 68 of 1995, and 135 of 2000.

[63] Customs Notification No. 133/2000, 17 October 2000. Viewed at: http://www.cbec.gov.in/cae/customs/cs-act/notifications/cs133-2k.htm.

[64] It appears from the Customs online information that cesses continue to apply for exports of shellac and lac based products, manganese ore, chrome ore, mica, and iron ore.

(v) Export prohibitions, restrictions, and licensing

(a) Export prohibitions

87. Export prohibitions, which are maintained under the Foreign Trade Policy, are in place for environmental, food security, marketing, pricing, and domestic supply reasons, and to comply with international treaties. Since 2002, a few products have been added to the list of prohibited exports (Table III.7). In addition to these export prohibitions, India also issues ad hoc prohibitions on exports of sensitive products; for example, export prohibitions have recently been issued for wheat, pulses, and sugar (Chapter IV(2)(ii)).

Table III.7
Export prohibitions, 2002 and 2006

Description (status on 1 April 2002)	**Reason for prohibition**	**Status in March 2006**
All wild animals, animal articles including their products and derivatives excluding those for which ownership certificates have been granted and those required for transactions for education, scientific research, and management under the Wild Life (Protection) Act, 1972, including their parts and products[a]	Protection of wildlife under the Wild Life (Protection) Act, 1972	Unchanged
Special chemicals, organisms, materials equipment and technologies (SCOMET) goods as specified in Appendix 3 of the book titled "ITC(HS) Classifications of Export and Import Items"[b]	Dual use items	Unchanged
Live exotic birds except albino budgerigars, budgerigars, Bengali finches, white finches, and zebra finches, which may be exported subject to preshipment inspection, and java sparrows, which are subject to export restrictions	Protection of wildlife under the Wild Life (Protection) Act, 1972	Unchanged
Beef and offal of cows, oxen and calves	Social and religious reasons	Export of buffalo meat was not prohibited on 1 April 2002
Undersized rock lobsters and sand lobsters (HS 0306 11 00, 0306 2100) and sand lobsters (HS 0306 12 10, 0306 12 90 and 0306 22 00) (Notification No.16 dated 17.7.2003 for prohibition)	Ecological reasons	Added
Human skeletons	Social reasons	Unchanged
Peacock tail feathers including handicrafts and articles of peacock tail feathers	Control of poaching and illegal trade in wildlife and its products	Unchanged
Shavings and manufactured items of shed antlers of Chital and Sambhar	Control of poaching and illegal trade in wildlife and its products	Unchanged
Tallow, fat and/or oils of any animal origin excluding fish oil	Social and religious reasons	Unchanged
Chemicals under the Montreal Protocol when exported to a country that is not party to the Montreal Protocol on Substances that Deplete the Ozone Layer	Ecological and environmental reasons	Unchanged
Condoms[c] (certain brands)		Added
Wood and wood products in the form of logs, timber, stumps, roots, barks, chips, powder, flakes, dust, pulp and charcoal other than sawn timber made exclusively out of imported logs/timber	Ecological and environmental reasons	Unchanged
Fuel wood in logs, in billets, in twigs, in faggots or in similar forms; wood in chips or particles; sawdust and wood waste and scrap, whether or not agglomerated in logs, briquettes, pellets or similar forms	Ecological and environmental reasons	Added
Wood charcoal (including shell or nut charcoal), whether or not agglomerated	Ecological and environmental reasons	Added
Wood sawn or chipped lengthwise, sliced or peeled, whether or not planed, sanded or end jointed, of a thickness exceeding 6 mm, other than sawn timber made exclusively out of imported logs/timber	Ecological and environmental reasons	Added

Table III.7 (cont'd)

Description (status on 1 April 2002)	Reason for prohibition	Status in March 2006
Sandalwood in any form, but excluding finished handicraft products of sandalwood, machine finished sandalwood products, sandalwood oil	Ecological and environmental reasons	Unchanged
Red sanders wood in any form, whether raw, processed or unprocessed but excluding value added products of red sanders wood such as extracts, dyes, musical instruments and parts of musical instruments made from red sanders wood procured from legal sources	Ecological and environmental reasons	Unchanged
Mechanical wood pulp	To conserve natural resources	Added
Chemical wood pulp, dissolving grades	To conserve natural resources	Added
Chemical wood pulp, soda or sulphate, other than dissolving grades	To conserve natural resources	Added
Chemical wood pulp, sulphite, other than dissolving grade	To conserve natural resources	Added

a Including under Chapters HS 0106, 0208, 0210, 0300, 0407-0408, 0410, 0502, 0504-0511, 1504, 1506, 1516-1518, 1600, and 3000.
b Including under Chapters HS 28-29, 30, 35-40, 48-48, 59, 69-91, and 93.
c Certain brands and those with certain markings/stamps as set out in the Export Policy Schedule.

Source: WTO (2002), *Trade Policy Review: India*; and Ministry of Commerce (2006), *Foreign Trade Policy (Schedule 2: Export Policy).*

(b) Export restrictions and quotas

88. Export restrictions are largely unchanged since the last Review. Some 171 lines at the HS 8-digit level (excluding special chemicals, organisms, materials, equipment, and technologies) are currently subject to restrictions; products may only be exported if a licence is issued by the Directorate General of Foreign Trade (DGFT), on the approval of its Export Facilitation Committee.

89. Onions may be exported through 13 designated state-trading enterprises (without quantitative ceiling) subject to conditions of quality laid out by NAFED from time to time. In addition, quantitative ceilings are notified by the DGFT for sandalwood oil and sandalwood chips, recommended by the Ministry of Environment and Forests to conserve natural resources. All the quotas are allocated by the DGFT. Quotas for wheat and wheat products, grain and flour of barley, maize, bajra, ragi and jowar, butter, non-basmati rice and lentils, gram, beans and flour made from them were removed in March 2002.[65]

(vi) Measures maintained by importing countries

90. Between January 2002 and December 2005, Members initiated 52 anti-dumping investigations against imports from India; final measures were taken in 25 cases. Members also initiated 12 countervailing actions against India and imposed final measures in 12 cases during the period. During January-June 2006 investigations were initiated for three products and final measures were taken in six cases. India has also identified a number of sanitary and phytosanitary restrictions maintained by Members as potential barriers to its exports. Issues raised during the period under review in the WTO Committee on Sanitary and Phytosanitary Measures include: maximum levels for certain aflatoxins in food stuffs, residual pesticide tolerance and inspection methods for tea, MRLs in animal products for imports into the EC, and geographical BSE risk assessment requirements maintained by the EC, import requirements on meat and eggs maintained by Switzerland, as well as

[65] DGFT online information. Viewed at: http://164.100.9.245/exim/2000/not/not01/not4901.htm [12 June 2006].

Japan's restrictions on imports of mangoes.[66] India also believes that SPS measures maintained on mango imports into the United States, Australia, and New Zealand, cereal and cereal product imports into the United States, and cut flower and grape imports into Japan are a barrier to its exports.

(vii) Duty and tax concessions

91. In an attempt to mitigate the impact of, if not remove, the anti-export bias inherent in the tariff and other indirect taxes, India has established various schemes for exporters to obtain tax rebates or remissions. The schemes include drawbacks for customs duty paid, and exemptions from payment of import duty. They render the export regime rather complex.

(a) Drawback

92. The system of duty drawback and its rates are reviewed and revised every year. Drawback is available under the Customs Act, 1962 for re-exports of goods on which import duty was paid (Section 74) and for imported material used in the manufacture of exports (Section 75). Drawback rates are drawn up annually and released soon after the Budget is introduced in Parliament. The rates are based on parameters including the prevailing price of inputs, standard input-output norms published by the DGFT, share of imports in total inputs, and the applied rates of duty; in most cases, the drawback is less than 100% of the import duty paid. According to the authorities, although the rates are based on a mixed classification, they are fully aligned with the HS nomenclature at the HS 4-digit level.[67] The rates are expressed as a percentage of the f.o.b. value of the export.

(b) Other duty and tax concessions

93. In order to offset the incidence of import duties and internal taxes India provides tax exemptions and rebate/remission to exporters through various schemes (see section (4)(ii) below) and on customs duty. While barriers to imports have declined and the indirect tax system has been rationalized over the years, the number of these schemes renders the export regime increasingly complex. In the latest Foreign Trade Policy, announced in March 2006, the Duty Free Import Authorization (DFIA) scheme was announced to replace the DFRC scheme, the agriculture scheme was expanded to include village industry products, while the Target Plus scheme introduced in 2004 was discontinued (Table AIII.4).

94. In addition to introducing new programmes and replacing others, changes have been made to existing programmes. The Duty Free Import Authorization (DFIA) scheme offers exemptions in respect of customs duty, additional duty, education cess, and any anti-dumping or safeguard duties in force for inputs used in exports. The main difference between the DFIA and the Advance Authorization scheme seems to be that the Advance Authorization scheme requires positive value added in exports, and the DFIA requires minimum value added of 20%. The export obligation period for the EPCG has been extended to 12 years in certain cases (Table AIII.4). Changes to the "Served from India" scheme, include a reduction in duty-free imports from 20% to 10% of foreign exchange earned by restaurants in the previous financial year.

[66] WTO documents G/SPS/GEN/204/Rev.2 to Rev.6.

[67] Ministry of Finance, Circular No. 22/2005-Cus., 2 May 2005. Viewed at: http://www.cbec.gov.in/cae/customs/dbk-schdule/dbk-2005-06/circular0506.doc [24 May 2006]. The authorities also state that a complete alignment with the customs tariff at the 6- and 8-digit levels is not required as the objectives of the customs tariff and the drawback schedule are different. The 6-digit and 8-digit sub-headings of the drawback schedule have been devised keeping in view the composition of Indian exports, just as the 8-digit level sub-headings in the customs tariff have been devised keeping in view the composition of imports into India.

95. The Government has estimated revenue forgone from these schemes at Rs 537.7 billion in 2006/07, up from provisional figures of Rs 375.9 billion for the previous year; the largest shares are accounted for by the Advance Authorization Scheme (32.8%) and the EOU/EHTP/STP Scheme (25.4%).[68]

(viii) Free-trade zones

96. India's first export processing zone was established in Kandla in 1965, followed by the Santa Cruz Electronics Export Processing Zone in 1973. Although they were set up to counter the anti-export bias inherent in India’s policies of import substitution, research has suggested that they were not particularly successful due to continued restrictions on their operations and on foreign direct investment.[69] In 1980, the export oriented unit (EOU) scheme was introduced. The EOUs were set up outside the EPZs, but were managed by the Development Commissioners of the EPZs and had access to the same incentives. Further EPZs and specialized processing zones (for software, electronic hardware, and agriculture) were set up in the following years. In 2001, the Government further expanded the network by establishing Special Economic Zones (SEZs). The degree of success of these zones is not clear. A recent study, for example, found that exports from the EPZs and SEZs as a share of total exports have been almost stagnant since the early 1990s.[70] Data provided by the authorities for 2001/02 to 2005/06, show that the share of total exports from EOUs has remained at between 8% and 10% and from the SEZs (including EPZs) at between 4% and 5%.[71] There also appears to be considerable sectoral variation, with exports of gems and jewellery and electronics faring better than other industries.

97. Of the seven EPZs in India, one is exclusively for exports of electronic products and gems and jewellery.[72] In addition to income tax relief and holidays (Table AIII.4), the incentives provided for investing in the EPZs include exemption from import licences, single window approval process, and exemption from customs duty for industrial inputs; imports from the domestic tariff area (DTA) are also exempt from payment of excise duty. There are also around 2,334 EOUs in the country receiving the same incentives initially as firms established in the EPZs although the EPZs have now become SEZs (see below).

98. The multi-product SEZs, which can be set up by government or private entities over a minimum contiguous area of 1,000 hectares (at least 200 hectares in selected states)[73], are self-contained parks providing advanced infrastructure, and all units operating in the SEZs are offered simplified customs and other administrative procedures, and facilities such as electricity, and water. In contrast to EPZs and EOUs, there are no minimum export requirements for SEZs although they are required to be net foreign exchange earners. In addition to the tax incentives already provided to the EPZs and EOUs, investors in the SEZs are eligible for other incentives, including: exemption from the service tax and minimum alternate tax; up to 100% FDI in most activities; and a relaxation of

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[68] Ministry of Finance (2007).

[69] Aggarwal (2005).

[70] Aggarwal (2004).

[71] Data provided by the authorities show that exports from EOUs grew from Rs 187 billion in 2001/02 to Rs 377 billion in 2005/06, and from SEZs from Rs 92 billion to Rs 223 billion during the same period.

[72] Kandla Free Trade Zone; Falta Export Processing Zone; Santa Cruz Electronics Export Processing Zone; Vishakhapatnam Export Processing Zone; Chennai Processing Zone; Cochin Export Processing Zone; and Noida Export Processing Zone.

