III. TRADE POLICIES BY MEASURE

(1) Overview

1. Over the past four years, India's trade policy has shown a mixed record. While India has continued to lower the simple average tariff, the number of tariff items subject to restrictive licensing remains extensive. The beginning of a tendency towards export-orientation, as opposed to outward orientation, can be seen as the extensive incentives given to exporters have not been reduced in tandem with the liberalization of the import regime. A more neutral policy stance would be more likely to maximize the benefits from trade reform.

2. The simple average tariff has fallen from 71 per cent in 1993/94 to 35 per cent, and tariff levels on par with the ASEAN countries are envisaged by the authorities by the year 2000. However, substantial tariff dispersion continues to exist, and indeed the variation in rates has increased somewhat since India's last Review; the number of tariffs is also fairly high, at 22. Tariff escalation by processing stage remains significant, thereby providing higher levels of effective protection to goods as they are further processed. As a result of the Uruguay Round, India bound a wide range of products, equivalent to about two thirds of all tariff lines. The bound rates, are often at ceiling levels, above prevailing applied rates.

3. About 32 per cent of all tariff lines are subject to licensing, which, for most of them, act as import bans. India is gradually liberalizing its import restrictions through movement of items from restricted status to the list of freely importable goods, often through the freely transferable Special Import Licenses (SILs). To date, this programme has concentrated largely on capital goods and inputs to industry. A phase-out programme for remaining restrictions has been presented to trading partners and agreement has been reached with all major partners except the United States.[1] In addition, India continues to control imports and exports by, *inter alia*, the use of state-trading monopolies (canalization); the share of canalized imports as a percentage of total imports has declined since the period covered by the previous Review.

4. Although direct export subsidies are not provided to exporters, India relies on a wide range of indirect subsidies, including exemption from income tax; export finance at below-market interest rates; guaranteed access to a minimum of 10 per cent of commercial bank net credit; export insurance and guarantees provided by government-owned agencies; access to a wide range of export promotion and marketing assistance schemes; and import access to restricted items. No phase-out plan has been announced for the associated performance requirements, which are linked to export obligations, net foreign exchange earnings and/or value added.

5. Since its previous Review, India's anti-dumping and countervailing laws have been brought into line with its WTO obligations. A new law on copyrights has been enacted, while for other amendments of its intellectual property rights laws India intends to make use of the five-year transition period granted to developing countries.[2] The amended customs valuation law has raised some concern within the WTO Committee on Customs Valuation and further clarification from the Indian authorities

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[1]On 1 April 1997 around 10 per cent of all tariff lines were on the SIL List, compared to 7.5 per cent one year before.

[2]India, as a developing country Member, is granted an additional five years from the date of application of the Agreement, to extend product patent protection to areas of technology not so protectable, such as pharmaceutical and agricultural chemicals.

has therefore been requested. Local-content schemes have, in general, been phased out. In the area of standards, the general policy has been, according to the authorities, a two-pronged approach: bringing Indian standards up to international levels, as well as a harmonization between the standards of Indian States. India, which has not signed the WTO Agreement on Government Procurement, lacks separate statutory guidelines on government procurement although some progress has been made in simplifying procurement procedures and making them more transparent.

6. In the area of measures affecting production and trade, attempts to simplify India's extensive industrial policy measures have continued since its last Review. Reforms include, *inter alia*, a reduction (from 18 to 9 product categories) of the number of industrial licensing controls, a decrease from (836 to 821 items) in the number of areas reserved for the small-scale sector, and abolition of price controls for some pharmaceutical products. Some progress has also been made in public sector reforms although government disinvestment in public sector enterprises has been slow. A number of interventions, such as price controls, credit requirements for certain priority sectors, and a high level of subsidies (14 per cent of GDP in 1994/95) remain.

(2) <u>Measures Directly Affecting Imports</u>

(i) <u>Registration and documentation</u>

7. Most importers (like exporters) must register with the Director General of External Trade (DGFT) to obtain an Importer-Exporter Code (IEC) number. Importers exempt from this requirement are those covered by Clause 3(1) (except subclauses (e) and (l)) of the Foreign Trade (Exemption from Application of Rules in Certain Cases) Order, 1993; Ministries and Departments; persons importing goods for their personal use, not connected with trade or manufacture or agriculture; and persons importing goods from Nepal or Myanmar (provided the c.i.f value does not exceed Rs 25,000).[3]

8. The application for an IEC number must be supported by a certificate from the banker of the applicant firm, in the required form, and a fee of Rs 1,000. The DGFT may suspend or cancel the registration of any registered importer who, in the view of the DGFT, has engaged in commercial transactions causing severe harm to India's external trade relations.

9. Any trader wishing to claim replenishment/Special Import Licence (SIL) or import licences related to export obligations like the Duty Exemption Scheme (DES) or the Export Promotion Capital Goods (EPCG) scheme, is required to furnish a Registration-cum-Membership Certificate (RCMC), issued by the relevant authorities (such as Export Promotion Councils and Federation of Indian Exporters Organizations) or by the regional licensing authority. An RCMC is required for claiming an import licence for a restricted good (on the Negative List of Imports). Licence application fees are charged according to the value of imports to be made; rates in April 1997 ranged from Rs 200 to Rs 150,000.[4] There is no deposit or advance payment requirement associated with the issue of an import licence for restricted goods.

[3]Government of India (1997d), Chapter IV.

[4]Six additional fees may be levied: application for duplicate licence (Rs 200); Speed Post (Rs 200); application for an identity card (Rs 200); application for a duplicate Identity Card in the event of loss of original card (Rs 100); extension of the period of shipment of an import licence (Rs 200); and application for a split-licence (Rs 1,000 per licence).

10. Other documents required upon importation are: (i) shipping documents; (ii) commercial invoices; (iii) if required, certificates of origin[5]; (iv) analytical test report in case of chemicals, metals, etc.; (v) Chartered Engineer's Certificate in case of second-hand plant and machinery; and (vi) catalogue, literature on its usage in case of machinery, equipment, etc.

(ii) <u>Customs valuation, clearance and inspection</u>

11. India's legislation on customs valuation, the Customs Valuation Rules, 1988, has been amended since the completion of the Uruguay Round, to bring it into conformity with the provisions of the WTO Agreement on Implementation of Article VII of GATT 1994, the Customs Valuation Agreement.[6] However, India invoked the special provisions for developing countries under the Agreement relating to computed value and unit price of the imported goods.[7]

12. Under Indian legislation, transaction value is the basis for customs valuation. The transaction value is defined as the price actually paid for the goods when sold for export to India, adjusted to reflect some costs and services incurred by the buyer.[8] Some WTO Members have raised concerns regarding the rules for the estimation of transportation costs, loading, unloading and handling charges and/or insurance in the cases when these are not ascertainable. In such instances a specified percentage of the f.o.b. value of the imports is used in the calculation of cost and services.[9] According to the authorities, the provision of a fixed percentage has been made for transparency purposes. Further clarification of these provisions were requested from the Indian authorities, and pending this the WTO Committee on Customs Valuation has not yet concluded its examination of the Indian legislation.

13. Since India's last Trade Policy Review in 1993, the green channel facility for customs clearance has been enhanced. Large established exporters with a good track record receive expeditious assessment of their import Bills of Entry by a group of appraisers and assistant collectors especially earmarked for this purpose.[10] Facilities for de-stuffing containers are provided by the Central Excise Officers at the factory premises of the large established exporters who are manufacturers/importers. The containers are moved straight from the port to the factory.[11] On-line assessment and clearance through Electronic Data Interchange (EDI) has been started at Delhi and is likely to be extended to all other Customs Stations by the end of 1998. For facilitating customs clearance, the importer can file documents for clearance 30 days in advance of the expected date of arrival of a vessel. Exports of perishable goods have been exempted from routine customs examination. Further, to facilitate imports, a large

[5]WTO document G/LIC/N/3/IND/1, 23 January 1996.

[6]Amended by notification No. 26/95, 24 April 1995.

[7]WTO document G/VAL/6, 10 January 1996.

