II. TRADE POLICY REGIME: FRAMEWORK AND OBJECTIVES

(1) OVERVIEW

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

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

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

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

(2) TRADE POLICY FORMULATION AND IMPLEMENTATION

(i) Institutional and legal framework

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

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

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

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

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

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

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

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

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

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

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

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

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

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

n.a. Not applicable.

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

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

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

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

Note: The same hierarchy is applicable to State laws.

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

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

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

(ii) Trade policy formulation, implementation, and objectives

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

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

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

Table II.3 (cont'd)

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

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

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

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

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

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

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

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

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

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

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

(3) TRADE AGREEMENTS AND ARRANGEMENTS

(i) World Trade Organization

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

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

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

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

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

Table II.5 (cont'd)

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

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

Source: WTO Secretariat.

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

(ii) Regional trade agreements

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

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

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

[15] Early Announcements of Negotiations.

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

[17] Ministry of Finance (2011a).

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

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

(4) INVESTMENT REGIME

(i) Business environment

(a) Regulatory framework

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

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

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

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

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

Table II.6
Setting up a business, 2011

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

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

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

(b) Industrial licensing and zoning

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

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

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

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

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

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

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

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

(c) Micro, small, and medium enterprises

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

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

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

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

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

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

(ii) Foreign investment regime

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

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

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

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

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

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

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

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

[39] OECD (2009b).

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

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

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

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

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

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

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

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

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

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

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

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

[47] Information provided by the authorities.

[48] OECD (2009b).

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

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

Table II.8
Sectors where FDI is prohibited, 2011

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

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

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

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

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

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

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

[52] Foreign Investment Promotion Board (2010).

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

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

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

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

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