[73] SEZs proposed in the states of Assam, Meghalaya, Nagaland, Arunachal Pradesh, Mizoram, Manipur, Tripura, Himachal Pradesh, Uttaranchal, Sikkim, Jammu and Kashmir, Goa or in a Union Territory (Chapter II of the Special Economic Zones Rules, 2006).

certain requirements including environmental impact assessment, labour laws, and residence requirements for foreign managing directors of companies (Table AIII.4).[74]

99. Thus far, approval has been given for around 237 SEZs across 19 states and 3 Union Territories; all of the existing EPZs have been converted to SEZs. Like the EPZs, each SEZ is administered by a Development Commissioner. Applications for establishing a unit in a SEZ must be made to the Development Commissioner of the SEZ along with supporting documents. The Approval Committee must provide its decision to the applicant within 15 days of receipt of the application; for applications requiring an industrial licence, approval must be given within 45 days by the SEZ's Board of Approval in the Ministry of Commerce and Industry.[75] Sector-specific considerations based on, *inter alia*, export potential and product sensitivity, apply for high grade iron ore, coffee, polyester yarn, and some textiles and clothing products.[76] A large share of the industries approved to operate in the SEZs seem to be information technology based industries. The cost-effectiveness of these SEZs in generating incremental investment and employment is open to question. As these are fairly capital-intensive activities, it is not clear that this is the most effective way to create additional employment opportunities, especially for the less-skilled labour force. The Ministry of Finance estimates that forgone taxes from the SEZs will amount to some Rs 1,750 billion (US$39.6 billion) by 2011, while the Ministry of Commerce estimates that the SEZs will bring in US$13.5 billion in investment and 890,000 jobs by 2009.[77] Duty forgone from the SEZs was estimated at Rs 21.5 billion in 2006/07.[78] These figures suggest that the amount of investment generated by SEZs falls far short of the associated tax revenues forgone and that the average cost of the jobs created is very high, all of which casts doubt on the cost-effectiveness of SEZs. The Reserve Bank of India has also noted that the revenue loss in providing incentives may be justified only if the SEZs ensure forward and backward linkages with the domestic economy.[79]

(ix) State trading

100. There has been further liberalization in state trading in exports since 2002. The main changes concern onions, which can be freely exported by a number of state cooperatives, while some petroleum products (LPG and kerosene) can be exported subject to obtaining a "no objection" certificate from the Ministry of Petroleum and Natural Gas (Table III.8). Indian exports of sugar are subject to tariff rate quotas in the United States and the EC and are exported through the Indian Sugar Exim Corporation Limited, which is a sugar producers cooperative.[80]

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[74] In certain cases, labour laws have been delegated by states to the SEZs, and specific legislative amendments have been passed by some states to introduce flexibility in labour and environmental requirements applied to the SEZs (SEZ online information. Viewed at: http://www.sezindia.nic.in/lab.asp [30 June 2006].

[75] SEZ online information. Viewed at : http://sezindia.nic.in/howapply_enterprise.asp [16 June 2006].

[76] Rule 18 of the SEZ Rules 2006. Viewed at: http://www.sezindia.nic.in/sez-rules2006.pdf [16 February 2007].

[77] *The Economist*, 27 January 2007.

[78] Ministry of Finance (2007).

[79] RBI (2006b).

[80] Quantitative ceilings are notified by the DGFT from time to time (ITC(HS), Schedule 2: Export Policy).

Table III.8
Exports subject to state trading, 2001 and 2006

October 2001	1 April 2006	Agency
Onions (all varieties other than Bangalore rose onions and Krishnapuram onions)	Under notification 20 of 8 October 2003, all varieties of onions (including Bangalore rose and Krishnapuram) can be exported; in addition to the agencies previously authorized, onions can be exported by the Karnataka State Cooperative Marketing Federation Ltd. (KSCMF); the North Karnataka Onion Growers Co-operative Society (NKOGCS); the West Bengal Essential Commodities Supply Corporation (WBECSC) Ltd.; M.P. State Agro Industries Development Corporation (MPSAIDC); Karnataka State Produce Processing and Export Corporation (KAPPEC); Madhya Pradesh State Co-operative Oil Seeds Growers Federation Ltd.; and the Andhra Pradesh Marketing Federation (AP MARKFED).	National Cooperative Consumers' Federation of India Ltd.(NCCF); National Agricultural Cooperative Marketing Federation of India Ltd. (NAFED); Gujarat Agro Industries Corporation Ltd. (GALC); Maharashtra State Agricultural Marketing Board (MSAMB); Andhra Pradesh State Trading Corporation; and Spices Trading Corporation Ltd. (STCL)
- Bangalore rose onion	Not subject to state trading (see above)	
- Krishnapuram onion	Not subject to state trading (see above)	
Niger seeds	Not subject to state trading	
Gum karaya	Unchanged	Tribal Cooperative Marketing Development Federation of India Ltd.
Preferential quota sugar to the EC and the United States	Unchanged	Indian Sugar Exim Corporation Limited subject to quantitative ceiling notified by DGFT from time to time
Mica scrap	Not subject to state trading	
Iron ores concentrate prepared by beneficiations and or concentration of low-grade iron ore containing 40% or less of iron produced by Kudremukh Iron Ore Company Ltd.	Unchanged	Kudremukh Iron Ore Company Ltd.
Iron ore pellets manufactured by Kudremukh Iron Ore Company Ltd. out of concentrates produced by it	Unchanged	Kudremukh Iron Ore Company Ltd.
Manganese ores below 46% Mn	Unchanged	Minerals and Metals Trading Corporation (MMTC); and Manganese Ore India Ltd. (MOIL)
Chrome Ore lumps with Cr_2O_3 not exceeding 40%	Unchanged	Minerals and Metals Trading Corporation (MMTC).
Low silica, friable/fine ore with Cr_2O_3 not exceeding 52% and silica exceeding 4%; and low silica friable/fine chromite ore with Cr_2O_3 in the range of 52-54% and silica exceeding 4%	Unchanged	Minerals and Metals Trading Corporation (MMTC)
Crude oil	Unchanged	Indian Oil Corporation
Liquefied petroleum gas	Free subject to obtaining NOC from Ministry of Petroleum and Natural Gas	
Kerosene	Free subject to obtaining NOC from Ministry of Petroleum and Natural Gas	
Rare earths (including yttrium) ores, concentrates and compounds thereof	Free although monazite is a prescribed substance subject to the provisions of the Atomic Energy Act, 1962	.
Other materials containing the following substances as accessory ingredients, including:	Free but subject to the provisions of the Atomic Energy Act, 1962	
- Samerskite		
- Uraniferrous allanite radium ores and concentrates		

Source: WTO document G/STR/N/7/IND, 8 October 2001; and Ministry of Commerce and Industry (2006), *Foreign Trade Policy 2004-2009;* Schedule 2: Export Policy.

(x) Export finance, insurance, and guarantees

101. Export finance is provided primarily by the Export-Import Bank of India (Exim Bank) as well as through mandatory annual lending targets for commercial banks. The Exim Bank was established in 1982 under the Export Import Bank of India Act, 1981. Its primary responsibility is to finance, facilitate, and promote India's exports. It is wholly owned by the Government of India and its Board of Directors includes representation from the Ministries of Commerce and Industry, and Finance, as well as the Reserve Bank of India, banks, and the private sector.

102. The Exim Bank provides a range of financing products, support programmes, and value-added services to promote two-way trade and investment. It provides credit to governments and to overseas financial institutions to enable buyers in those countries to purchase capital/engineering and manufactured products and related services from India on deferred payment terms negotiated between the Exim Bank and the overseas agency.[81] The export credit can be provided to Indian companies, commercial banks or overseas entities.[82] The bank also provides various export guarantee schemes and fee-based services to support international trade and investment, and conducts related research.[83] The bank is wholly owned by the Government of India (GOI), which has subscribed to its equity capital. The Government has also subscribed to an issue of long-term subordinated bonds, which qualify as Tier I capital of the bank. The bank also raises resources from the domestic and international capital markets.[84] Under the Act, the bank is required to act on business principles and is also liable to tax under the Income Tax Act. The bank usually lends on a cost-plus basis at market-related interest rates. In certain cases, it may (at the behest of and on behalf of the Government) extend a line of credit to an overseas government or institution. The top five industrial sectors to which the bank had exposure, on 31 March 2006, were textiles and garments, metals and metal processing, engineering goods, construction goods and services, and capital goods.

103. Under the current guidelines on lending to the priority sector, 12% of net bank credit (within the overall target of 32% of net bank credit stipulated for priority sector lending) must be loaned to the export sector by foreign banks having offices in India. The loans may be provided in domestic or foreign currency and are at concessional rates of interest. As at March 2006, 19.4% of net bank credit by foreign banks went to the export sector: out of 29 foreign banks, 26 have achieved the 32% target.

104. Export insurance is provided by the Export Credit Guarantee Corporation of India Limited (ECGC). The ECGC is under the administrative control of the Ministry of Commerce and Industry, and its Board of Directors includes representation from the Central Government, the RBI, and the banking, insurance, and exporting sectors. It provides: credit risk insurance for exporters of goods and services; pre- and post-shipment cover to banks and financial institutions, to enable exporters to obtain adequate and need-based financing; and overseas investment insurance to Indian companies investing in joint ventures abroad either through equity or loans on a "liberal basis".[85] According to

[81] Export Import Bank of India online information. Viewed at: http://www.eximbankindia.in/services-1a.html [20 July 2006].

[82] Export-Import Bank of India online information. Viewed at: http://www.eximbankindia.in/faq.html [24 July 2006].

[83] The guarantees include: bid bond guarantees; advance payment guarantees; performance guarantees; guarantees for release of retention money; and guarantee for raising borrowings overseas for execution of project export contracts (Export-Import Bank of India online information. Viewed at: http://www.eximbankindia.in).

[84] Instruments used by the bank for raising short-term finances include commercial paper and certificates of deposit; instruments used for raising medium- and long-term funding include syndicated loans and bonds. Resources are raised on the strength of the bank's own balance sheet.

[85] ECGC online information. Viewed at: https://www.ecgcindia.com/Portal/aboutus/aboutus.asp#q1, 24 July 2006; and Department of Commerce and Industry (2006), pp. 37-40.

the authorities, "liberal basis" implies that the ECGC cover is expected to provide increased comfort to exporters to enhance their exports and to the banks for financing the exporters, but does not imply concessional rates of premium or terms. In addition, in March 2006, the Government approved the establishment of a National Export Insurance Account (NEIA), to ensure the credit-risk cover for medium and long-term exports, which are commercially viable and are desirable from a national interest point of view, but which ECGC cannot underwrite without affecting their competitiveness.[86] Funding for these programmes will be provided by the Central Government or through the Tenth Five Year Plan.[87] The ECGC will only administer the NEIA, the risk will be borne by the Government. Furthermore, the authorities note that the ECGC is guided in its decisions solely by commercial judgement and does not receive a subsidy from the Government.

(xi) Export promotion and marketing assistance

105. In addition to the tariff concessions and exemptions and export programmes mentioned above, the Department of Commerce encourages exports indirectly through the Assistance to States for Development of Export Infrastructure and Allied Activities (ASIDE) scheme, which provides assistance for setting up new export promotion parks and zones and complementary infrastructure such as road links to ports, container depots, and power supply; the Marketing Development Assistance (MDA) scheme, to support efforts by the export promotion councils (EPCs) in their export promotion activities; the Market Access Initiative (MAI) scheme, which provides assistance for research on potential export markets; as well as other incentives to improve quality, infrastructure, etc. related to agriculture through the commodity boards and councils.[88] India's EPCs and commodity boards also continue to promote exports of specific products. The India Trade Promotion Organization (ITPO) also continues its promotion activities by organizing trade fairs and exhibitions in India and abroad.[89]

(4) MEASURES AFFECTING PRODUCTION AND TRADE

(i) Industrial policy

(a) Overview

106. The Statement of Industrial Policy, issued in 1991, which started the process of economic liberalization in India, sets the basis for current industrial policy.[90] Licensing requirements are in place for a number of industries, although these have been substantially reduced since 1991. As a result of gradual reform, there are now three industries reserved only for the public sector, compulsory industrial licensing is required for five industries, 326 products at the HS 8-digit level are reserved for the small scale sector, and there are locational restrictions under urban zoning and environmental regulations for non-Small-Scale Industry (SSI) units subject to industrial licensing.

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[86] Projects include high risk with respect to a single country; high value of a single transaction; and large value projects involving unusual or unconventional credit terms, which are beyond the normal, risk-bearing capacity of the ECGC (Department of Commerce, 2006).

[87] This includes Tenth Plan expenditure of Rs 17.25 billion for the ASIDE programme (Rs 14.9 billion had been released by end December 2005); and Rs 660 million for the financial year 2005/06.

[88] Department of Commerce (2006).

[89] Other organizations affiliated to the Ministry of Commerce and Industry include the Federation of Indian Export Organizations (FIEO), the Indian Diamond Institute, and the Indian Council of Arbitration, which, *inter alia*, provides arbitration facilities to settle trade disputes (Department of Commerce, 2006).

[90] India's policy on industrial licensing is based on the Industries (Development and Regulation) Act, 1951.

(b) Public sector reservation

107. As at April 2006, three industries (atomic energy, substances specified in the schedule to the notification 212(E) issued by the Department of Atomic Energy (15 March 1995), and railway transport) are reserved exclusively for investment and manufacture by public sector companies. At the time of the last Review, defence aircraft and warships were also reserved for the public sector.

(c) Compulsory industrial licensing

108. India continues to require compulsory industrial licensing for a few industries for security, safety, strategic, social, and environmental reasons; the main change since the previous Review is the removal, on 23 September 2005, of the drugs and pharmaceuticals industry as it seems these are already subject to licensing under the Drugs Control Order (Table III.9).[91]

Table III.9
Industries for which industrial licensing is compulsory

	Industry
1	Distillation and brewing of alcoholic drinks
2.	Cigars and cigarettes of tobacco and manufactured tobacco substitutes
3.	Electronic aerospace and defence equipment: all types
4.	Industrial explosives, including detonation fuses, safety fuses, gun powder, nitrocellulose, and matches
5	Specified hazardous chemicals i.e. (i) hydrocyanic acid and its derivatives, (ii) phosgene and its derivatives and (iii) isocyanates and diisocyanates of hydrocarbon, not elsewhere specified (example methyl isocyanate)

Source: Information provided by the authorities.