[8]The costs and services include, *inter alia*, commissions and brokerage, except buying commissions; containers; packing; goods and services for use in connection with the production and sale for export of imported goods such as materials components, tools and engineering work; royalties and licence fees; transportation; loading, unloading and handling charges; and insurance.

[9]WTO document G/VAL/M/3, 24 June 1996.

[10]Large established exporters include Trading Houses, Star Trading Houses, Super Star Trading Houses and Export Houses.

[11]Government of India (1997d), Chapter IV.

number of Inland Container Depots and Container Freight Stations have been created in the hinterland areas for customs clearance of import and export cargo at the place of production/consumption. The Goods Imported (Conditions of Transhipment) Regulation, 1995, contains provision for facilitating movement of imported goods. Import of cargo by courier has been provided for through the Courier Import (Clearance) Regulation, 1995. The Multimodal Transport Act has also been framed with the objective of providing guidelines for the expeditious movement of cargo.

14. In 1993, according to the authorities, about 70 per cent of imported cargo at major customs houses was cleared within three days of all documents being submitted; a similar situation now prevails.

15. Appeals procedures are laid out in Chapter XV of the Customs Act, 1962. Appeals by importers concerning valuation and procedures may be addressed to the Commissioner (Appeals) within three months of the date of communication of orders passed by the officers dealing with clearance of goods. The importer may also lodge judicial appeals, within three months, to the Customs, Excise and Gold (Control) Appellate Tribunal. The Tribunal may hear appeals against orders and decisions passed by the Commissioner (Appeals) on all customs issues, except those related to baggage, short-landing and duty-drawback payment. Decisions taken by the Tribunal can be appealed to the Supreme Court. The appeals in cases related to baggage, short landing and duty drawback may be filed before the Central Government. The total number of appeals by importers to the Commissioner of Appeals was 48,581 in 1996, of which 25,351 (or 52 per cent) of cases were settled.

16. Preshipment inspection of imports is generally not required in India. In the case of second-hand capital goods, the importer is required to, *inter alia*, furnish to Customs, at the time of the clearance of goods, a certificate from Chartered Engineers. Preshipment inspection certificates are, however, required for import of metal scrap originating from a country affected by rebellion or war.

(iii) Tariffs and additional duties

(a) Structure

17. There are five different rates in the Indian tariff structure:

- *basic rates*, which can only be changed by legislation, are statutory m.f.n. tariffs;

- *preferential area rates*, which are applicable to imports from the declared "preferential areas" of Mauritius, Seychelles, and Tonga. Other country preferences are provided by India under bilateral and plurilateral agreements (section (i) below);

- *additional duties* (i.e. countervailing duties in the Indian nomenclature) corresponding to excise taxes on similar, domestically produced goods. These duties do not give domestic producers additional protection[12];

- *a special rate* of 2 per cent applied to all imports, except goods that are completely exempt from the basic rates, was introduced in the 1996/97 budget. On 16 September 1997, the rate was increased to 5 per cent for most imports; imports subject to a special rate of only 2 per cent include crude petroleum and petroleum products (HS Chapters 27.09 to 27.15);

[12]The "additional" duty has been excluded from the tariff analysis since it is neutral in its impact between domestically made and imported products and therefore has no protective effect.

project imports (HS Chapter 98.01); and 31 other items at the HS-six digit level.[13] Parliamentary approval is until 31 March 1999[14]; and

- the Indian tariff structure also contains a wide range of tariff exemptions. The basic rate may be replaced by one of several *concessional rates* (section (e)), some of which are granted to all importers while others are conditional. In addition, a number of concessional schemes grant partial or full exemption of duty.[15] Concessional rates can be administratively fixed by the Government, and announced through public notifications in the Official Government Gazette, without legislative assent, though they are required to be laid before Parliament. Changes in tariff require prior approval of Parliament.

18. The classification of customs tariffs in India is based on the Harmonized Commodity Description and Coding System (HS); as of 1 April 1997, the Indian tariff had 5,134 tariff lines classified at the HS six-digit level. India grants at least m.f.n. treatment to imports from all trading partners, including countries not members of WTO.

(b) Form of tariffs

19. Almost all of India's tariffs are *ad valorem* based, some 99.8 per cent of the tariff lines as of 1 April 1997. Composite duties (a combination of specific and *ad valorem* rates) are applied to ball and roller bearings.[16]

(c) Average tariff levels and dispersion

20. Since its last Review, India has lowered its simple average "effective" (i.e. applied) m.f.n. tariff, exclusive of additional duties, from 71 to 35 per cent (Table III.1).[17] Substantial dispersion of effective tariff rates continues to exist. The index of dispersion, as measured by the coefficient of variation is as high as 42 per cent, while the standard deviation is 15 per cent. The number of tariff

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[13]Finance Act (Amendment) Ordinance, 1997. Other major items subject to a special rate of only 2 per cent include some alcoholic beverages; computers and their parts, of HS heading 84.71; floppy discs and CD-ROMS; and microphones and loudspeakers for telecommunication use.

[14]Academy of Business Studies (1997), page 107.

[15]According to the authorities, the effective rates resulting from concessional schemes have been built into the tariff as far as possible (Table III.1); new concessions below the HS six-digit level are rare.

[16]However, the rate on the two tariff lines covering almonds is an *ad valorem* rate or a specific rate, whichever is lower; the tariff analysis assumes the *ad valorem* rate applies. Since 14 May 1997, almonds-in-shell and shelled-almonds attract a specific rate of Rs 95/kg. and RS 100/kg., respectively. In exchange for increases in its quotas for textiles and garments into the European Union and U.S. markets, India agreed in separate treaties to a comprehensive liberalization of the sector, including tariff rates of 20 to 40 per cent by the year 2000. These reforms will be applied to all countries exporting to India. Within the framework of the agreements, India reserved the right to vary the negotiated maximum tariffs by levying specific duties. (Pursell, 1996.)

[17]In the following section, the effective rate has been calculated by adjusting the basic rates for exemptions and concessions. However, concessional rates that are only applied to a part of the HS six-digit line or extended to a specific producer, have not been incorporated into the effective rate.

bands is high; 22, ranging from 0 to 260 per cent. The distribution of effective rates is skewed towards rates between 20 and 45 per cent, which cover 90 per cent of tariff lines (Chart III.1).[18]

Table III.1
Tariff structure of India 1990/91 to 1997/98
(Per cent)

	1990/91[a]		1993/94[b]		1995/96		1996/97[c]		1997/98[d]	
	Basic[e]	Effe.[f]	Basic[e]	Effe.[f]	Basic[e]	Effe.[f]	Basic[e]	Effe.[f]	Basic[e]	Effe.[f]
Av. unweighted										
Agriculture	134	113	83	43	…	27	29	26	26	26
Mining	127	100	85	70	…	30	26	26	27	25
Manufacturing	145	126	85	73	…	42	40	40	36	36
Whole economy	144	125	85	71	…	41	39	39	35	35
Index of dispersion[g]	35	32	17	42	…	47	47	49	41	42
	1990/91		**1993/94**		**1995/96**		**1996/97**		**1997/98**	
Max. tariff rate[h]	355		85		50		52		45	
Av. weighted[i]	87		47		25		22		20	

… Not available.

a Prior to the reform package of July 1991. Includes auxiliary duty mostly at 45 per cent.
b The auxiliary duty was merged with the basic customs duty in the 1993/94 budget.
c Includes special rate of 2 per cent.
d Includes special rate of 5 per cent.
e Basic m.f.n. rate, i.e., the statutory rates without adjusting for the lower tariffs applied through exemption notifications.
f Effective m.f.n. rate, i.e., actual rates applied where basic rates have been reduced by exempt rates. However, many exempt rates cannot be incorporated such as where the exempt rate applies to only a part of the HS six-digit tariff line. The effective rate also excludes specific exemptions.
g Index of dispersion for the whole economy as measured by the coefficient of variation, percentage points.
h Higher than the so-called maximum rate is applied to a few items; in 1997/98, 0.4 per cent of tariff lines.
i Weighted by 1992/93 import values.

Note: Tariff averages consider only those tariff lines with *ad valorem* rates. Year beginning 1 April.
Classification used is based on the International Standard Industrial Classification (ISIC): Agriculture = ISIC 1, Mining = ISIC 2, Manufacturing = ISIC 3, including food processing.