109. Potential investors in industries subject to compulsory industrial licensing must submit an application to the Secretariat for Industrial Approvals (SIA) in the Department of Industrial Policy and Promotion (DIPP) of the Ministry of Commerce and Industry. Decisions are made within 4-6 weeks of receipt of the application. The Licensing Committee takes into account the location and pollution/environmental impact of the proposed industrial unit. For industries exempt from the industrial licence requirement, applicants must submit an "Industrial Entrepreneur Memorandum" to the SIA. A "carry on business" (COB) licence is required for micro and small manufacturing enterprises that exceed the investment limits (in plant and machinery, excluding land and buildings) prescribed for them (section (d) below); if the unit exceeds the investment limit indicated on the COB, it must obtain an industrial licence; following the granting of the COB the unit loses its SSI status.[92]

110. Environmental clearance is also required separately for 39 categories of developmental projects, from the Central Government or, as the case may be, from the State level Environmental Impact Assessment Authority, under notifications issued by the Ministry of Environment and Forests, under the Environment (Protection) Act, 1986.[93] Applications for environmental clearance must be made to the authorities prescribed by the notification. The authority must grant or refuse environmental clearance within 105 days of receipt of the final environmental impact assessment (EIA) report (incorporating environmental concerns arising from public consultations, where applicable). The main change since the previous Review of India, is a new EIA notification issued on 14 September 2006, which seeks to rationalize and re-engineer the EIA process and to decentralize

[91] Department of Industrial Policy and Promotion Notification, *Gazette of India*, 23 September 2005.
[92] Department of Industrial Policy and Promotion (2005).
[93] These categories include: manufacturing and chemical industries, river valley and hydroelectric projects, infrastructure, nuclear and thermal power plants, mineral extraction, and large construction.

decision making in most cases to the state authorities in order to render the process faster and transparent.[94]

111. Locational restrictions continue to apply to setting up industrial units in 23 cities (21 cities at the time of the previous Review) with a population of over one million (according to the 1991 census). Manufacturing enterprises must obtain an industrial licence to invest within a radius of 25 kilometres of the Standard Urban Area limits of these cities, unless the unit is to be established within an area designated as an "industrial area" before 25 July 1991, or if the industry is designated as "non-polluting" such as electronics, computer software, and printing.[95] Data provided by the authorities on industrial licences granted indicate that most applications since 2002 have been approved (out of 698 applications received up to October 2006, 471 or 67.5% have been approved, and 26 or under 4% rejected). The main sectors in which the licences were approved are textiles, chemicals (other than fertilizers), metallurgical industries, and defence industries.

(d) Small-scale enterprises

112. Under the Micro, Small and Medium Enterprises Act (MSMED), 2006, enterprises are classified as micro, small and medium enterprises according to the amount of investment. For enterprises involved in manufacturing, micro enterprises are defined as those with investment of up to Rs 25 million; small as those with investment between Rs 25 million and Rs 50 million; and medium enterprises as those with investment between Rs 50 million and Rs 100 million. In services, micro enterprises are defined as those with investment of up to Rs 1 million; small as those with investment between Rs 1 million and Rs 20 million; and medium enterprises as those with investment between Rs 20 million and Rs 50 million.

113. According to estimates, the SSI/MSE sector accounted for around 40% of gross industrial value added in India and almost 44% of manufactured exports in 2005/06. It is estimated that at the end of 2005/06, there were around 12.3 million MSEs providing employment to 29.5 million people.[96] The sector's contribution to the economy in terms of output and employment has grown steadily, with output growth at 9.2% (at constant prices) and employment growth at 4.3% annually during 2002/03 and 2005/06.[97]

114. To promote the development and enhance the competitiveness of MSEs, the MSMED Act, 2006 entered into effect on 2 October 2006. The Act provides a legal framework to recognize the concept of "enterprise" (in manufacturing and services) and to integrate the three tiers of micro, small and medium-sized enterprises. The Act also provides for a statutory consultative mechanism at the national level with stakeholders, particularly the three classes of enterprises, and with a wide range of advisory functions. It also establishes, *inter alia*, specific funds and schemes/programmes to promote, develop, and enhance the competitiveness of these enterprises; credit policies and practices; preferences in government procurement for products and services of micro and small enterprises; more effective mechanisms for mitigating the problems of delayed payments to micro and small enterprises; and simplified procedures to close poorly performing firms. The legislation also defines medium-sized enterprises for the first time and micro enterprises for the first time under law. According to the authorities, some nine notifications/model rules (the latter to be adopted by state governments) have been issued in this connection.

[94] Ministry of Environment and Forests online information. Viewed at: http://envfor.nic.in/legis/eia/so1533.pdf [8 February 2007].
[95] Department of Industrial Policy and Promotion (2005).
[96] RBI (2005).
[97] Ministry of Finance (2006).

115. A number of products have been reserved for production only by SSI/MSE in order to encourage their development.[98] Over the years, however, recognizing that reservation did not necessarily help SSI units to develop and expand, the Government has gradually reduced the number of products. The policy on reservation, including a review of products on the list, is implemented by the Advisory Committee on Reservation created in 1984. The review is based on consultations with all stakeholders, followed by a recommendation to the Government. Since the previous TPR of India, the number of products reserved exclusively for SSIs has declined from 799 to 326. The products removed from the list include: textiles, rubber, leather, plastics, chemicals, and mechanical engineering products (Table III.10). It is estimated that in 2001/02 these products accounted for around 8.4% of the total output of the SSI sector.[99] In certain cases, non-SSI units can manufacture items reserved for SSIs, including: where the undertaking existed prior to the reservation of the item being manufactured by it and has a COB licence; when a SSI becomes too large and has a COB licence; if a non-SSI obtains a letter of intent with an obligation to export a minimum of 50% of its output; where a non-SSI has been granted a licence prior to the reservation of an item, it can continue to produce that item to the extent of the prescribed licensed capacity; and when a unit is established in a special economic zone (SEZ).

Table III.10
Items reserved for the small-scale sector, 2001 and 2006

Product	2001	May 2006
Food and allied industries	12	9
Textile products including hosiery	16	0
Articles of silk and man-made fibre hosiery	15	0
Wood and wood products	14	9
Paper products	30	19
Leather and leather products including footwear	9	0
Rubber products	21	0
Plastic products	15	13
Injection moulding thermo-plastic products (1)	42	37
Injection moulding thermo-plastic products (2)	7	3
Chemicals and chemical products laboratory chemicals and reagents	62	7
Natural essential oils	7	2
Organic chemicals, drugs and drug intermediates	37	12
Other chemicals and chemical products	76	20
Glass and ceramics	3	3
Ceramic table wares and allied items in stone wares semi-vitreous wares and earthen wares	24	24
Mechanical engineering excluding transport equipment	193	61
Electrical machines, appliances and other apparatus including electronics and electrical appliances	47	17
Electronic equipment and components	9	1
Transport equipment, boats and truck body building	3	3
Auto parts components and ancillaries and garage equipment	47	0
Bicycle parts, tricycles and perambulators	42	41
Miscellaneous transport equipment	4	4
Miscellaneous: mathematical and survey instruments; sports goods; stationary items; clocks and watches	52	20
Others	22	21
Total	799	326

Source: Data provided by the Small Industries Development Organisation, Ministry of Small Scale Industries.

[98] In 1967, when reservation for the SSI was introduced, 67 products were reserved; the number peaked at 836 products in 1989 and has progressively declined since then.

[99] Information based on the Third All India Census of Registered SSI Units and sample survey of unregistered SSI units and provided by the authorities.

116. In addition to the list of items for exclusive manufacture by the SSI, restrictions are in place on investment in SSI/MSEs: any non-MSE enterprise that has no interest in another industrial undertaking can hold up to 100% equity in MSEs. However, if the unit or enterprise has an interest in any other industrial undertaking, it may invest a maximum of 24% equity (including FDI). These issues, based on the Industries (Development & Regulation) Act, 1951, as well as the list of items reserved for manufacture by the SSI, are currently under review.

117. In 1999, the Government established the Ministry of Small Scale Industries (split into the Ministry of Small Scale Industries and Ministry of Agro and Rural Industries in 2001) to provide assistance to the states in developing small-scale industries. The Ministry operates with the help of the Small Industry Development Organization (SIDO) and the National Small Industries Corporation Limited (NSIC), a public sector enterprise. The SIDO (also known as the Office of the Development Commissioner (Small Scale Industries)), which was established in 1951, provides, *inter alia*, technology support services, and marketing assistance to SSI units through its offices across the country. Assistance includes direct credit and credit through the banks under the priority sector lending targets as well as other forms of protection, such as government purchase of 358 items exclusively from the small-scale sector and a 15% price preference for the SSI units (Table AIII.5) (section (2)(xiv)). The National Small Industries Corporation Limited (NSIC) is the single-point of registration for eligible MSEs for government purchase preference schemes.

118. Despite these efforts to assist the SSI, industrial "sickness" appears to remain a problem. The main reasons are inadequate and delayed credit, obsolete technology, infrastructural constraints, management deficiencies, and marketing problems. Under the RBI's latest guidelines, an SSI unit is defined as sick when any of its loan accounts remain substandard for more than six months; or if after at least two years of commercial production, there is an erosion in the net worth of the unit due to accumulated losses of up to 50% of its net worth during the previous accounting year.[100] According to the most recent survey conducted by the SIDO, 104,769 units (or 1% of all SSI units) were judged to be "sick". "Incipient" sickness measured as continuous decline in gross output over three consecutive years was found in 750,922 units (around 7.14% of all SSI units).[101] To address these problems, the RBI issued detailed guidelines to banks in January 2002 on detection of sickness at an early stage and remedial measures, and for rehabilitation of sick SSI units identified as potentially viable. These guidelines include, *inter alia*, changes in the definition of sick SSI units, norms for deciding their viability, and concessional finance. The Government also announced the Policy Package for Stepping up Credit to Small and Medium Enterprises (SMEs) on 10 August 2005, while the RBI issued detailed guidelines on 8 September 2005 on a debt restructuring mechanism for all eligible SMEs (including SSIs). These guidelines include, *inter alia*, viability criteria, prudential norms for restructured loan accounts, provision of additional finance, and time frame for working out the restructuring package and its implementation. As at March 2006, the assets of 594 SME units had been subject to restructuring under the debt restructuring mechanism.

[100] SIDO online information. Viewed at: http://www.smallindustryindia.com/Print.jsp?filename=/ssiindia/census/ch7.htm [4 July 2006].

[101] Almost 60% of sick SSI units were found in the states of West Bengal, Kerala, Maharashtra, Karnataka, and Andhra Pradesh, while over 54% of incipient sickness was found in the Kerala, Tamil Nadu, Andhra Pradesh, Karnataka and Maharashtra (SIDO online information. Viewed at: http://www.smallindustryindia.com/Print.jsp?filename=/ssiindia/census/ch7.htm [4 July 2006].

(ii) Taxation and non-tax assistance

(a) Tax policy

Overview

119. India's tax system has moderate tax rates but a narrow tax base, owing to an array of exemptions and incentives. As a result, average effective tax rates (the ratio of taxes collected to the notional tax base) tend to be low, but marginal effective tax rates are high, thereby creating a potential distortion to both investment and financial decisions.[102] Under the Indian Constitution, taxation is a shared responsibility, with both the central and state governments raising revenue through certain taxes. The main taxes levied by the Central Government are income tax (personal and corporate), customs duties, excise duties, and service tax. The Central Government also levies a central sales tax (CST) on inter-state sales of goods, but this is collected and appropriated by the states. The states raise most of their revenues through the sales tax (replaced by the VAT in most states), although there are also other taxes like state excise duty on alcohol, stamp duties, octroi/entry tax, tax on professions, tax on agricultural income, etc.

120. Since 2000/01, the Central Government's total tax revenues have ranged between 5.9% and 8.4% of GDP (between 8.2% and 11.4%, if transfers to the states are included (Table I.5)). (Revenues including state taxes rose from 14.5% of GDP in 2000/01 to 16.6% in 2005/06.) Excises and corporate income tax accounted for the largest shares of tax revenues in 2006/07, 2.3% and 2.4% of GDP, respectively (Table I.4). Whereas the share of customs tariffs in the Central Government's total tax revenues has declined substantially, owing to reductions in tariff rates, the shares of corporate and personal income taxes have risen considerably, mainly as a result of improvements in tax administration and compliance.[103]

121. Despite the gradual increase in total tax revenue, India's tax to GDP ratio is relatively low, and services, which make up over half of India's GDP, are not taxed appropriately.[104] Moreover, the tax base is relatively narrow due to the many exemptions granted for both direct and indirect taxes, resulting in poor buoyancy.[105] Despite statements to the contrary by successive Governments, it has been suggested that the number of exemptions have increased rather than fallen over the years.[106] Other problems include the cost of tax compliance, which is high, and the low probability of violators being caught, leading, according to a recently established Taskforce, "to an endemic culture of tax avoidance" as well as tax evasion.[107] Reforms necessitated by the Fiscal Responsibility and Budget Management Act, 2003, which requires the Government to eliminate its revenue deficit by 2008/09, have to further address some of these deficiencies in the tax system (Chapter I).

Indirect taxes

122. The main indirect taxes (in terms of their share of tax revenue) are excise duties, customs duties, and service tax for the Central Government; and state sales tax (now replaced by VAT), CST, and excise duties on alcohol for the states. During 2005/06, indirect taxes accounted for about 70.7% of total tax revenue of central and state governments. Central indirect taxes have been declining as a share of total central tax revenue, from 63% in 2000/01 to 52% in 2006/07 (Table I.4). According to

[102] Poirson (2006).
[103] Rao (2005).
[104] Despite being introduced in 1994, the service tax still only accounts for under 8% of total tax revenue and just over half a percent of GDP.
[105] See for example, Ministry of Finance (2003).
[106] See for example, Mukhopadhyay (2006), pp. 1324-1326.
[107] Ministry of Finance (2003), p. 17.

the authorities, the tax revenue of VAT-implementing states registered an increase of 13.8% during 2005/06 over 2004/05 under the earlier sales tax system (Box III.1).

Box III.1: Introduction of the value-added tax

Reform of the state sales tax and introduction of a value-added tax began in 1994, when a conference of Chief Ministers of the States and Union Territories and the Ministry of Finance was held. An Empowered Committee of State Finance Ministers was constituted on 17 July 2000 to discuss details of the introduction of a new state-level value-added tax as well as the relevant rates. Its terms of reference included: monitoring the implementation of uniform floor rates across all states and union territories, and the phase-out of incentives linked to the sales tax; and determining steps to be taken to implement a value-added tax to replace the sales tax.

The Empowered Committee agreed to prepare for the introduction of a uniform, nation-wide state VAT by 1 April 2001, with assistance from the Central Government. The date was later changed to 1 April 2002 and then to 1 April 2003. One State adopted the VAT on 1 April 2003 and another 19 states and union territories on 1 April 2005. Currently 30 states and union territories have implemented the VAT. Of the remaining five, two union territories do not have a sales tax, one state declared that it would implement the VAT from 1 January 2007, and one union territory from 1 April 2007. The remaining State has yet to take a decision on implementing the VAT.

In the states that have implemented the VAT, most goods are subject to rates of 4% or 12.5%, while gold and silver ornaments are taxed at 1%; some 550 goods are covered by the VAT, while 46 commodities including natural and unprocessed goods produced by the unorganized sector, like fresh fruit and vegetables, fresh milk, salt, bread, unprocessed meat and fish, organic manure etc., are exempt for social reasons. Around 270 goods, including medicines and drugs, agricultural and industrial inputs, and capital goods, are taxable at 4%; all other products are subject to the rate of 12.5%. A few items, like petrol, diesel, liquor, etc. are subject to a minimum rate of 20%. The Committee decided to exclude sugar, textiles, and tobacco products because they were subject to additional excise duty in lieu of sales tax by the Central Government, against which the states received a share of central tax revenues.

The authorities note that the initial experience with the VAT has been encouraging. The new system has been well received and the transition smooth. The tax revenue of implementing states increased by 13.8% during 2005/06 (compared with the sales tax revenues during 2004/05), which is higher than the growth rate for these states during the previous five years. During April-November 2006, there was significant further improvement, with an increase of about 25.5% over the corresponding period of the previous year.

Source: Empowered Committee of State Finance Ministers (2005), *A White Paper on State-Level Value Added Tax*, 17 January; Press Information Bureau "Implementation of State VAT" 21 August 2006; WTO (2002), *Trade Policy Review: India*; and information provided by the authorities.

123. Central excise taxes (CENVAT), which are essentially taxes on manufactures, are imposed only on domestically produced goods. They remain the most important indirect tax for revenue purposes, although their share declined from over 35% of total central tax revenue in 2000/01 to 25% in 2006/07, mainly due to rationalization and reduction of rates. As a result of several years of reform, the rate for many goods was unified at 16%. However, in the 2006/07 Budget, a large number of products (mostly textiles and clothing) were made subject to the lower rate of 8%; further products were added to the list in the 2007/08 Budget. A scheme was introduced in March 1986 to enable manufacturers to receive a credit for excise duty paid on raw materials and for components used in the manufacture of final products. The modified VAT (MODVAT) is now applied to most excisable goods.[108] According to the authorities, the excise duty is a value-added tax wherein the tax paid on inputs is credited against the duty paid on final products, thus reducing the cascading effect of taxation at different stages of manufacture. Some products are also subject to an additional excise

[108] Goods excluded included tobacco and tobacco products, matches, cinematographic films, motor spirits, high speed diesel, and some woven fabrics.

duty under the Additional Duties of Excise (Goods of Special Importance) Act of 1957, which is imposed on all types of fabrics except silk fabrics, in lieu of sales tax. The Additional Duties of Excise (Textiles and Textiles Articles) Act 1978 was abolished in the 2004/05 Budget.[109] The tax schedule is complicated by the presence of many exemptions, including for production based on geographical location, for small-scale industries, and for certain activities. It has also been suggested that while the CENVAT is levied on manufactured goods, services (which have grown in importance over the years), are not adequately taxed and that a larger number of services should be covered by the service tax (see below).[110]

124. The service tax, which was introduced in 1994, is currently levied by the Central Government on some 99 services; a number of services were added to the list in the 2007/08 Budget. Initially imposed at 8% of the value of services provided, the rate has been increased gradually over the years. The 2006/07 Budget raised the rate from 10% to 12%. The inter-state sales tax is levied by the Central Government at a rate of 4%. There are also wealth taxes, state taxes on agricultural income, and others such as stamp duty, taxes on motor vehicles, and octroi.

125. The state VAT is levied at 4% or 12.5%, except for gold and silver items, which are taxed at 1% (Box III.1). Traders with turnover up to Rs 500,000 are exempt from payment of tax. Traders with turnover between Rs 500,000 and Rs 5 million have to register under VAT, but are allowed to opt for a simplified tax on total turnover at a nominal rate not exceeding 1%. These traders do not receive input tax credits and cannot issue tax invoices. Traders with turnover above Rs 5 million must pay VAT. Certain items, such as alcoholic beverages and petroleum products, are subjected to a higher floor tax rate of 20%. The VAT is zero-rated on exports. The input tax credit is allowed in respect of input taxes paid within the same State. Central sales tax on inter-state sales of goods is not rebatable against VAT.

Direct taxes

126. Corporate and personal income taxes account for 31.3% and 17.6%, respectively, of total Central tax revenue.[111] While the share of personal income tax has remained relatively stable since 2002, there has been a substantial increase in the contribution of corporate tax to total revenue. Both the top personal tax and statutory corporate tax rates (for Indian companies) are currently 30% (the threshold for the 10% surcharge on personal income tax was raised in the 2005/06 Budget to Rs 1 million).[112] The Government minimum alternate tax (MAT) on company book profits, was raised from 7.5% to 10% in the 2006/07 Budget, partly in response to the erosion of the tax base resulting from a large number of exemptions and incentives (see below).

127. While the statutory rates are relatively high compared with neighbouring countries and particularly south east Asia, a large number of exemptions and concessions and tax holidays are offered to investors, likely making the effective rate of corporate tax significantly lower (estimated at 21% in 2002).[113] Over the years, reviews of tax policy have suggested a reduction or removal of the activity-based or sector-based exemptions available through the tax system. The Tenth Five year Plan calls for, *inter alia*, a reduction in unnecessary exemptions in order to raise sufficient resources to

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[109] Revenues from this additional excise duty are shared between the Centre and states. The present share of state governments under the Award of the Twelfth Finance Commission (2005/06 to 2009/10) is 30.5%.

[110] Government of India (2002), Chapter 8.

[111] Provisional figures for 2006/07. The respective figures for 2005/06 are 28% and 17.9%.

[112] All companies incorporated in India, whether domestic or foreign owned, are regarded as domestic companies. For foreign branches, the tax rate is 41.82%, which includes 40% tax rate + 2.5% (x40%) surcharge and 2% (x41%) education cess

[113] Based on a report by the Planning Commission cited in WTO (2002).

implement the Plan.[114] A review of tax policy carried out in 2002 also suggested a removal or reduction of exemptions, which render the tax system complex and susceptible to tax evasion and "rent seeking".[115] The MAT adds further complexity to the tax structure.

128. The Government appears to have accepted most of the suggestions made by the Task Force. These include: moderation of tax rates, reduction of depreciation rates, elimination of standard deduction, filing of annual information returns by third parties, exemption for long-term capital gains and dividend income from listed equity. Other recommendations, according to the authorities, are taken into consideration while making legislative amendments from time into time, and implementing them, wherever considered appropriate. Most of the recommendations relating to reform of tax administration, notably to reduce the compliance cost by simplification of forms and procedures for filing taxes, have also been implemented. Some action also appears to have been taken on the Task Force recommendations to remove exemptions granted under Sections 10A and 10B (for export) and Sections 80IA and 80IB (infrastructure, industrial and regional development), although new measures have also been added since the previous Review (see below).

Tax incentives

129. India's last notification to the WTO Committee on Subsidies and Countervailing Measures was made in October 2001. According to that notification, tax incentives are provided mainly under Sections 10A, 10B and 80 HHC of the Income Tax Act 1961. However, incentives under 80HHC have been phased out since then and no deduction under this section is available as from assessment year 2005/06. The incentives are provided "with a view to improving the foreign exchange reserves of the country".[116] India plans to notify changes to its incentives to the WTO as soon as possible.

130. Direct tax incentives to exporters are provided under Sections 10A, 10AA, 10B and 10BA of the Income Tax Act. Under Section 10A of the Act, a 100% tax deduction for ten years is available for export profits of manufacturers of goods or computer software located in a special economic zone, export processing zone, free-trade zone, electronic hardware technology park, or software technology park. Section 10B provides similar incentives for EOUs. Export profits under this section were excluded from the minimum alternate tax (MAT)[117]; however, an extension of the MAT to include tax relief claimed under sections 10A and 10B was proposed in the 2007 Budget. The provisions of Section 10B were amended in 2002 to reduce the tax deduction to 90% for the financial year 2002/03 and to provide a five-year 100% tax deduction for undertakings commencing operations in SEZs on or after 1 April 2002, followed by a partial tax deduction of 50% for the two subsequent assessment years.

131. Under the Finance Act, 2003, undertakings commencing operation in SEZs on or after 1 April 2002, were given a further deduction of 50% of profits credited to a Special Economic Zone Re-investment Allowance Reserve Account to be used for acquiring new plant or machinery, to be

[114] Planning Commission (2002), Chapter 3.

[115] The Report on Direct Taxation suggests that the exemptions "promote rent-seeking behaviour and contribute to the complexity in tax laws. In terms of administration, exemptions more often than not lead to tax leakage and tax abuse thus increasingly making the system counter productive and dysfunctional" (Government of India, 2002, p. 11).

[116] WTO document G/SCM/N/71/IND, 19 October 2001.

[117] The provision permitting 25% of domestic tariff area (DTA) sales to be included in the tax deduction available under this section was removed as of 2001/02 and it was clarified that profits from on-site development of computer software (including software development services) outside India would qualify for a tax holiday.

used within three years[118]; deductions under Section 10A to the business of cutting and polishing precious and semi-precious stones were extended; business losses or unabsorbed depreciation from financial year 2000/01 of undertakings receiving deductions under Section 10A were extended; and restrictions on eligibility for deductions under this section on account of changes in ownership were removed. These changes became effective from 2003/04, except for the carry-forward of business losses (permitted from 1 April 2001).

132. The SEZ Act, 2005, which entered into effect on 10 February 2006, introduced a new section 10AA in the Income Tax Act. It provides for a deduction of an SEZ unit's export profits derived from the manufacture of goods or from providing services. The deduction is available on 100% of profits for the first five years and 50% of profits for the following five years. A further deduction, of up to 50% of profits re-invested in the business, is available for the next five years. A new section 10BA was inserted in the Income Tax Act by the Taxation Laws (Amendment) Act, 2003 with effect from 2003/04. This provides for a 100% deduction of export profits up to 2008/09 from the manufacture or production of hand-made articles or items of artistic value that use wood as the main raw material, provided at least 90% of the sales during the previous year are exports of such wood-based articles and the undertaking employs at least 20 workers in the manufacturing process during the year. The purpose of this tax concession is to promote exports of traditional artistic products, which would keep alive traditional skills.

133. Under Section 80IA, tax incentives are available for infrastructure facilities, including the development of roads, water supply projects, treatment systems, irrigation, sanitation, ports, telecommunication services, power, and the development and maintenance of special economic zones and industrial parks. With the exception of telecommunications services, the incentive comprises tax holidays for ten consecutive assessment years; for telecommunications, the tax holiday is for five years, followed by a 30% deduction for the next five years, for an undertaking that started providing telecom services before 1 April 2005.[119] Section 80IB provides tax benefits to industrial undertakings in the state of Jammu and Kashmir and to companies engaged in: scientific research and development; commercial production or mineral oil refining; developing and building housing projects; processing, preserving, and packaging of fruits or vegetables or handling, storage, and transportation of foodgrains; and operating and maintaining a hospital in a rural area. Most of these tax benefits were restricted to undertakings/companies set up by 31 March 2007 or 31 March 2008. The eligibilities period for other tax benefits under section 80IB for new units is over. The Task Force on Direct Taxes suggested that these incentives had not served their purpose and should be removed with immediate effect.[120] Deductions under Section 80H, including general export incentives, construction abroad, and software exports, were phased out by end 2004/05; and the deduction under Section 80P, to cooperative banks, was withdrawn in 2006.

134. The Income Tax Act provides additional incentives, including for shipping (Section 33AC)[121]; and deductions for revenue and capital expenditure (other than for land) on scientific research (under Section 35).

[118] However, until the acquisition of the new plant or machinery, the reserve may be used by the undertaking (other than for distribution through dividends or profits or for remittance outside India as profits, or for the creation of any asset outside India). This deduction is available for three years.

[119] Government of India (2002), Tables 5.5 and 5.6.

[120] Government of India (2002), p. 147.

[121] The incentive is a deduction from profits of any sum of money transferred to a special reserve account and to be used for acquiring new ships to enable shipping companies to build up capital for new acquisitions (Government of India, 2002, p. 138).

135. New tax incentives have also been introduced since the previous Review of India in 2002. These include a ten-year tax holiday for an undertaking owned by an Indian company and set up for reconstruction or revival of an electricity generating plant[122], and a tax exemption for the income flowing between a subsidiary company and its Indian holding company involved in generation, transmission or distribution of electricity, if the income is for reconstruction or revival of an existing electricity company (the transfer must have been notified before 31 December 2005). In addition, under the SEZ Act, a ten-year tax holiday has been extended to a developer of a SEZ notified on or after 1 April 2005. Other tax incentives introduced by the Central Government include deductions ranging up to ten years for companies involved in processing, preserving, and packing fruits and vegetables; for hospitals in rural areas; and for offshore banking units or a unit of the International Financial Service Centre established in a SEZ under Section 80. In addition, 100% deductions of tax on profits have been granted for between five and ten years on profits from production of certain targeted activities in certain states.[123]

136. Data on duty forgone from these incentives were made available for the first time in the 2006/07 Budget. Under Section 10A revenue forgone in 2004/05 was estimated at Rs 70.8 billion for software companies located in Software Technology Parks and Rs 13.4 billion for SEZs including EPZs and free trade zones. In 2005/06 and 2006/07, revenue forgone was Rs 68.7 billion and Rs 99.4 billion under Sections 10A and 10AA; Rs 17.9 billion and Rs 25.9 billion for EOUs (Section 10B); Rs 108.9 billion and Rs 157.6 billion for Section 80IA; and Rs 62.3 billion and Rs 90.2 billion under 80IB.