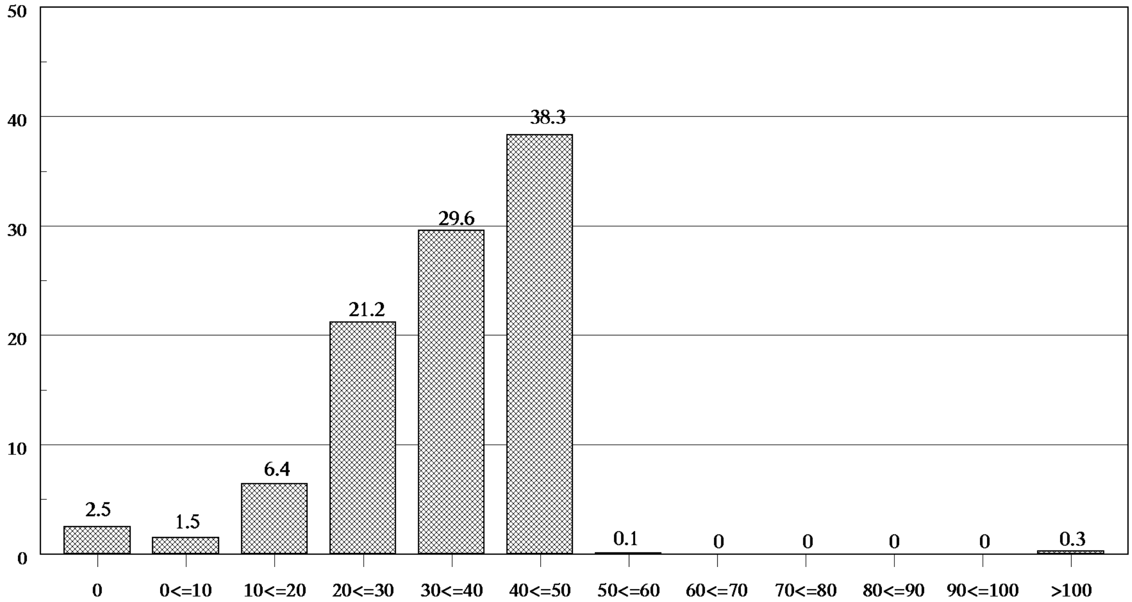
Source: WTO Secretariat calculations based on Academy of Business Studies (1997), Easy Reference Customs Tariff 1997/98; World Bank (1997a), India 1997 Economic Update: Sustaining Rapid Growth; and data provided by the World Bank.

21. The simple average effective tariff is substantially higher in manufacturing than for agriculture or mining. The average effective rate for imports of manufactured products is 36 per cent in 1997/98, down from 73 per cent in 1993/94, while the average tariff for agricultural imports is 26 per cent in 1997/98, compared with 43 per cent in 1993/94 (Table III.1). Effective tariffs at the HS two-digit level are provided in Table AIII.1. Under an ISIC-two digit classification, the tariff profile shows a peak of 44 per cent for non-metallic mineral products (ISIC-36); and imports of textile, wearing apparel and leather industries (ISIC-32) have an effective average rate of 42 per cent (Chart III.2).

[18] A rate higher than the stated maximum tariff is applied to a few products (23 tariff lines) including, *inter alia*, some alcohol products (tariff of 262 per cent); and dried grapes (127 per cent).

Chart III.1
Tariff structure by rates, 1997/98

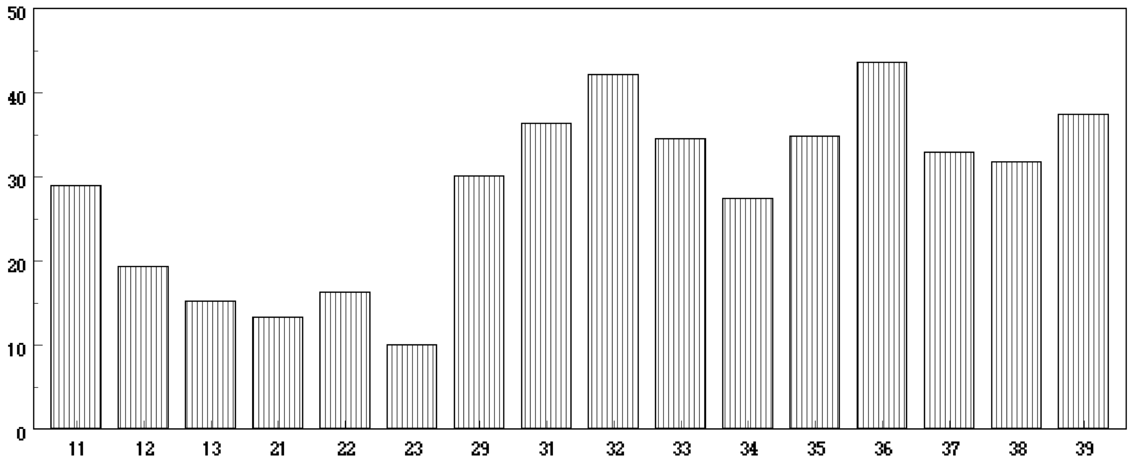
(Per cent; percentage share of tariff lines)



Source: WTO Secretariat.

Chart III.2
Tariff structure by sector, 1997/98

(Per cent)



ISIC-classification:

11 Agriculture and hunting
12 Forestry and logging
13 Fishing
21 Coal mining
22 Crude petroleum and natural gas
23 Metal ore mining
29 Other mining
31 Manufacture of food, beverages and tobacco
32 Textile, wearing apparel and leather industries
33 Wood and wood products
34 Paper and paper products
35 Chemicals, rubber and plastic
36 Non-metallic mineral products
37 Basic metal
38 Fabricated metal, machinery
39 Other products

Source: WTO Secretariat.

22. The Government is to continue tariff reform, with the stated aim of progressively reducing and harmonizing tariffs. Tariff levels on par with those of the ASEAN countries are envisaged by the turn of the century and at global levels by 2003.

(d) Tariff escalation

23. Throughout the 1990's, India's tariffs have been lower on unprocessed goods than on semi-processed or final goods, thereby maintaining higher levels of effective protection to the manufacturing sector than that reflected by the nominal rates (Table III.2). The simple average tariff on fully processed goods, a category covering 50 per cent of the tariff lines, is 37 per cent. Imports of semi-processed products face an average tariff of 35 per cent. Primary products, a category covering 12 per cent of the tariff lines, have the lowest rates of the three processing categories, with an average of 25 per cent. Significant tariff escalation is displayed in the following industries: paper and paper products, printing and publishing; wood and wood products; and food, beverages and tobacco (Chart III.3).

Table III.2
Tariff by processing stage, 1990-98
(Per cent)

	1990/91[a]		**1993/94[b]**		**1995/96**		**1996/97[c]**		**1997/98[d]**	
	Basic[e]	**Effe.[f]**	**Basic[e]**	**Effe.[f]**	**Basic[e]**	**Effe.[f]**	**Basic[e]**	**Effe.[f]**	**Basic[e]**	**Effe.[f]**
Av. unweighted by stage of processing										
Unprocessed	128	107	83	50	…	27	27	25	26	25
Semi-processed	148	122	85	75	…	44	39	38	36	35
Processed	144	130	86	73	…	43	42	42	37	37

… Not available.

a Prior to the reform package of July 1991. Includes auxiliary duty mostly at 45 per cent.
b The auxiliary duty was merged with the basic customs duty in the 1993/94 budget.
c Includes special rate of 2 per cent.
d Includes special rate of 5 per cent.
e Basic m.f.n. rate, i.e., the statutory rates without adjusting for the lower tariffs applied through exemption notifications.
f Effective m.f.n. rate, i.e., actual rates applied where basic rates have been reduced by exempt rates. However, many exempt rates cannot be incorporated such as where the exempt rate applies to only a part of the HS six-digit tariff line. The effective rate also excludes specific exemptions.
g Measured by the coefficient of variation, percentage points.