(b) Subsidies

137. Direct subsidies as reported in the Central Government's annual budgets declined from around 1.9% of GDP in 2002/03 to around 1.4% of GDP in 2005/06 (Table III.11). The largest subsidy continues to be provided for food (over half of direct subsidies budgeted for 2006/07); additional agriculture-related support is provided in the form of fertilizer subsidies and price support (the latter included under "other subsidies"). Other major direct subsidies are provided for price support for petroleum products and for the railways. These direct subsidies are not reported in India's notifications to the Committee on Subsidies and Countervailing Measures, which were last notified in October 2001 (see section (a) above).

138. While there has been a decline in direct subsidies, a recent paper commissioned by the Ministry of Finance suggests that they account for around 38% of total government subsidies including those "hidden" in the provision of social and economic services. The paper also estimated that explicit and implicit subsidies accounted for around 4.2% of GDP in 2003/04.[124] Moreover, the share of "merit" subsidies (including education, health care, soil and water conservation, research and development) in 2003/04 was only around 42% of total subsidies. A more detailed examination of the major subsidies (food, fertilizer, and petroleum) reveals the need for reform especially in the way food subsidies are targeted, the method of setting minimum support prices for certain agricultural products, and the costing and targeting of the fertilizer subsidy.[125] The report suggests that the subsidies on kerosene and LPG for weaker sections of society do not meet the desired objectives and, in the case of

[122] If it was formed before 30 November 2005, notified before 31 December 2005 and starts generation, transmission or distribution of electricity before 31 March 2007.

[123] Information provided by the authorities (Ministry of Finance).

[124] Government of India (2004).

[125] It seems that nearly half the fertilizer subsidy is collected by industry, while the remainder is shared equally between rich and poor farmers; the former, because of their greater purchasing power, appropriate a larger share of the economic benefits than the poor farmers (National Institute of Public Finance and Policy, 2003).

LPG, should be gradually reduced and removed, while the availability of kerosene could be improved through an open and competitive market. India last notified its aggregate measure of support for agriculture to the WTO in March and June 2002, respectively, for export subsidies and domestic support (Chapter IV(2)).

Table III.11
Explicit subsidies, 2002/03-2006/07
(Rs billion and per cent of GDP)

Type of subsidy	2002/03	2003/04	2004/05	2005/06	2006/07 (budget)
Total	**456.9**	**459.4**	**478.5**	**478.6**	**472.9**
(% of GDP)	1.9	1.7	1.5	1.4	..
Of which:					
Food	414.7	252.0	258.0	232.0	242.0
Indigenous urea fertilizers	75.0	81.4	101.4	104.1	104.1
Imported urea fertilizers	0.1	0.01	4.7	11.0	11.0
Sale of decontrolled fertilizer with concession to farmers	35.0	36.6	50.5	57.5	57.5
Petroleum subsidy	62.7	65.7	35.5	29.3	30.8
Subsidies to railways for dividend relief and other concessions	10.7	2.1	13.3	9.9	10.8
Interest subsidies	7.7	9.3	5.7	21.8	4.9
Other subsidies	23.8	9.3	9.4	13.1	12.0

.. Not available.

Source: Government of India, *Expenditure Budget*, Vol. 1, various years.

139. In addition to direct subsidies, transfers are made to state governments and by individual government ministries and agencies, including to state-owned enterprises and for research and development. Assistance is also provided to utilities, such as power, mainly in the form of regulated prices, and to services such as transport (other than rail transport, which receives an explicit subsidy) and postal services. In addition, although the administered price mechanism (APM) for petroleum has been dismantled, complete pass-through of international prices does not take place (section (iii)). In a period when prices of international crude oil and petroleum products have risen sharply, the consequent higher cost is shared by the National Oil Companies, consumers, and through budgetary support from the Government. Kerosene distributed as part of the targeted public distribution system (TPDS) and LPG for domestic use receive explicit subsidies through the budget, as comparatively cleaner fuels (see (iii) below). The state governments also provide subsidies, especially for basic services such as education and health.[126]

(iii) Price controls

140. Price controls continue for agricultural and pharmaceutical products and to some extent petroleum products. In agriculture, the Government maintains minimum support prices (MSPs) for 25 major agricultural commodities. This policy (and the products covered) is unchanged since the previous Review (Chapter IV(2)). The Government also provides a limited number of food products, such as rice, wheat, and sugar, and kerosene, at controlled prices to a targeted population living below the poverty line, through the TPDS (Chapter IV(2)). The price of urea (a nitrogenous fertilizer) is also controlled through a "group concession scheme", which replaced the retention price-cum-subsidy scheme (RPS) on 1 April 2003 (Chapter IV(2)). The price of other phosphatic and potassic fertilizers

[126] It is estimated that in the late 1990s around 90% of state revenues were spent on subsidies (National Institute of Public Finance and Policy, 2003).

like di-ammonium phosphate (DAP), muriate of potash (MOP) and 11 grades of complex fertilizers is indirectly controlled through a concession scheme under which the indicative maximum retail prices (MRPs) are notified by the Government. A producer/importer selling fertilizers at the indicative MRPs is compensated under the concession scheme. The price of single super phosphate (SSP) is also fixed by the state governments and ad hoc concessions are provided by the Central Government for the sale of SSP.

141. While the APM applied to certain petroleum products, including petrol and diesel, was eliminated by March 2002, full price pass through does not occur and price changes are still lagged (Chapter I). In addition, prices of kerosene (under the TPDS) and LPG remain subject to control.

142. Prices of 74 bulk drugs and related formulations are controlled through the Drugs Price Control Order (DPCO) 1995, to ensure the availability of quality drugs at "reasonable prices"; the controls cover approximately 20% of the market. The Pharmaceutical Policy of 2002 was not put into effect because of a judicial order. A new policy is being formulated.

143. Prices of certain services, including electricity and water, are also fixed and subsidized at different rates by different state governments (Chapter IV). Price controls on seeds of cattle fodder, food crops, fruits and vegetables are scheduled under the Essential Commodities (Amendment) Bill, 2006.

(iv) Role of state-owned enterprises and privatization

(a) Overview

144. State-owned enterprises (SOEs) were set up to help develop infrastructure and industry, to create employment, to provide substitutes for imports and save on the use of foreign exchange, and for income distribution and regional development purposes.[127] Investment in SOEs grew from Rs 290 million in 1951 to Rs 2,741 billion at the end of March 2001, while the number of SOEs at the central level increased from 5 to 242[128]; in 2004/05, there were 237 central SOEs, employing 1.69 million people (down from 2 million five years earlier).[129] The major sectors of activity are coal and lignite, power, defence, and railways. The 2006/07 Budget announced additional equity support of Rs 169 billion and loans of Rs 27.9 billion to Central SOEs. The Government has also infused non-financial support of Rs 25.7 billion to restructure ten SOEs in the last two years.[130]

145. In addition, there are an estimated 831 state-level SOEs[131], and 1,050 non-departmental commercial undertakings and companies in banking and insurance. Official government figures put the share of the central public sector at around 11.2% of GDP in 2005/06, down from 12.6% in 2002/03. However, other estimates put the public sector at around one fourth of GDP in 2001.[132] The return on investment in SOEs appears to have been low: post-tax profits of central SOEs did not exceed 5% of total sales or 6% of capital employed during 1986/87-1997/98. The figures for SOEs competing with the private sector are significantly worse.[133]

[127] Industrial Policy Resolution 1956.
[128] Ministry of Finance (undated), Chapter 3.
[129] Employment in PSEs is declining in part due to a voluntary retirement scheme.
[130] Non-financial support may involve "non-cash flow", surplus, waiver of interest and interest penalties, government loans, guarantee fees, conversion of loan into equity/debentures, etc.
[131] Ministry of Finance (undated), Chapter 17.
[132] Makhija (2006), pp. 1947-1951.
[133] Ministry of Finance (undated), Chapter 6.

146. The State Electricity Boards (SEBs), the railways, and fertilizer producers appear to have been the worst drain on public finances and a source of inefficiency. The SEBs have incurred annual deficits as high as 1.5% of GDP, placing substantial constraints on state fiscal resources.[134] It has been suggested that the SEBs poor performance has been due, in part, to inadequate pricing of utilities and other infrastructure services, and poor recovery of the cost of services (Chapter IV(power)).[135]

147. In the absence of a bankruptcy law, companies in financial difficulty may be referred under the Sick Industrial Companies (Special Provisions) Act (SICA), 1985, to the Board for Industrial and Financial Restructuring (BIFR), either for closure or revival. However, the BIFR has been widely criticized as ineffectual, as the SICA procedures laid down for the BIFR to follow have led to endemic delays.[136] A Bill to repeal the SICA, introduced in Parliament in 2003, has been passed but not yet gazetted due to delays in setting up a National Company Law Tribunal to replace the BIFR.

148. In an attempt to recognize and reward public sector enterprises (PSEs) that had performed well, the Government in 1997 identified 11 well performing PSEs as "Navratnas" (nine gems). The companies were selected on the basis of factors such as size, performance, nature of activity, and future prospects. An additional 39 companies were identified as "mini-ratnas" (mini-gems) in 1999 and given greater financial, managerial, and operational autonomy. Such companies, of which there were 50 on 31 March 2006, were given power to incur capital expenditure of up to Rs 5 billion.

(b) Privatization

149. "Disinvestment" or privatization of India's SOEs, several of which are considered to be large and inefficient, has been hesitant and has often fallen short of monetary targets.[137] The decision to disinvest in selected SOEs was announced in the Industrial Policy Statement of 1991. This was followed by specific recommendations on disinvestment by the Rangarajan Committee in April 1993, although no action was taken on these recommendations. In 1996, a Disinvestment Commission was established and the Budget for 1998/99 announced a decision to reduce government shareholdings in selected "non-strategic" SOEs to 26% while maintaining majority shareholdings in "strategic sectors". In March 1999, the Government decided that strategic PSEs would be in: arms and ammunition, defence equipment, defence aircraft, and warships; atomic energy; and railway transport. Moreover, the reduction of the Government's stake in non-strategic industries to 26% would be considered on a case-by-case basis. It was also declared that workers' interests would be protected in all cases. Despite these statements of intent, little progress has been made on privatization. During the first ten years of the privatization programme, it is estimated that only around 19% of total equity in some 40 SOEs was sold, with no majority shareholding sales. Since then, there has been privatization in ten central SOEs, 19 hotels owned by India Tourism Development Corporation Limited, and three hotels owned by Hotel Corporation of India Limited. It seems that in 13 additional cases, privatization efforts are stalled.[138] At the State level, of 831 SOEs, 222 were identified for disinvestment, restructuring or closure. Of these, 68 have been closed down and 29 privatized; 140 cases are pending.[139]

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[134] IMF (2005b).

[135] Nagaraj (2006), pp. 2551-2557.

[136] According to some estimates, it takes some 20 years on average to complete the process of rehabilitation or closure of a sick company under this structure (*The Hindu* online information. Viewed at: http://www.thehindu.com/thehindu/biz/2003/02/17/stories/2003021700140200.htm [5 July 2006]).

[137] During 1991/92-2004/05 (14 years), except during four years, sales were well below targets (Ministry of Finance, 2005, p. 163).

[138] Makhija (2006), pp. 1947-1951.

[139] Ministry of Finance (undated), Chapter 17.

150. Since India's previous Review, in 2002, further attempts have been made to rationalize and streamline privatization procedures. In May 2004, the Ministry of Disinvestment was renamed the Department of Disinvestment and moved into the Ministry of Finance. The Disinvestment Commission, set up in 1996, was reconstituted in July 2001 and all "non-strategic" SOEs referred to it for restructuring or privatization. In addition, in the 2004/05 Budget, a Board for Reconstruction of Public Sector Enterprises (BRPSE) was established in December 2004. The Board is expected to advise the Government on restructuring PSEs, including disinvestment or closure.

151. The privatization policy evolved from the sale of minority shares in public sector companies prior to 2000 to a preference for sales to a strategic partner. Thus, since 2001, the recommendations of the Disinvestment Commission have focused mainly on minority or majority sales to a strategic partner (Box III.2).

Box III.2: The process of disinvestment for strategic sales

Following the recommendations of the Disinvestment Commission, there is a three-tiered mechanism by which decisions are made to implement the recommendations.

The Disinvestment Commission's proposals are considered by the Cabinet Committee on Disinvestment (CCD). The CCD is headed by the Prime Minister and consists of the Deputy Prime Minister, Ministers of Power, Law and Justice, Commerce and Industry, External Affairs, Finance and Company Affairs, Petroleum and Natural Gas, Civil Aviation, and Disinvestment, as well as the Deputy Chairman of the Planning Commission and the Minister overseeing the company being considered for disinvestment. Its functions include deciding the price band for the sale of government shares either through the domestic or international capital markets; the final sales price and the strategic partner; and approving the annual and three-year rolling plan of disinvestment.

Following approval by the CCD, an Advisor is selected through competitive bidding, to be responsible for the disinvestment process. Strategic investors are selected from a shortlist of bidders invited through an announcement in national newspapers and websites of the Department of Disinvestment, the Administrative Ministry concerned with the company, and the company concerned. In some cases announcements are also made in international newspapers. The Expressions of Interest received are scrutinized by the Advisor concerned and the short listing done by the Inter-Ministerial Group on the basis of recommendations of the Advisor. There are no specific criteria in regard to nationality. A foreign company, subject to the Government's sectoral policy on FDI, is eligible for consideration. The Advisor is responsible for preparing draft share purchase and shareholder agreements, which must be approved by the Ministry of Law and the CCD before being sent to the prospective bidders for their final financial bids.

The sealed bids are opened by an Inter-Ministerial Group made up of officials of the Ministry of Finance, Departments of Public Enterprises, Legal Affairs, and Company Affairs, as well as the Administrative Ministry and the Director of the SOE being considered for disinvestment. A final decision on the strategic sale is taken by the CCD. At the third level, there is a Core Group of Secretaries on Disinvestment, which oversees implementation of the decision and makes recommendations to the CCD on disinvestment policy matters. The Core Group is headed by the Cabinet Secretary and includes the Secretaries of the Ministries of Finance, Heavy Industries and Public Enterprises, Disinvestment, the Planning Commission, and the Administrative Ministry as well as any other relevant ministries or departments.

Source: Ministry of Finance (undated), *Disinvestment Manual*. Viewed at: http://www.divest.nic.in/manual03/chap10.htm [6 July 2006].

152. The present Government initially decided that all future privatization of SOEs would take place within the context of its Common Minimum Programme.[140] It decided in principle to list large, profitable PSEs on domestic stock exchanges, selectively selling a minority stake (up to 49%) so as

[140] Government of India (2004b).

not to disturb the public sector character of the companies.[141] The proceeds of such sales were to be channelled into a newly established National Investment Fund, constituted on 23 November 2005, and would be used for investment in: social sector projects promoting education, health care, and employment, and for capital in selected profitable and revivable PSEs that yield adequate returns to enable them to finance expansion or diversification.[142] However, no funds have been deposited with the NIF. The Government also planned to devolve managerial and commercial autonomy to profitable SOEs operating in a competitive environment[143]; according to the authorities companies operating in "a non-competitive environment" would include those in the three remaining sectors reserved for the public sector. Attempts would be made to restructure loss-making SOEs, failing which they would be closed down or sold. However, on 6 July 2006 the Government announced that it had "decided to keep all disinvestment decisions and proposals on hold pending further review"[144]; it appears that some 16 recommendations for strategic sales made by Disinvestment Commissions are not being pursued, as the present Government's policy is not to continue privatizations.[145]

(v) Intellectual property rights

(a) Overview

153. Technological progress is one of the main long-term engines of growth in GDP and productivity (and thus competitiveness), therefore, new technologies need to be nurtured by adequate protection of intellectual property rights in India's domestic market. This is important for foreign innovators and enterprises, as well as for Indian innovators and enterprises seeking to compete in an increasingly globalized economy.

154. The administration and protection of intellectual property rights in India is divided between the Department of Industrial Policy and Promotion in the Ministry of Commerce and Industry, which is responsible for industrial property through the Controller General of Patents, Designs and Trade Marks; the Ministry of Human Resource Development, which supervises copyright protection; and the Ministries of Agriculture and Communication and Information Technology, which administer the protection of plant varieties and semiconductors and integrated circuits, respectively. India is a member of most of the key international conventions and agreements on intellectual property rights. In addition, there are proposals to further amend the Indian Copyright Act in light of the WIPO's WCT and WPPT treaties.

(b) Industrial property

Patents

155. The Patents Act, 1970, governs the granting of patents. During the period under review, the Act was amended twice (June 2002 and April 2005). The Patents (Amendment) Act, 2002 extended the period of protection granted for all product and process patents to 20 years from the date of filing (Section 53); previously, protection was for five years for process patents for food or medicine and

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[141] Department of Disinvestment online information. Viewed at: http://www.divest.nic.in/annrepo2004-05/mainreport.htm [6 July 2006].

[142] Department of Disinvestment online information. Viewed at: http://www.divest.nic.in/annrepo2004-05/mainreport.htm [6 July 2006].

[143] Ministry of Finance (2005), p. 163.

[144] Prime Minister's Office Press Release 6 July 2006. Viewed at: http://pmindia.nic.in/pressrel.htm [18 July 2006].

[145] Department of Disinvestment online information. Viewed at: http://www.divest.nic.in/annrepo2004-05/mainreport.htm [6 July 2006].

14 years for other cases. Other key changes introduced by the 2002 Act include a more detailed framework for the granting of compulsory licences and deletion of the sections dealing with "licences of right" (see below). The Patents (Amendment) Act, 2005, by deleting Section 5 of the Act, which excluded product patents for food, medicine or drug or products using chemical processes, ended the ten-year transition available to India and other developing countries under the TRIPS Agreement. The regime for exclusive marketing rights, introduced under the 1999 amendment was also revoked.

156. Under the current Patents Act, which became effective on 1 January 2005, patent protection may be granted to any invention relating to either a product or process that is new, involves an inventive step, and is capable of industrial application (Article 2(1)(j)). The Act also sets out products or processes that are not recognized as inventions and are therefore not patentable.[146] Patents of addition for an improvement to a patented product can be granted to the holder of the original patent for the same period as the validity of the original patent.

157. Applications for patents may be submitted by nationals of any country, to the Controller General of Patents, Designs, Trademarks and Geographical Indications. Under the 2005 amendment, applications will only be examined by the Patent Office if requested by the applicant or by another interested party within 48 months, failing which the application is deemed to have been withdrawn. The Act also provides for pre- and post-grant opposition under Chapter V.[147] The patent rights accrue from the date of publication of the patent application, which is within one month after completion of 18 months of its filing or at an earlier date, if requested by the applicant. On average, it takes between 10 and 60 months to grant a patent depending on the information provided by the applicant. However, the applicant is not entitled to institute any infringement proceedings until the patent has been granted. For patents relating to pharmaceuticals filed before 1 January 2005 (the "Mailbox"), the rights of the patentee accrue from the date of grant of the patent, but the period of protection remains 20 years from the date of filing. Moreover, the patent holder may not institute infringement proceedings against manufacturers already producing the patented product when the patent is granted; in such cases, the patent holder is entitled to receive reasonable royalties.[148] The law does not define "reasonable", which depends on the circumstances of each case, like royalty payment under Article 31 (h) of the TRIPS Agreement. The law also does not define the authority for determining the royalty. However, according to the authorities, although some 8,000 applications were made through the Mailbox facility, there have been no demands for royalty payments from patent holders. It is not clear how many patents have been granted under this facility.

158. India currently has 16,419 patents in force, of which 4,486 have been granted to Indians and 11,933 to foreigners resident abroad (Table III.12). As a result of procedural improvements, including a time limit of three months for examiners to complete examinations once complete documentation is received, efforts are being made to clear the Patent Office's large backlog of 19,000 patent applications (around 30,000 at the time of the last Review).

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[146] These are: inventions whose primary or intended use or commercial exploitation would be contrary to public order or morality or cause serious prejudice to human, animal or plant life or health or to the environment; the process for the medicinal, surgical, curative, prophylactic or other treatment of human beings; plants and animals or their parts (including seeds, varieties and species, and biological processes for the production or propagation of plants and animals) other than microorganisms; mathematical or business methods or computer programs and algorithms; and the topography of integrated circuits and traditional knowledge (Section 3).

[147] Pre-grant opposition must be made within four months of publication of the application, while the period for post-grant opposition is up to one year.

[148] Section 11A of the Patent Act.

Table III.12
The number of patents granted and in force, 2001-06

	2001/02	2002/03	2003/04	2004/05	2005/06
Patents granted					
- Indians	654	494	945	764	1,396
- Foreigners resident abroad	937	885	1,524	1,147	2,924
- Total	1,591	1,379	2,469	1,911	4,320
Patents in force					
- Indians	1,578	1,479	2,075	2,200	4,486
- Foreigners resident abroad	6,742	6,519	4,331	4,657	11,933
- Total	8,320	7,998	6,406	6,857	16,419

Source: Data provided by the authorities.

159. Compulsory licences can be granted under Chapter XVI of the Patents Act. Under Section 84 any person interested in working a patent can, after the expiry of three years from the date of grant of the patent, apply to the Controller for grant of a compulsory licence. The grounds for such a compulsory licence may include: that the reasonable requirements of the public with respect to the patented invention have not been satisfied; the patented invention is not available at a reasonably affordable price; or that it is not worked in India. The Controller may issue a licence upon terms and conditions outlined in the Act.[149] Two years after a compulsory licence has been granted, the Central Government or any other interested person may request the Controller to revoke the patent on the grounds that it has not been worked or that the reasonable requirements of the public have not been met, or that it is not available to the public at a reasonable price. The Controller would normally make a decision within one year of it being presented. No compulsory licences have been granted under this provision. The Central Government may also, if necessary, such as in the case of a national emergency, provide for issue of a compulsory licence for a patented product through a notification in the *Official Gazette* (Section 92) and may use a patented invention for government purposes (Section 100). Following the amendment to the TRIPS Agreement in December 2005 to include the decision on patents and public health, a new section 92A was inserted in the Act to permit compulsory licences for exports of patented pharmaceutical products in certain exceptional circumstances. This provision has not been used to date.

160. India also permits parallel imports, the definition of which was changed in 2005 from "importation of patented products by any person from a person who is duly authorized by the patentee" to "importation of patented products by any person from a person who is duly authorized by the law".

161. False representation of any article sold in India as being patented in India or for which an application has been made are punishable by a fine of up to Rs 100,000. Contravention of secrecy provisions relating to certain inventions or falsification of any information relating to the Patents Register is punishable by a fine or imprisonment of up to two years. Appeals can be made to the Appellate Board established under Section 83 of the Trade Marks Act, 1999. However, pending establishment of the Appellate Board, appeals are to the High Courts.

[149] The terms and conditions stipulated in Section 90 include: ensuring that the royalty or remuneration paid to the patent holder is appropriate; that the licence is fully worked by the holder; that the patented products are made available to the public at reasonably affordable prices; that the licence granted is non-exclusive and non-assignable; that the licence is granted for the balance of the term of the patent; that the licence is provided for predominant use in the Indian market; in case of semi-conductor technology, the licence is to be used for public non-commercial use; and in case the licence is granted to remedy an anti-competitive process, the licensee is permitted to export the product if necessary.

Trade marks

162. Trade marks are protected under the Trade Marks Act, 1999 and the Trade Marks Rules, 2002 (in force since September 2003), which repealed the Trade and Merchandise Marks Act, 1958. The changes introduced by the Act, include: protection to well known marks, as well as service and collective marks; extension of the period of protection from seven to ten years; establishment of an Appellate Board; and increased penalties for infringement of trade marks.

163. Trade marks must be filed in writing at one of the offices of the Trade Marks Registry. Following examination to determine whether the trade mark is distinctive and does not conflict with an existing or pending trade mark, the Registry publishes the trade mark in the *Trade Marks Journal*. Opposition to the trade mark can be made within three months of publication (extendable by one month) to which the applicant must respond within two months. Following a decision to register the trade mark a certificate of registration is issued. The trade mark is registered for ten years, renewable for further periods of ten years on payment of the prescribed fee. If the registered mark is not used for a continuous period of five years and three months from the date it was registered, or if the renewal fee is not paid within the prescribed period, it can be removed from the registry on grounds of non-use. Appeals against a decision by the Registrar may be made to the High Court pending establishment of the Appellate Board.

164. Under the Act, registration of a trade mark gives the owner "the exclusive right to the use of the trade mark in relation to the goods or services and to obtain relief in respect of infringement of the trade mark" (Chapter IV, 28(1)). Registration is not compulsory, but the owner cannot bring a legal case against an infringer if the mark is not registered. The law also enables a suit for passing off to be filed for the use of any trade mark that is identical or deceptively similar to the plaintiff's trade mark, whether registered or unregistered. The Trade Marks Act, 1999, preserves common law rights in respect of an unregistered trade mark. Penalties for falsification of trade marks and selling or providing goods that infringe trade marks include a prison term of at least six months, extendable to three years, and a fine of between Rs 50,000 and Rs 200,000. Second or subsequent convictions may lead to imprisonment of between one and three years and a fine of between Rs 100,000 and Rs 200,000. Falsely representing a trade mark as registered may lead to imprisonment of up to three years and/or a fine. Other penalties include imprisonment of up to two years and/or a fine for improper description of a place of business as connected with the Trade Marks Office and for falsification of entries in the Register.

Industrial designs

165. Legislation governing industrial designs in India is the Designs Act, 2000 and the Designs Rules, 2001. Under the Act, designs may be registered by the Controller General of Patents, Designs and Trade Marks, provided that: they are new or original; have not been disclosed to the public in India or another country by publication prior to the filing or priority application date; they are significantly distinguishable from known designs or combinations of known designs; and they do not comprise or contain scandalous or obscene matter. Following registration, the design is published in the *Gazette of India* and made publicly available in a Register of Designs.

166. Industrial designs are protected for ten years, extendable by five years, upon payment of the appropriate fee. A design may be cancelled at any time by the Controller General if it is determined that it does not fulfil the requirements for registration defined in the Act. Three design registrations have been cancelled since 2002. Appeals against a decision by the Controller General may be made to the High Court within three months of the decision. Four appeals have been made to the High Court since 2002 and are pending.

167. The sale, import or imitation of any article in which the design is registered without the consent of the registered owner is punishable by a fine of up to Rs 25,000 (to be paid to the registered owner) or any other damages incurred of up to Rs 50,000 if the owner begins legal proceedings. The Act does not contain criminal penalty provisions.

(c) Copyright

168. Copyright is protected under the Copyright Act, 1957, most recently amended in 1999. Protection is granted to: original literary, dramatic, musical and artistic works; cinematographic films; and sound recordings. The term of protection is the lifetime of the author plus 60 years for literary, dramatic, musical and artistic works; and 60 years after the year of publication for anonymous and pseudonymous works, photographs, cinematographic films, sound recordings, and works owned by the Government or by a public undertaking or an international organization. Broadcast reproduction rights are for 25 years from year of broadcast, and performers rights are for 50 years from the date of performance.

169. Compulsory licences may be issued for works withheld from the public or for unpublished "Indian works"[150], where the author is dead or unknown. In such cases applications may be made to the Copyright Board, which after holding an inquiry, may direct the Registrar of Copyright to issue the licence under specified terms and conditions. The Central Government may also, if it deems it to be in the national interest, require the heirs or executors of a work whose author is no longer alive, to publish the work. Applications for licences to publish a translation of a literary or dramatic work in any language may be made to the Copyright Board seven years after publication of the work (three years if the translation is required for teaching, scholarship or research). Parallel imports are not permitted by the law.

170. Both civil and criminal remedies are available for infringement of copyright. Under Section 63, the penalties can be imprisonment for between six months and three years and/or a fine of between Rs 50,000 and Rs 200,000. Repeat offences are punishable by imprisonment of one to three years and/or a fine of Rs 100,000 to Rs 200,000.[151] Any person who knowingly makes use of an infringing copy of a computer program is punishable by imprisonment of seven days to three years and/or a fine of Rs 50,000 to Rs 200,000. The penalty for making or possessing plates for making infringing copies of protected works is imprisonment of up to two years and/or a fine. Publication of a sound recording or a video film in contravention of the Act is liable to imprisonment of up to three years and a fine.