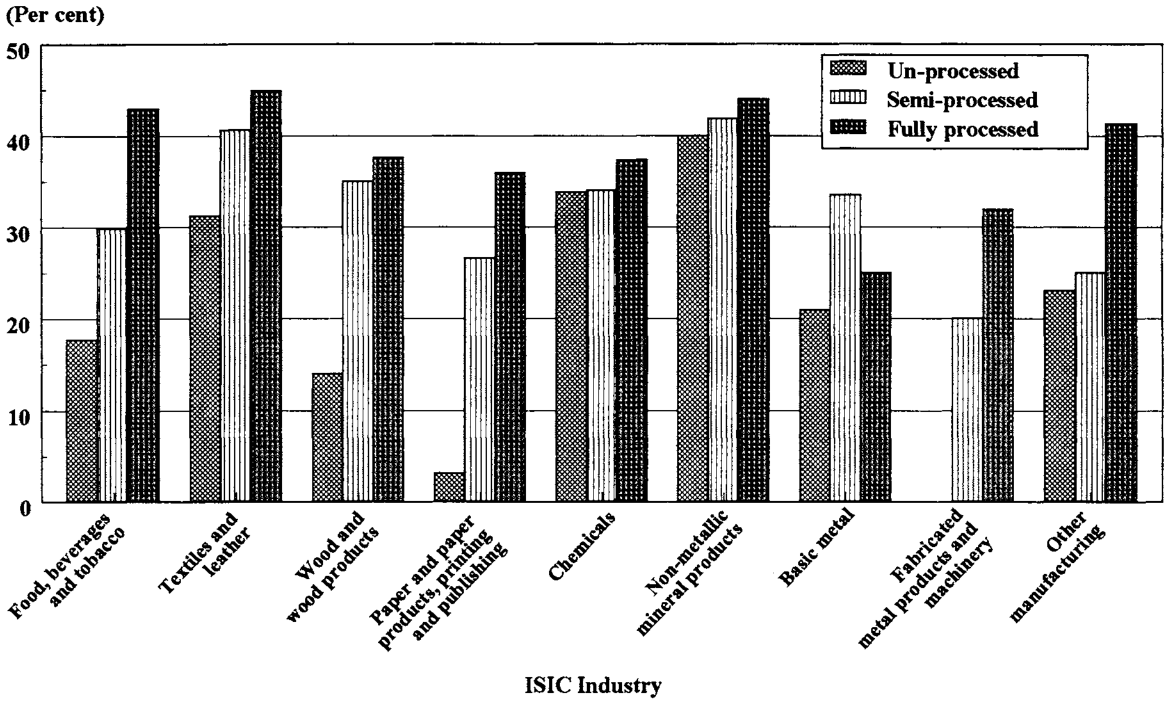
Note: Tariff averages consider only those tariff lines with *ad valorem* rates. Year beginning 1 April.

Source: WTO Secretariat.

24. A similar pattern is found by the World Bank where products are divided into consumer, intermediate and capital products.[19] The import-weighted tariff for capital goods has been higher than for the import-weighted tariff for intermediate goods throughout the 1990s (Table III.3).

[19]World Bank (1997a).

Chart III.3
Tariff escalation by 2-digit ISIC industry, 1997/98



Source: WTO Secretariat.

Table III.3
Tariff by products, average import-weighted rates, 1990/91-1997/98
(Per cent)

	1990/91	1992/93	1993/94	1994/95	1995/96	1996/97	1997/98
Consumer goods	153	131	86	48	36	33	25
Intermediate goods	77	55	42	31	22	19	18
Capital goods	97	74	50	37	29	29	24

Note: Year beginning 1 April.

Source: World Bank (1997a), India 1997 Economic Update: Sustaining Rapid Growth, Annex Table 10.

(e) Tariff concessions (exemptions and waivers)

25. The continued use of exemptions (although these have been scaled down and incorporated into the "effective" tariff) complicates the tariff structure and makes it very difficult to evaluate the full impact of the tariff reform. Moreover, the complex system may lead to unintended and undesirable effects on resource allocation.

26. Concessional duty schemes are basically of two types: (i) those targeting exporters; and (ii) those providing exemptions for a commodity used for a specific purpose (i.e. end-use provision), thereby exempting only a portion of the tariff line. Schemes under the former category include the Duty Drawback scheme, which compensates exporters for customs tariffs on their imported inputs after the exports have been undertaken; the Duty Exemption scheme (advance licence), which offers duty exemptions on inputs prior to importing; and the Export Promotion Capital Goods (EPCG) scheme, which provides exporters with access to foreign capital goods at reduced rates. Schemes for specific producers (i.e. exporters of diamonds, gems, jewellery, and software) also exist. Performance requirements are linked to export obligations, net foreign exchange earnings and/or value added to be fulfilled under a prescribed time period; no phase-out plan for the requirements has been announced. The salient features of the concessional duty schemes are provided in Table III.4 and the end-use provisions are presented in Table AIII.2. Data are not available on the amount of forgone revenue attributed to these exemptions.

Table III.4
Key features of the concessional entry schemes in India

Scheme	Eligibility	Incentives	Performance requirement
1. End-use tariff schemes:	A wide range of specified end-uses (Table AIII.3)	Concessional duty range from 0 to 42 per cent on imports	None
2. Export promotion capital goods (EPCG) scheme:	Manufacturer-exporters, merchant-exporters tied to supporting manufacturer(s) and service providers	10 per cent duty on capital good (new or second hand)	Export obligation of four times c.i.f. value of imports under a period of five years
	As above	0 per cent duty on capital good (new or second hand) if value is Rs 200 million or more	Export obligation of six times c.i.f. value of imports or NFE of five times c.i.f. value of imports under a period of eight years
	Agriculture exporters and allied sectors[a]	0 per cent duty on capital good (new or second hand) if c.i.f. value is Rs 50 million or more	Export obligation of six times c.i.f. value of imports or NFE of five times c.i.f. value of imports under a period of six years
3.a Duty drawback scheme:	Any exporter	Based on industry-average drawback rates, refund of customs duty paid on imported inputs used in manufactured specified exports	
3.b Brand rate fixation scheme:	Manufacturer-exporter	Extends drawback rates for individual exporters on particlur brands	
4. Duty exemption scheme (DES):			
(1) advance licence	Merchant-exporter or manufacturer-exporter	0 per cent duty on inputs for production of export; import is allowed in accordance with standard input-output norms	Export obligation varies and value addition of 33 per cent under a period of 1½ years
(2) advance intermediate licence	Manufacturer and supply of inputs to another manufacturer-exporter holding the advance licence mentioned above	As above	As above

Table III.4 (cont'd)

Scheme	Eligibility	Incentives	Performance requirement
(3) special imprest licence	Manufacturer-exporter of inputs required in the manufacture of goods to be supplied in the following categories: (a) deemed exporters (see below) in category (2), (3) in case of duty free licence, (4), (5), and (6) (b) sub-contractors to deemed exporters (see below) in category (4), (5), and (6)	As above	Export obligation varies and value addition of 33 per cent under the period of the execution of the project
(4) duty entitlement passbook scheme	Manufacturer-exporter and merchant-exporter, and in the case of pre-export basis with the supporting manufacturer having export performance in the preceding three licensing years	On pre-export basis: duty credits, which will allow imports of inputs duty free, of 5 per cent of average f.o.b. exports performance of the preceding three licensing years; on post-exports basis: 0 per cent duty on inputs	On pre-export basis: export obligation to be offset by making exports under a period of one year; on post-export basis: not applicable
5. Deemed exporters scheme (DES): (refers to transactions in which the goods supplied do not leave the country)	Goods to be supplied to the following categories: (1) Holder of duty free licences under the DES (2) Export oriented units, export processing zones, software technology parks or electronic hardware technology parks (3) Holders of licences under the EPCG scheme (4) Projects financed by multilateral or bilateral agencies (5) Supply of capital fertilizer plants including spares up to (10 per cent of f.o.r. value) (6) Any project approved by the Ministry of Finance (7) Approved projects in the power, oil and gas sector	Entitled to the benefits extended under the special imprest licence, the advance intermediate licence, and the DDS (see above)	Supply of goods to eligible categories
6. Diamond, gem and jewellery export promotion schemes:			
(1) replenishment licence	Specific exporters of gems and jewellery	Allows imports of selected restricted items of imports	On post-export basis
(2) diamond imprest licence	Importer of rough diamonds	As above	Export obligation of 65 per cent of replenishment[b] under a period of five months
(3) DTC imprest licence	As above	As above	As above
(4) bulk licence for rough diamonds	M/s. Hindustan Company Ltd, Mumbai; MMTC Ltd, New Delhi; and exporters whose annual average f.o.b. value of exported cut and polished diamonds during the preceding three licensing years has not been less than Rs 750 million	As above	Supply min. 90 per cent of diamond production to holder of replenishment licence and diamond imprest licence, and EOU and EPZ units.

Table III.4 (cont'd)

Scheme	Eligibility	Incentives	Performance requirement
(5) schemes for gold, silver, platinum jewellery	Exporters of gold, silver, platinum jewellery	As above[c]	Export obligation period of a maximum of 150 days and value addition between 10 and 25 per cent[d]
7. Export oriented units (EOUs):	Units exporting entire production[e] in the following areas: manufacture, production of software, agriculture and allied sectors[a], and services	0 per cent duty[f]	Varying NFE (0 to 60 per cent) and varying export obligation
8. Export processing zones (EPZs):	As above	As above	As above
9. Export Houses, Trading Houses, Star Trading Houses, Super Star Trading Houses:	As above	Special Import License	Varying export obligation
10. Software technology parks:	Software units exporting entire production	0 per cent duty[f]	Varying NFE (0 to 60 per cent) and export obligation of 1½ times the c.i.f. value of import plus 1½ of the wage bill
11. Electronic hardware technology parks (EHTP):	As above	As above	No NFE requirement and varying export obligation

a Allied sectors are aquaculture, animal husbandry, floriculture, horticulture, pisciculture, viticulture, poultry, and sericulture.
b I.e. if the licence is fixed for a c.i.f. value of US$65, the f.o.b. value of export obligation shall be US$100.
c A quantity based advance licence may be grated for duty-free import of a certain quality of gold, silver, platinum, mountings, sockets and frames.
d 10 per cent for plan and platinum jewellery and articles thereof; 15 per cent for studded gold/platinum jewellery and articles thereof; and 25 per cent for silver jewellery and articles thereof.
e Rejects up to 5 per cent of the value of production may be sold in the Domestic Tariff Area (DTA); 25 per cent of the production may be sold in the DTA subject to payment of applicable duties; EOU and EPZ units in agriculture and allied sectors may sell up to 50 per cent of the production in the DTA subject to positive NFE; up to 40 per cent of the electronic hardware production may be sold in the DTA subject to a NFE of more than 25 per cent; EOU and EPZ units may sell in the DTA against payment of full duties; electronic hardware units in EOU, EPZ and EHTP may alternatively sell 50 per cent of production in DTA without any minimum NFE stipulation, on payment of applicable duties.
f Import of basmati paddy and brown rice is prohibited.

Note: NFE = Net foreign exchange earnings; f.o.r. = free-on-rail; c.i.f. = customs insurance freight; and f.o.b. = free-on-board.

Source: WTO Secretariat based on Government of India (1997d), Export Import Policy 1997/98-2001/02.

27. Since India's last Review, the benefits (expressed as percentage reduction from the basic rate) provided under the concessional schemes appear to have been enhanced. For example, the concessional rate provided under the EPCG scheme, which enables exporters to import capital machinery at a concessional rate subject to their undertaking an export obligation, has been lowered from 15 to 10 per cent (at a time when, according to the authorities, basic duties on capital goods have fallen from 40 to 25 per cent). A 0 per cent duty, subject to a higher export obligation, has also been introduced. Moreover, the coverage has been extended to merchant exporters and service providers. Under the Deemed Exporters scheme the sectors covered have been widened (notably to include the oil and gas sectors). The number of schemes, by broad categories, has been reduced from 16 in 1993/94 to 11, counting the end-use tariff schemes as one.[20] The number of sub-schemes within the end-use tariff

[20]Since 1993/94, by broad categories, the Software Technology Parks scheme and the Electronic Hardware Technology Parks schemes have been introduced, while the following schemes have been eliminated: (i) Natural Rubber scheme; (ii) International Price Reimbursement scheme (on iron and steel inputs); (iii) Deep Sea Fisherman (continued…)

schemes continues to be substantial; as of 1 April 1997, 83 concessional rates were offered for different end-users.[21]

28. As shown in Table III.4, manufacturer-exporters benefit most from the concessional schemes. However, data are not available on the extent to which individual industries benefit from the different concessional schemes.

(f) Tariff bindings

29. Prior to the Uruguay Round negotiations, India had bound some 6 per cent of its tariff lines. As a result of the Uruguay Round, India has bound about 67 per cent of its tariff lines, with all agricultural lines bound and some 62 per cent of lines for imports of industrial goods. Lines remaining unbound include those on consumer products and some industrial items. For non-agricultural goods India undertook, with a few exceptions, ceiling bindings of 40 per cent *ad valorem* on finished goods and 25 per cent on intermediate goods, machinery and equipment. The phased reduction to these bound levels from the very high level prevailing in 1990, is, where necessary, in instalments over the period March 1995 to the year 2005. In textiles, where reductions will be achieved over ten years, India has reserved the right to revert to duty levels prevailing in 1990, if the integration process envisaged under the Agreement on Textile and Clothing does not materialize in full or is delayed. Finally, in agriculture, where, except for a few goods, India's bound rates range from 100 to 300 per cent, India is in the process of renegotiating some of its tariff bindings.

30. Although these bindings play an important role in signalling to the business community an upper limit for possible tariff increases, many applied tariffs are below the Uruguay Round bound levels. The simple average bound tariff (pre-Uruguay and Uruguay Round) is 54 per cent, compared with a 35 per cent simple average tariff as of October 1997: in agriculture, the average bound rate is 94 per cent compared with a 26 per cent simple average applied rate; in mining the rates are 36 and 25 per cent, respectively; and in manufacturing the bound average of 52 per cent compares to the applied average of 36 per cent (Tables III.5 and AIII.1). The bound rates, by stage of processing, do not show tariff escalation.

31. India is a participant in the Information Technology Agreement, covering computers, telecommunications equipment, semiconductors, semiconductor manufacturing equipment, software, and scientific instruments. Its offer included zero rates on 217 items at the HS six-digit level by the year 2005; the reduction to zero duties will apply to 95 tariff lines by year 2000 and reductions to zero on 116 tariff lines is left for the final year. India's Schedule, submitted on 1 April 1997, is effective.

[20](…continued)
scheme; (iv) Pharmaceutical Exporters scheme; (v) Garment Exporters scheme; (vi) Electronic Exporters scheme; and (vii) Technology Upgradation Scheme. In the 1997/98 budget the value-based advance licensing scheme (VBAL) and the passbook scheme were replaced by the duty entitlement passbook scheme, both being sub-schemes of the Duty Exemption Scheme.

[21]In the Customs Tariff 1997/98, the end-use concessions are summarized in notification No. 011/01.03.97.

Table III.5
Bound tariff rates and effective rates of duty

	Bound rate of duty[a] by year 2005	Effective rate of duty[b] 1997/98
Average unweighed tariff (per cent)		
Agriculture (ISIC 1)	94 (33)	26 (16)
Mining (ISIC 2)	36 (9)	25 (13)
Manufacturing (ISIC 3, includes food processing)	52 (41)	36 (10)
Whole economy	54 (42)	35 (15)
Average unweighed tariff by stage of processing (per cent)		
Unprocessed	74 (40)	25 (16)
Semi-processed	44 (23)	35 (9)
Processed	56 (51)	37 (17)

a Includes only items bound during the Uruguay Round. The bound rates do not include the commitments under the Information Technology Agreement.
b Effective m.f.n. rate, i.e., actual rates applied where basic rates have been reduced by exempt rates. However, many exempt rates can not be incorporated such as where the exempt rate applies to only a part of the HS six-digit tariff line. The effective rate also excludes specific exemptions.