(d) Other intellectual property

Geographical indications

171. Geographical indications are protected under the Geographical Indications of Goods (Registration and Protection) Act, 1999 and the Geographical Indications of Goods (Registration and Protection) Rules, 2002. The Geographical Indications Registry was established on 15 September 2003.

172. Applications for registration of a geographical indication must be made in writing to the Registrar of Geographical Indications who is the Controller General of Patents, Designs and Trade Marks. Geographical indications can be registered for any or all goods in a territory of a country or a

[150] "Indian work" is defined as an artistic work by a citizen of India or a cinematographic film or record made or manufactured in India" (Article 31).

[151] In both cases, the penalty can be reduced if the infringement has not been made for gain in the course of trade or business.

region or locality in that territory (Section 8).[152] Once the application is accepted, the Registrar issues an advertisement of application. If there is no opposition to the registration within three months, the GI will be registered. If the application is not accepted by the Registrar, the grounds for the refusal must be given in writing. Registration of trade marks containing geographical indications may be invalidated by the Registrar of Trade Marks (section 25). Decisions by the Registrar may be appealed to the Appellate Board within three months from the date of notification of the Registrar's decision.

173. Protection for the owner of the geographical indication and any authorized user is ten years, but may be renewed by the Registrar for a further period of ten years. Currently, 28 geographical indications are registered in India. Additional protection may be provided by the Central Government to certain goods or classes of goods by notification in the *Official Gazette*. Registration guarantees exclusive use of the geographical indication by the owner or authorized user and protection in case of infringement. Infringement is defined under the Act as: use of the geographical indication to indicate or suggest that the goods originate in a geographical area other than the true place of origin in a misleading manner; use that constitutes an act of unfair competition, including passing off; and use of a geographical indication to falsely indicate that the goods are those to which the registered GI relates. The penalty for falsifying or falsely applying geographical indications, or selling goods under false geographical indications is imprisonment for six months to three years, and a fine of Rs 50,000 to Rs 200,000. Repeat offences are subject to a prison term between one and three years and a fine of Rs 100,000 to Rs 200,000. The Geographical Indication Registry has received two requests under Section 50 of the Act for the opinion of the Registrar, which has to be obtained before conducting search and seizure; a suit was filed for infringement in the Delhi High Court by the registered proprietor of the GI; the matter ended in a compromise.

Plant varieties

174. The Parliament passed the Protection of Plant Varieties and Farmers' Rights Act in 2001. Criteria for the registration of new plant varieties include novelty, distinctiveness, uniformity, and stability.[153] Applications must be made to the Registrar-General of Plant Varieties; applications that comply with the requirements of the Act, are advertised. Opposition to the registration must be made within three months of advertisement; the applicant has two months to respond. If there is no opposition, or if the opposition is rejected, the variety is registered in the Plant Varieties Registry and an official certificate given to the applicant. For registration of essentially derived varieties, the Registrar must forward the application and supporting documents to the Protection of Plant Varieties and Farmers' Rights Authority for examination. If the Authority is satisfied that the essentially derived variety has been derived from the initial variety, it directs the Registrar to register the new variety.

175. The term of protection is nine years for trees and vines and six years for other crops, renewable for a further nine years (for extant varieties of trees and vines, or a total of 15 years for annual crops from the date of notification under the Seeds Act 1966). However, under Chapter VI of

[152] Geographical indications will not be registered if their use: will likely deceive or cause confusion; would be contrary to any law in force, and if they comprise or contain scandalous or obscene matter or any matter likely to hurt religious susceptibilities, which would otherwise not be entitled to protection in a court. In addition, GIs determined to be generic names or indications of goods and therefore not protected in their country of origin, or that falsely represent that the goods originate in another country will not be registered.

[153] The variety is novel if, at the date of filing, the propagating or harvested material has not been sold or otherwise disposed of by or with the consent of its breeder for exploitation in India, earlier than one year before the date of filing of the application, or, outside India, earlier than six years for trees and vines and earlier than four years for other varieties.

the Act, a farmer is entitled to save, use, sow, resow, exchange, share or sell his farm produce, including seed (except branded seed), of a variety protected by the Act.

176. The Act also provides for benefit sharing. Once the certificate of registration is issued, the Authority publishes the contents of the certificate and invites claims of benefit sharing in the registered variety; claims are accepted only from Indian citizens or institutions established in India. The breeder may submit an opposition to the claim. Moreover, any person or group of persons may, on behalf of any village or local community in India, file a claim attributable to their contribution to any new variety (Section 41).

177. Compulsory licences may be granted after three years from the date of issue of the certificate of registration. A request may be made to the Authority on the grounds that the reasonable requirements of the public for seed or other propagating material of the variety have not been satisfied or that it is not available to the public at a reasonable price. The term of a licence will be determined by the Authority, who must ensure reasonable compensation to the breeder (Section 51). The compulsory licence can also be revoked or modified by the Authority at any time. No compulsory licence has been granted so far.

178. Appeals against decisions by the Authority or the Registrar can be made to the Plant Varieties Protection Appellate Tribunal. The Tribunal, which has not yet started functioning must, to the extent possible, reach a decision on an appeal within one year.

179. Infringement is defined as: the sale, export, import or production of a protected variety without the permission of its breeder or within the scope of a registered licence without the permission of the registered licensee or agent; or the use, sale, export, import or production of any other variety that is given an identical or deceptively similar denomination of a variety registered under the Act so as to cause confusion. The penalty for applying a false denomination is imprisonment for between three months and two years and/or a fine of Rs 50,000 to Rs 500,000. The penalty for selling varieties to which a false denomination is applied is imprisonment of between six months and two years and/or a fine of Rs 50,000 to Rs 500,000. The penalty for falsely representing a variety as registered is imprisonment of between six months and three years and/or a fine of Rs 100,000 to Rs 500,000. Repeat offences are liable to imprisonment of between one and three years and/or a fine of Rs 200,000 to Rs 2 million. No case of seizure or infringement has been reported.

Semiconductor integrated circuits layout-designs

180. The Semiconductor Integrated Circuits Layout-Design Act was passed in September 2000. There have been no changes to this legislation since the previous Review. Applications should be made in writing to the Registrar and filed at the office of the Semiconductors Integrated Circuits Layout-Design Registry, although it appears that the Registry is not yet functional. Upon accepting the application, the Registrar must publish an advertisement within 14 days. Opposition to registration must be made within three months of publication of the advertisement and the applicant is given two months to respond. A registration certificate will be issued to the applicant. Registration is for ten years from the date of filing the application or from first commercial exploitation in India or elsewhere, whichever is earlier. Decisions by the Registrar may be appealed to the Layout-Design Appellate Board.

181. Infringement is defined as unauthorized reproduction, whether by incorporating in a semiconductor integrated circuit or otherwise, a registered layout-design or any part of it, or unauthorized import, sale, or distribution for commercial purposes of a registered layout-design or a semiconductor integrated circuit incorporating a semiconductor integrated circuit with a registered

layout-design. However, reproduction is permitted for scientific evaluation, analysis, research or teaching. In addition, 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, while if a person independently develops a layout-design that is identical to a registered one, that person may use it as desired without infringing. The penalty for infringement of a layout-design is imprisonment for up to three years and/or a fine of Rs 50,000 to Rs 1 million.

Trade secrets

182. There is no specific legislation regulating the protection of trade secrets nor enforcement measures/penalties for violations of trade secrets. However, aggrieved parties can seek action through the Civil Courts.

(e) Enforcement

183. Enforcement of intellectual property rights in India is carried out by the police for domestic cases and by the police and customs for imports and exports. Domestic enforcement, especially for copyright violations, appears to have been stepped up, notably through the setting up of a Copyright Enforcement Advisory Council (CEAC). The CEAC, headed by the Secretary (Higher Education) in the Government of India, has 28 other members including the head of Police from some states as well as senior officers of related departments like Customs; it meets twice a year. In addition special IPR cells have been set up, currently in 18 states, and nodal officers appointed to coordinate enforcement activities with industry. Industry associations and copyright societies are also involved in supplementing and sometimes guiding the efforts of the enforcement agencies. A police officer (not below the rank of a sub-inspector) has ex officio powers to seize goods suspected of infringing copyright.[154]

184. Under the Customs Act, Customs may seize and hold goods "for a reasonable period", including for suspected violations of intellectual property rights, following which, the goods must be released or a court injunction obtained to start infringement proceedings. Under Section 53 of the Copyright Act 1957, the Registrar of Copyright has the power to order that copies of an infringing work cannot be imported and order a physical search of any ship, dock or premises. An amendment to this provision, to transfer the power of banning import of any infringing copy to the Commissioner of Customs, is currently under consideration.

185. Enforcement by the police has been stepped up through increased raids since 2004. As a result some 6,290 cases were filed in 2004 with the National Crime Records Bureau (1,211 cases in 2000). According to information provided by the National Crime Records Bureau (NCRB), 2,108 cases were registered under the Copyright Act between January and June 2005. This resulted in the arrest of over 2,000 alleged offenders and over Rs 93 million in seized material. Similarly, data made available by the IMI, an industry group, reveals over 2,100 raids and 2,255 arrests in 2005/06 in music-related copyright violations. The police also have ex officio powers under the Trade Marks Act, 1999, which permits any police officer not below the rank of deputy superintendent of police or equivalent, to search and seize without warrant the goods, die, block, machine, plate, and other instruments or goods suspected of infringing intellectual property. However, the police officer must obtain the opinion of the Registrar before any search and seizure. No data were provided to the

[154] According to a ruling by the Supreme Court of India, such infringements would cover not only goods being imported for the Indian market but also goods transiting India for eventual export to a third country (Gramophone Company of India Ltd vs Bivendra Bahadur Pandey & ORS, AIR 1984 SC 667, 21 February 1984).

Secretariat on enforcement with regard to other IPR violations, nor on the number of IPR infringement cases that have been settled through the courts.[155]

186. The Government has stepped up training to increase awareness of IPR enforcement. The Intellectual Property Institute (IPI) provides training to government officials (including from the IP offices and from other government agencies), the private sector, including management in companies, creators of IPRs, and academics, and to "potential users from the public at large". A scheme of the copyrights division (the intellectual property education, research and public outreach scheme) aims to create an IP culture and awareness at colleges and universities through grants for seminars, training, and discussions on IP, especially copyright. Activities are also carried out in conjunction with industry organizations.

187. Despite these efforts, however, according to NASSCOM, which represents India's software suppliers, it appears that much remains to be done to improve IPR enforcement.[156] While the reported number of police raids appears to have increased in recent years, it is unclear whether these are a sufficient deterrent to further violations of IPRs, given that there is very little information on the number of cases resulting in prosecutions through the justice system or civil or criminal penalties.[157] The authorities state that the courts are well aware of the gravity of the problems and the legal provisions of the various IP laws and regularly pronounce sound enforceable judgements. Moreover, there is a growing realization of the need to sensitize the judiciary on the role of IPRs and the impact of IP violations on the economic climate, and creativity and innovation, including through seminars for the judiciary.

(vi) Corporate governance

188. An efficient capital market capable of mobilizing domestic savings and channelling them into the most productive investments is essential for improving competitiveness and thus long-term development. Recognizing that good corporate governance is essential for the establishment of such a market, the authorities have been taking steps to improve the framework in this regard. While the basic framework for governance of companies in general is provided by the Companies Act, 1956, the Securities and Exchange Board of India (SEBI) Act 1992 and the Listing Agreement with stock exchanges contain requirements for governance of listed companies, and the Securities Contracts (Regulation) Act, 1956 cover tradeable government paper, stocks, shares, bonds and other marketable securities. In addition, corporate governance in banks and non-bank financial companies is regulated by the Reserve Bank of India (RBI).

189. Schedule VI of the Companies Act outlines financial reporting requirements for companies incorporated under the Act. These include reporting of company balance sheets, and profit and loss accounts. The Act, most recently amended in 2002, is enforced by the Ministry of Company Affairs.[158] The 2002 amendment dissolved the Company Law Board replacing it with a National Company Law Tribunal and an Appellate Tribunal. The Company Law Tribunal and the Appellate Tribunal are empowered to examine and pass judgement with regard to all cases under the Companies Act. Appeals against decisions by the Appellate Tribunal can be heard by the Supreme Court.

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[155] It is suggested that court proceedings are overly burdensome, courts are severely backlogged and there are massive delays in bringing criminal and civil cases to final judgement (IIPA, 2006).

[156] The National Association of Software and Service Companies states that, despite measures taken, software piracy in India remains high (NASSCOM online information. Viewed at: http://www.nasscom.in/Nasscom/templates/NormalPage.aspx?id=6247 [22 November 2006]).

[157] IIPA (2006).

[158] World Bank (2004).

190. The National Foundation for Corporate Governance (NFCG) was established on 1 October 2003 to improve awareness of the importance of implementing good corporate governance practices. It is a non-profit body and includes participation from the Ministry of Company Affairs, the Confederation of Indian Industries (CII), the Institute of Company Secretaries of India (ICSI), and the Institute of Chartered Accountants of India (ICAI).

191. The Companies Act, 1956, is currently being reviewed with an emphasis on transparency, accountability, and good corporate governance, along with institutional arrangements to ensure that stakeholder rights are recognized and equitably and more speedily protected. The proposed revisions are also expected to enable shareholders-based enforcement based on shareholders democracy, rather than a state-based enforcement regime, with more effective protection of investor/minority shareholder rights. The revision will also address the issue of rehabilitation, including winding up and liquidation of companies including "sick industries" in a time-bound manner. It is not clear when the revisions are expected to be submitted to Parliament. Other efforts to improve governance include the "MCA21 e-Governance Project", which began in March 2005, and has required all companies to submit their documents electronically to the Registrar of Companies since 16 September.