Note: Standard deviation is provided in parentheses. Tariff averages consider only those tariff lines with *ad valorem* rates. Year beginning 1 April.

Source: WTO Secretariat.

(g) Seasonal tariffs

32. According to authorities, India has no seasonal tariffs.

(h) Tariff quotas

33. According to authorities, there are no tariff quotas operating in India.

(i) Plurilateral and bilateral tariff preferences

34. India receives and grants tariff preferences under (i) the Bangkok Agreement, (ii) the South Asian Preferential Trading Arrangement (SAPTA), and (iii) the Global System of Trade Preferences (GSTP). The preferential margins vary substantially among the products covered, but are the same for all participants, except for the least developed countries which generally receive larger margins of tariff preferences (Table III.6). The relevant rules of origin are based on value-added criteria (section (j)).

Table III.6
Plurilateral preferential trading agreements

Agreement	Participants	Coverage by India	Selected products	Preferential margin
Bangkok Agreement	Bangladesh, India, Papua New Guinea, Republic of Korea, Sri Lanka (Indonesia, Malaysia, Nepal, Philippines and Thailand as observers)	67 items and 13 additional items for least developed countries	Fish, dessicated coconut, cloves, nutmeg, mace, glycerine, molasses, cocoa beans, natural graphite, fluorspar, carbon, glycerol, some edible oil, papian pure, activated carbon, some acids, some rubber products, some paper products, transformers, induction furnaces, tubes, parts of railway or rolling stock, toys. Items for least developed countries include dried fish, leather products, wood and paper products, hand-woven sarees, and carpets.	13 per cent to 30 per cent of m.f.n. tariffs
South Asian Preferential Trading Arrangement (SAPTA)	Bangladesh, Bhutan, India, Maldives, Nepal, Pakistan, Sri Lanka	437 items and 571 additional items for least-developed countries	Leguminous vegetables, pistachios, figs, oranges, grapes, apricots, cloves, nutmeg, mace, coconut milk powder, some seeds, lac, gums, some chocolate products, some pastry products, natural graphite, titanus ores and concentrates, coal tar, some petroleum products, some chemical products, some rubber products, whole bovine skin leather, some wood products, printed books, cotton (not carded or combed), marble, travertine, alabaster, some refractory ceramic construction products, nuts, electro-magnetic lifting heads, ceramic multilayer dielectric, electrodes brushes, part of motor vehicles, pencil leads. Items for least developed countries include fish, unworked red coral and cowrie shells, musk, pineapple, fresh jack fruit, some glycerol products, some sugar products, mineral and aerated waters, naphthalene, some medicaments, some fertilizers, some paints and varnishes, make-up for the care of skin and hair, preparations for oral and dental hygiene, soap for toilet use, tubes/pipes/hoses/artificial guts of plastic, some woods products, newsprint, printed books and brochures, some woven fabrics, some suits/jackets and trousers, some bed/table/toilet/and kitchen linen, some footwear, artificial flowers, some household articles, some boilers, some hydraulic turbines, some pumps for liquids, vacuum pumps, some furnace burners, some laboratory equipment, centrifuges, some hoists, some machinery and equipment, prepared unrecorded media, electrical capacitors, electrical resistors, some semiconductor devices, graphite or carbon articles of a kind used for electrical proposes, electrical insulators, gramophone records, copper waste and scrap, some toys	10 per cent to 90 per cent of m.f.n. tariffs; up to 100 per cent for least-developed countries
Global System of Trade Preferences (GSTP)	41 developing countries (Colombo, Myanmar and Venezuela negotiating membership)	31 items	Copra, seed lac, gum arabic, gum damar, molasses, sand, cement, antimony ore, phosphoric acid, gelatin, calf leather, sheets of cork, cotton yarn, abaca fibre, bricks, aluminium products, shovels	10 per cent to 30 per cent of m.f.n. tariffs; up to 50 per cent for least developed countries

Note: See Table III.8 for relevant rules of origin.

Source: WTO (1995b), Trade Policy Review - Sri Lanka; and Academy of Business Studies (1997), Easy Reference Customs Tariff 1997/98.

35. Under the Bangkok Agreement India offers tariff preferences on 67 items at the HS six-digit level, including fish; cloves; cocoa beans; glycerol; some rubber and paper products; transformers; induction furnaces; and parts of railway or rolling stock. In addition, least developed members, including Bangladesh, receive further concessions on 13 items, such as some leather, wood and paper products. The preferential rates vary between 0 and 30 per cent, and are generally 5 percentage points below the normal rate. Under the SAPTA, India offers preferences on 437 items or product categories at the HS six-digit level to all member countries; the items include leguminous vegetables; oranges; grapes; some petroleum, chemical, rubber and wood products; alabaster; and parts of motor vehicles. The preferential rates vary between 0 to 90 per cent. There are additional concessions on 571 items at the HS six-digit level up to 100 per cent to the least developed countries (Bangladesh, Bhutan, Maldives and Nepal); these items include fish; pineapple; some fertilizers; some wood products; woven fabrics; some suits/jackets and trousers; and some footwear. Under the GSTP, India presently grants tariff preferences on 31 items at the HS six-digit level to all GSTP members at margins between 10 and 50 per cent. These items include sand; cement; calf leather; cotton yarn; bricks; and aluminium products. In addition preferences of up to 50 per cent on these items are given to least developed countries.[22] Bilateral negotiations have recently been held between GSTP participants. India has agreed to offer tariff preferences on 27 items at the HS six-digit level, subject to completion of necessary domestic procedures. The result of this round is to be endorsed at the next Ministerial meeting of GSTP participants.

36. The impact of these agreements on India's trade seems to have been minimal. India's merchandise imports from the Bangkok Agreement and SAPTA member countries accounted for some 2 per cent of total merchandise imports in 1995/96, with most from the Republic of South Korea. These countries accounted for 7 per cent of India's merchandise exports in 1995/96.[23]

37. In addition to the plurilateral agreements, India maintains several bilateral trade agreements and arrangements, extending a range of tariff preferences, including duty-free entry, to imports from: Bangladesh, Bhutan, Myanmar and Nepal (Table III.7). Commonwealth preferences of about 5 percentage points of m.f.n. tariffs continue to be extended to Mauritius, the Seychelles, and Tonga on around 19 items, including pepper, mace and ginger; sulpha drugs; some natural essential oils; pharmaceutical chemicals; and medicaments.

38. India receives tariff preferences under the Generalized System of Preferences (GSP) from Australia, Belarus, Canada, the European Union (EU), Hungary, Japan, New Zealand, Norway, Russian Federation, Slovak Republic, Sweden, Switzerland and the United States. Recent data are not available on the overall amount of India's exports receiving GSP treatment. The authorities are of the view that GSP treatment contributes to economic development.

[22] Academy of Business Studies (1997), Appendix A.

[23] UNSD, Comtrade database.

Table III.7
Bilateral preferential trading agreements

Country	Major exports covered	Major imports covered	Preferential rate
Bhutan	All goods of Indian origin.	All goods of Bhutanese origin.	0 per cent
Bangladesh	Nil	Handwoven Jamdani saris.	0 per cent
Nepal	Nil	All goods manufactured in Nepal[a]	0 per cent
Myanmar	Nil	A wide range of agricultural and manufacturing goods produced in Myanmar (see notifications 101/26.05.95; 77/28.09.96; 280/02.98.76 and 321/02.08.76).	Concessional tariffs range between 0 per cent and 85 per cent, but mostly between 45 per cent and 65 per cent

a The Agreement provides for access to the Indian market free of basic duty and quantative restrictions, excluding seven goods (alcoholic liquors/beverages and their concentrates except industrial spirits, cigarettes, perfumes, tobacco, and cosmetics with non-Nepalese/non Indian brand names.

Note: These countries also receive and grant preferences under the plurilateral agreements described in Table III.6.

Source: Academy of Business Studies (1997), Easy Reference Customs Tariff 1997/98, Appendix A and Government of India (1996o), Ministry of Commerce Annual Report 1995/95.