192. While the Companies Act addresses corporate governance issues among companies in general, corporate governance requirements for listed companies, are also provided in clause 49 of the Listing Agreement. Clause 49, which has been amended and updated periodically, contains details about the composition of boards of directors, board procedures, code of conduct of board members, and composition and powers of an independent audit committee. Companies are also required to submit a report on corporate governance. Clause 49 was most recently amended on 1 January 2006 to incorporate recommendations made by another committee on corporate governance set up by the SEBI in 2003.[159] Clause 49 details mandatory and non-mandatory provisions.[160] In order to improve disclosure standards applied by the SEBI, the Committee on Disclosures and Accounting Standards was constituted in September 2006. It has members drawn from various segments of the capital market and advises the SEBI on issues related to, *inter alia*, initial and continuous disclosure requirements of companies; disclosure requirements for intermediaries; operational and systemic risks, if any, in the primary securities market; smooth implementation of accounting standards developed by the ICAI; as well as inputs to ICAI for reviewing accounting standards and bringing them into line with internationally accepted standards.

193. Good corporate governance in banks is important as they are the major source of capital in the economy. The Advisory Committee on Corporate Governance was set up by the RBI in 2000 to examine the state of corporate governance and to suggest ways in which to improve standards and levels of compliance. Among its various recommendations were suggestions to improve corporate governance in public sector banks by transferring governance from the administering ministries to the banks' boards and by streamlining the appointment of directors. The Advisory Group also recommended the strengthening of the Companies Act and the role of independent directors. This was followed by a report by a Consultative Group of Directors of Banks and Financial Institutions in 2002, which made recommendations with regard to the role of the board of directors of banks. As a result, the RBI has issued 'fit and proper' criteria for directors of banks, including the constitution of a

[159] The Narayan Murthy Committee on Corporate Governance.

[160] The mandatory provisions include, *inter alia,* strengthening the definition of independent directors; clarifying the role/responsibilities/powers of audit committees; improving quality of financial disclosures including related party transactions and proceeds from public/rights/preferential issues; requiring Boards to adopt a formal code of conduct; requiring CEO/CFO certification of financial statements and improving disclosures to shareholders. Certain non-mandatory clauses, like whistle-blower policy and restriction of the term of independent directors, along with other non-mandatory provisions, have also been included in the revised Clause 49.

Nomination Committee of the Board to scrutinize declarations made by the directors, and the exercise of due diligence to determine the suitability of persons being appointed or renewed as directors. The Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970/80 has been amended to ensure "fit and proper" criteria are applied to the elected directors on the Boards of Public Sector Banks (PSBs). The Government has also implemented the RBI's suggestions on due diligence in respect of nominated directors on the boards of PSBs.

194. The RBI, through its Board for Financial Supervision, inspects and monitors banks using the CAMELS approach (Chapter IV). However, it appears that the RBI cannot insist that directors nominated by the government or elected by shareholders to the boards of the public sector banks also meet these "fit and proper" guidelines.[161] Nevertheless, as part of reform to increase competition in the banking sector, efforts have been made to increase the independence of public sector banks. In addition, urban cooperative banks (UCBs) and rural cooperative banks (RCBs), which are currently a source of considerable weakness in the banking sector, are not subject to RBI governance procedures but to state government regulations. Neither are they subject to shareholder scrutiny as they do not depend on equity markets for their funds. Such banks will need to be brought under the purview of the corporate governance structure to which private sector banks are currently subject. The RBI has been providing regulatory support to small and weak UCBs, while strengthening their supervision, including through consultation with state governments and representatives of the UCBs. The Reserve Bank has also issued a "Vision Document for the Urban Co-operative Banks" which, *inter alia,* envisages a state-specific strategy for addressing issues relating to UCBs. As part of this strategy, memoranda of understanding are being signed between the RBI and the respective state governments, which envisage the constitution of a state-level Task Force for Co-operative Urban Banks that would, *inter alia*, identify viable and non-viable UCBs in the State and suggest time-bound plans for the revival of the viable UCBs and non-disruptive exit for others.

195. The Chartered Accountants (Amendment) Act was passed by Parliament in March 2006. The amendment, *inter alia*: expands government membership of the Council of the Institute of Chartered Accountants of India and gives the Government power to dissolve the Council in certain exceptional cases; broadens disciplinary procedures for misconduct, including the establishment of a Tribunal and Appellate Authority; and provides for the establishment of a Quality Review Board, to review the quality of services provided by members of the Institute, and to make recommendations for improving these services.[162]

(vii) Competition policy

(a) Introduction

196. Legislation to address anti-competitive practices by enterprises (e.g. cartels and abuse of a dominant position) is an important counterpart to measures aimed at liberalizing markets. Since its last Trade Policy Review, India has adopted the Competition Act, 2002. The Act embodies an economics-based approach to competition law and should, therefore, be a bulwark of the competitive market system. However, implementation of the core enforcement provisions of the Act has been delayed by the need to address questions raised in legal challenges to certain provisions of the Act. These and other matters are the subject of amendments currently before Parliament. In the meantime, the Monopolies and Restrictive Trade Practices Act, 1969 (MRTP Act) remains in force. The new Competition Commission, which will be responsible for the administration of the new legislation, has undertaken useful preparatory studies and research that will assist in the effective implementation of the law.

[161] Reddy (2005).
[162] The Chartered Accountants (Amendment) Act, 2006.

(b) Statutory framework

197. The Competition Act was enacted by the Indian Parliament in December 2002 and received the assent of the President in January 2003. It contains provisions dealing with anti-competitive agreements, abuse of dominant position and "combinations" (mergers), which are broadly comparable to those of other jurisdictions with effective laws in this area and, for the most part, embody a modern, economics-based approach.[163] The Act permits the Competition Commission of India (CCI) to take action against cartels and other anti-competitive practices originating outside India but affecting Indian markets and consumers.[164] The Act also attaches importance to and provides a legal basis for "competition advocacy" activities by the CCI, which has been created pursuant to the legislation (i.e. research and policy advice by the Commission, aimed at removing impediments to the operation of competitive market forces). This reflects a widely-held view that such activities are an important complement to competition law enforcement.[165] The importance attached to competition advocacy is in line with and reinforces other liberalization measures implemented over the past decade to remove licensing and other measures that have, in the past, limited competition in markets.

198. A key thrust of the Competition Act is to create a new enforcement body, the CCI, with a staff trained in modern enforcement methods and branches in various Indian cities. Eventually, the CCI will replace the Monopolies and Restrictive Trade Practices Commission (MRTPC), created under the MRTP Act. However, implementation of the Competition Act has been delayed by constitutional issues relating to the structure of the new CCI, in particular the apparent vesting of adjudicatory powers in a non-judicial body. Consequently, only one Member has been appointed to the Commission and the substantive enforcement provisions of the Act (e.g. regarding agreements, abuses of a dominant position and mergers) have still to be brought in force. The constitutional concerns will be addressed by proposed amendments to the Act that are before Parliament, the Competition (Amendment) Bill 2006, and will, *inter alia*, establish a separate Competition Appellate Tribunal to be headed by a current or former judge of the Supreme Court or a High Court Chief Justice.[166]

199. In addition to addressing the constitutional issues raised in the Supreme Court writ, the proposed amendments will fine-tune other aspects of the legislation and remove certain provisions that require amendment. For example, the amendments will delete a provision adopted in 2002 that enabled the CCI to issue a temporary injunction to restrain parties from importing goods.[167] The proposed amendments also attempt to strengthen the statutory basis for introduction of a "leniency programme" to facilitate enforcement of the anti-cartel and related provisions of the Act.[168]

200. In contrast to the substantive provisions of the new Competition Act, the existing MRTP Act is not perceived as providing a modern statutory framework to address practices such as cartels and abuse of dominant position. Rather, its objectives are framed in terms of: the prevention of

[163] See Chakravarthy (2005).

[164] Such an enforcement approach broadly emulates those of the United States and EC, which also permit action to be taken against foreign cartels and other anti-competitive arrangements that affect those jurisdictions' consumers.

[165] Anderson and Jenny (2004), Chapter 4.

[166] Bhattacharjea (2006).

[167] As Bhattacharjea points out, countering an anti-competitive practice involving imports by shutting out the imports "amounts to chopping off one's head to cure a headache" (Bhattacharjea, 2006).

[168] Such programmes, which typically offer immunity from prosecution to the first member (and sometimes other members) of a cartel who confess to the authorities and provide information leading to the prosecution of other members, are now viewed as an essential part of the toolkit of modern competition authorities (Bhattacharjea, 2006).

concentration of economic power; the control of monopolies; and the prohibition of monopolistic trade practices, and restrictive and unfair trade practices. The MRTP Act was amended in 1991 to provide a greater focus on curbing monopolistic, restrictive, and unfair trade practices.[169] In practice, the MRTPC has had greater focus on enquiries into alleged restrictive trade practices and unfair trade practices, than on monopolistic trade practices (Table III.13). Temporary injunctions and compensation orders have been issued in numerous cases.

Table III.13
Cases disposed of by MRTPC, 2002-05

	2002	2003	2004	2005
Monopolistic trade practices enquiry	0	0	2	0
Restrictive trade practices enquiry	171	81	31	64
Unfair trade practice enquiry	169	105	51	74
Temporary injunction	60	69	81	55
Compensation	420	178	116	144
Total	820	433	281	337

Source: Information provided by the authorities.

201. The Consumer Protection Act, 1986 (COPRA) protects consumers' interest through the establishment of consumer fora, which settle grievances regarding, *inter alia*, quality and pricing of goods and services. Consumers have the right to seek redress against "unfair and restrictive trade practices" (as defined in the Act)[170] and "unscrupulous exploitation of consumers".[171]

(c) Challenges to be faced and preparatory work undertaken

202. The new Competition Commission, when its powers are in force, will face significant challenges. There are reasons to believe that developing economies tend to be more vulnerable to anti-competitive practices than developed countries. The reasons include: high 'natural' entry barriers due to inadequate business infrastructure, including distribution channels, and (sometimes) intrusive regulatory regimes; asymmetries of information in both product and credit markets; and a greater proportion of local (non-tradeable) markets.[172] Thus it may be particularly important to protect, consumers in developing countries against cartels, monopoly abuses, and the creation of new monopolies through mergers. Bid rigging in public procurement markets (i.e. collusive tendering) is also pervasive in many developing economies, and merits vigorous enforcement initiatives.[173]

203. In anticipation of these challenges, and full entry into force of the 2002 Act, significant public education, training, and preparatory work for the implementation of the Act has been undertaken by the Commission. This includes the preparation of a series of studies on competition issues in particular sectors, including manufacturing, transport, telecommunications, and energy markets. International organizations, including the World Bank, FIAS, DFID and USAID, have extended assistance to the Commission for capacity building including funding some of the above mentioned studies. Recently, a state-of-the-art volume on the techniques and modalities of competition law analysis has been published under the editorship of the CCI's serving members, as a reference tool for

[169] Chakravarthy (2005).
[170] 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.
[171] 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.
[172] Anderson and Jenny (2004). See also Dutz (2002).
[173] See Anderson (2006).

persons involved in implementing competition law in India and other developing economies.[174] When the Commission becomes fully operational, it will continue to focus on competition advocacy work (e.g. to eliminate regulatory barriers to competition in telecommunications and other infrastructure sectors) in addition to core enforcement activities e.g. relating to cartels. This approach is expected to provide a sound basis for the eventual implementation of the new legislation.[175]

[174] Dhall (2007).
[175] Dhall (2005).

Annex III.1: The tariff and other import charges

1. India's tariff consists of standard rates (also referred to as basic rates) which are statutory rates applied under the Customs Tariff Act, 1975. The tariff is announced with the Budget annually; and additional changes are made through notifications issued during the year. There are a large number of exemptions and reductions, some of which are applied at the tariff line level. Others may be based on industrial use and are thus difficult to include in any calculation of the effective applied tariff rate, which is likely to be significantly lower than the standard rate of tariff. As a result of reform over the years, most of the exemptions have been consolidated under one notification (Notification 21, issued on 1 March 2002).

2. India's current MFN tariff is applied at the HS 8-digit level. It has 11,695 lines, of which 10,977 are *ad valorem*, 716 (around 6.1% of the tariff) carry alternate duties; and two have specific duties. The Secretariat was provided *ad valorem* equivalents for the specific components of the alternate duties, which are all in textiles and clothing. The AVE calculations for 563 of the 716 lines are based on import data for 2004 and 2005. For tariff lines under HS 5801.31, for which no import data were available for these years, the authorities used base rates computed under the Non-Agriculture Market Access simulations. For tariff lines under HS 6101.20, data for imports during April-June 2006 were used for the AVE calculations, since, according to the authorities, data for 2004 and 2005 were erroneous. AVEs for the remaining 151 lines could not be calculated due to a mismatch between the units of quantity imported according to statistics maintained by the Directorate General of Commercial Intelligence and Statistics (DGCI&S) and the units on which specific duty rates apply (e.g. the data on imports may be based on square metres while the duty is charged according to kilogrammes). The authorities have therefore used a conversion factor of 0.17 for fabric weighing more or less than 170 grammes per square metre and 0.2 in lines where the description states "more or less than 200 gms/sqm". Where there are no mismatches, the conversion factor was taken as 1.

3. In addition to customs duties (standard or applied tariffs), additional duties (also called countervailing duties) are charged at the border in lieu of central excise duties (a tax on manufactured goods), which are charged only for domestically produced goods. The additional duty rates charged are the same as the excise duties and hence have not been included in the Secretariat's tariff analysis. In addition, India charges a 4% special additional duty (also known as special countervailing duty) to bring the overall tax rate on imported goods more into line with that on domestically produced goods, which are subject to internal taxes, such as VAT, municipal tax, "market committee fees", etc. The 4% duty, however, is not harmonized with internal taxes, making it unclear to what extent the taxes on imports and on domestic goods are equivalent. The additional duty is calculated as a percentage of the value of the import plus any applicable tariff (but not any anti-dumping or countervailing duty applicable), while the special additional duty is charged as a percentage of the value of the import plus the tariff and the additional duty.