(j) Rules of origin

39. India, like most countries, does not apply rules of origin to imports from m.f.n. sources. However, within the framework of several preferential trade agreements, India applies rules of origin, based on value-added criteria (Table III.8). Under India's regional trade agreements - the Bangkok Agreement, the SAPTA and the GSTP - a minimum local value-added requirement of 50 per cent in the exporting country is generally applied. A somewhat lower origin requirement is applied to the least developed countries under the Bangkok Agreement and SAPTA, while the SAPTA and the GSTP require higher local value added if several members are involved in the production process. Less strict rules apply to imports from the declared "preferential tariff areas" of Mauritius, the Seychelles, and Tonga.[24] No rules of origin apply to the bilateral preferential trade arrangements with Bhutan, Myanmar and Nepal.

Table III.8
Rules of origin

Agreement/Area	Rules of origin[a]
Bangkok Agreement	minimum 50 per cent value added in general; 40 per cent for the least developing countries
South Asian Preferential Trading Arrangement (SAPTA)	minimum 50 per cent of value added if a product originates from a single member State; 40 per cent for the least developing countries; 60 per cent if several members are involved
Global System of Preferences (GSTP)	as above
"Preferential Tariff Areas" (Mauritius, Seychelles, and Tonga)	minimum 25 per cent value added in general; min 50 per cent for a few products[b]

a The Bangkok Agreement and the Commonwealth Preferences stipulate a minimum local content in the exporting member country as a certain percentage of the imported product's factory cost of manufactures, while the GSTP and the SAPTA stipulate the same requirement as a percentage of the products's f.o.b. value added in the exporting country.
b Sewing and knitting machines, cycles, motor cars, omnibuses, vans, lorries, motor cycles, and motor scooters.

Note: See Table III.6 for participants of the Agreements.

Source: WTO Secretariat based on information provided by the Indian authorities.

[24] Customs Tariff (Determination of Origin of Other Preferential Areas) Rules, 1977.

(iv) Variable import levies

40. India does not apply variable import levies or similar measures.

(v) Other levies and charges

41. Since the Review of India in 1993, it has taken steps to broaden the tax base and improve tax administration. The VAT-like MODVAT, which rebates taxes on inputs and was first introduced in 1986/87, has been extended to the textile sector, so that the system now covers almost all manufactured products. The MODVAT continues to contain a wide range of exemptions, with complex application, although, according to the authorities, substantial simplification has taken place and the scheme has become more transparent. Many exemptions on raw materials are tied to particular end-users, and/or are conditional on certain requirements, or are extended to producers and manufacturers located in special regions. The combination of a State sales-tax system and a lack of harmonization between Central and State taxes, further complicates the indirect tax system. The Central Government's goal is to put in place a four-rate excise tax structure by mid-1999, with a mean rate of 18 per cent, and to eliminating exemptions.[25]

42. The Constitution provides for indirect taxes to be levied both by the Centre and the States, with the Centre responsible for taxing production and the States responsible for taxing sales (including inter-state sales). The legal framework is laid out in the Central Excises and Salt Act, 1944 and other special Acts enacted from time to time. Excise duty and other indirect taxes levied by the Government are applied uniformly on both domestically produced and imported goods; imports, as noted above, being subject to "additional" duties equal to the excise taxes on similar domestically produced goods.

(a) Central Government levies and charges

43. *Excise duties*, which are the main form of indirect tax, are virtually all levied at *ad valorem* rates. The maximum rate of excise duty decreased from 105 per cent in 1990/91 to 60 per cent in 1993/94 and to 40 per cent in 1997/98. The present structure includes 12 rates, ranging from 3 to 40 per cent. A number of headings, accounting for about 17 per cent of the 139 broad budget headings, are exempt from excise duty.[26] The share of excise duties in total revenue of the Central Government (excluding trade taxes) has increased from about 22 per cent in 1993/94 to 34 per cent in 1997/98 (Table III.9).

[25] Government of India (1997b).

[26] These commodities include: meat and edible offal; aquatic invertebrates; edible vegetables, roots and tubers; edible fruit and nuts, and peel of citrus fruit or melon; coffee; tea; spices; vegetable saps and extracts; vegetable plaiting materials; processed fixed vegetable oils; preparations of aquatic invertebrates and plants; wastes from the food industries; leather; manufactures of furskins and artificial fur; manufactures of plaiting material basketware and wicker work; silk; knitted or crocheted fabrics; articles of apparel and clothing accessories; umbrellas, walking sticks, seat sticks etc; artificial flowers, articles of human hair; and musical instruments.

Table III.9
Indirect tax structure of the Central Government excluding taxes on international trade, 1993/94 and 1997/98
(Per cent of Central government revenue)

	1993/94	1997/98[a]
Total excise taxes, Central Government	21.8	34.2
Basic excise[b]	18.1	29.5
Additional duties on textile and textile articles	0.4	0.4
Additional duties on other goods[b]	0.0	2.2
Cesses on commodities	3.2	2.0
Service tax[c]	0.0	0.8
Other taxes	0.0	0.6
Foreign travel tax	0.0	0.2
Inland air travel tax	0.0	0.4

a Budgeted numbers.
b Article 272 of the Constitution provides for sharing a part of the net proceeds of the Union Excise Duties. The data above has been adjusted accordingly and shows the Central Government's net revenue.
c Includes sales tax on telephone, insurance, brokerage, and since November 1996 advertising, courier, and radio paging services.

Source: Government of India (1997b), Budget 1997/98.

44. The Additional Duties of Excise (Goods of Special Importance) Act, 1957 provides for additional duties, which are in lieu of sales tax. Additional excise duties are imposed on sugar, tobacco, silk, woollen fabrics and man-made fabrics (equivalent to 13 broad budget headings). The rates on sugar range from Rs 21 to 37 per quintal, and on tobacco from 10 to 75 per cent and specific rates from Rs 1.4 to Rs 352 per 1,000 cigarettes. Textiles, especially synthetic and cotton yarns, have been subject to separate legislation since 1978; the present rate is 15 per cent of the excise levied under the Central Excise Act, 1994.

45. Other duties levied by the Central Government include:

- *cesses* administered by the Department of Revenue and collected on a few selected items[27];

- *service tax* at 5 per cent levied on a wide range of services[28];

- *foreign travel tax*, introduced through the Finance Act, 1971, provides for a tax at the rate of Rs 500 (since January 1998, previously Rs 750) for each passenger undertaking an international journey, and Rs 150 for journeys to neighbouring countries. One third of the revenue made, less refunds, is paid to the carriers as collection charges[29]; and

- *inland air travel tax* (introduced through the Finance Act, 1971) provides for a tax of 15 per cent of the total fare and is payable by passengers on domestic air trips, except

[27]Cess is levied on handloom fabric, sugar, tea, biris, paper, jute manufactures, automobiles, indigenous crude oil, cotton, vegetable oil, and television sets.

[28]Telephone, insurance, brokerage, advertising, courier, and radio paging services, consulting engineers, customs house agents, air travel agents, clearing and forwarding agents, outdoor caters, pandal contractors and mandap keepers, man-power recruitment agencies/consultants, and tour operators including car rentals.

[29]Government of India (1997b).

to certain exempted areas and for tickets paid for in U.S. dollars. Five per cent of the revenue reverts to the carriers as a collection charge.[30]

(b) State Government levies and charges

46. The States are responsible for sales tax. The States levy two different types of sales tax: the general sales tax (GST) and the central sales tax (CST). The GST is generally applied at the manufacturer level on a wide range of goods and at rates between 4 and 25 per cent; luxury goods attract the higher rates while mass consumer items are taxed at lower rates or are exempt. The CST is a 4 per cent inter-state trade tax with the revenue collected by the State providing the good. Exports of goods and services are exempt from sales tax.

47. Some States also levy a *turnover tax* of around 1 per cent on all business with a turnover exceeding a certain limit. Recently, some States have increased their reliance on the turnover tax as a substitute for the sales tax.

48. Other duties levied by the States include:

- *octroi*, an *ad valorem* levy ranging from 1 to 3 per cent, imposed by the local authorities upon entry of goods into the municipality. Some States have abolished the octroi, while others (Karnataka and Madhya Pradesh) have replaced the octroi with an entry tax imposed only on goods brought into the municipality for sale;

- *stamp duties and registration fees*, in some States as high as 12.5 per cent, imposed on the transfer of property;

- *interest tax* levied on banking and financial service companies; and

- *state excise duty* imposed by some States on the manufacture of liquor.

(vi) Minimum import prices

49. The Customs Act, 1962, Section 14 permits the Government to set minimum import prices for customs valuation purposes, taking into account price trends of similar goods. Such prices must be notified in the Official Gazette. According to the authorities, minimum import prices have not been used since 1979.

(vii) Import prohibitions, licensing and state trading

(a) Legal and administrative basis

50. The Central Government has legislative authority to prohibit importation (and exportation) of any goods for a wide range of specified purposes. Section 11 of the Customs Act, 1962 states that the Central Government may prohibit trade in any goods by official notification for, *inter alia*, the following purposes: security; maintaining standards of public morality and decency; conserving foreign exchange; avoiding product shortages; establishing any domestic industry; preventing serious injury to domestic production; as well as any purpose conducive to the interest of the general public. Powers

[30] Government of India (1997b).

to prohibit, regulate or restrict trade by official notification are also contained in section 3 of the Foreign Trade (Development and Regulation) Act, 1992. While the Foreign Trade (Regulation) Rules, 1993 specify the rules relating to import transactions covered by licences, the Foreign Trade (Exemption from Application of Rules in certain cases) Order, 1993 specifies the nature of import transactions not covered by licences. The Director General of Foreign Trade (DGFT) and its regional offices in India, are empowered to issue the import licence. All applications/requests for issue of licences are placed before a special licensing committee and licences are granted on the basis of approval by the said committee on merits of individual cases.

51. The Government's trade policy is formulated in the Export and Import Policy. The policy is normally announced for a five-year period, with a view to providing traders and investors with a stable medium-term policy framework. However, substantial annual changes take place. In March 1997, the Export and Import Policy for the period 1997/98 to 2001/02 was announced.

52. Import policy is effectively administered by a Negative List of Imports (Chapter 15 of the Export and Import Policy). All goods not covered by the Negative List are freely imported. Products on the Negative List of Imports are divided into three categories:[31]

- *prohibited items*, which may not be imported under any circumstances;
- *restricted items*, which require a specific import licence or a Public Notice for import; and
- *canalized items*, which can be imported by public sector undertakings.

(b) Import prohibitions and other controls

53. Prohibited items, contained in Part I of the Negative List of Imports relate to religious and cultural sensitivities, or to the fulfilment of international obligations such as CITES. As of 1 April 1997, the list of prohibited items contained, by broad categories, seven items (equivalent to 59 items at the HS eight-digit level)[32], with the sub-item on wild animals the only one added to the list since India's previous Review (Table III.10).

54. India maintains an embargo on trade with Iraq, based on U.N. Security Council resolutions, and with Fiji, with which India has no diplomatic relations.

55. The current licensing system restricts, or in some cases, prohibits imports.

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[31]Capital goods, raw materials, intermediates, components, consumables, spares, parts, accessories, instruments and other goods, which are importable without restriction, may be imported by any person whether he is an actual user or not. However, imports requiring a licence, may only be imported by the actual user unless the actual user condition is specifically waived by a licensing authority (Government of India, 1997d, Chapter V).

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

Table III.10
Import prohibitions, 1993 and 1997

Prohibited items, 1 April 1997		Status on 31 March 1993
Tallow, fat and/or oils, rendered, unrendered or otherwise, of any animal origin including the following:		Prohibited
(i)	Lard stearin, oleo stearin, tallow stearin, lard oil, oleo oil and tallow oil not emulsified or mixed or prepared in any way	Prohibited
(ii)	Neat's-foot oil and fats from bone or waste	Prohibited
(iii)	Poultry fats, rendered or solvent extracted	Prohibited
(iv)	Fats and oils of fish/marine origin, whether or not refined, excluding cod liver oil, squid liver oil or a mixture thereof and fish lipid oil containing eicospentaenoic acid and other decosahexaenoic acid	Prohibited
(v)	Margarine, imitation lard and other prepared edible fats of animal origin	Prohibited
(vi)	Animal rennet	Prohibited
(vii)	Wild animals including their parts and products and ivory	Only unmanufactured ivory prohibited

Source: GATT (1993), Trade Policy Review - India, and Government of India (1997d), Export Import Policy 1997/98-2001/02, Negative List of Imports, Part I.

(c) Restricted items and import licensing

56. Restricted items, contained in Part II of the Negative List of Imports, of the Export and Import Policy 1997/98-2001/02, may only be imported against a licence or in accordance with a Public Notice issued for this purpose, except in the case of ships, trawlers and boats, aircraft and helicopters, automobiles and newsprint for which no licence is required but imports are subject to published conditions[33], and for second-hand capital goods, with a minimum residual life of five years, which can be imported without a licence by the actual user.[34] The restrictions are, according to the authorities, for balance-of-payments reasons as well as on grounds of safety, security and environment.

57. Almost all consumer goods are restricted, and their importation is permitted only with a licence. Other restricted goods requiring a licence include:

- specified precious, semi-precious and other stones;
- safety, security and related items;
- seeds, plants and animals;
- insecticides and pesticides;
- drugs and pharmaceuticals;
- items relating to the small-scale sector;
- miscellaneous items; and
- special items required by hotels and restaurants, the tourism industry and recreational bodies.

58. A more detailed list of the items is provided in Table AIII.3. The importation of the restricted goods is allowed selectively with a licence or in accordance with general schemes laid down in public notices.

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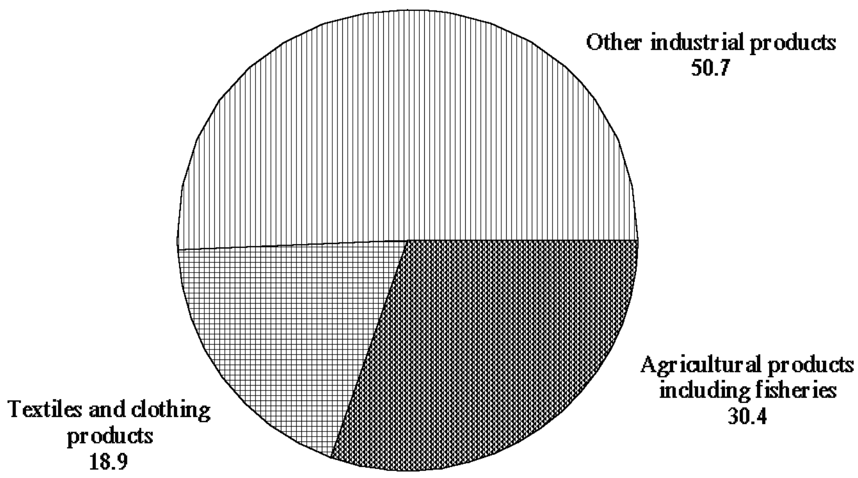
[33]WTO document G/LIC/N/3/IND/1, 23 January 1996.

[34]Government of India (1997d), Chapter V.

59. Although the number of tariff lines subject to licensing has decreased in recent years, the coverage is still extensive; as of 1 April 1997, approximately 32 per cent of total lines[35] were subject to licensing, compared with 37 per cent on 1 April 1996. The licensing requirement is concentrated on industrial products (Chart III.4).

Chart III.4
Licensing restrictions by products, 1 April 1997
(Per cent)



Note: Excludes prohibited items. Coverage at HS eight-digit level.

Source: WTO Secretariat estimates based on WTO document WT/BOP/N/24, 22 May 1997.

60. As of May 1995, the percentage of manufacturing value added protected by licensing was estimated to be about one third, compared to some 84 per cent in the agricultural and livestock sector.[36]

61. Since India's last Review in 1993, items removed from the licensing requirements include, *inter alia*, some consumer goods; certain electronic items; most drugs and pharmaceuticals; newsprint; diesel generating sets up to 1,500 KVA; electronic portables up to 3.5 KVA; and certain restricted items related to the small-scale sector. Items that have been made subject to licensing requirement since 1993 include some chlorofluorohydrocarbons (CFCs); some drugs and pharmaceutical items; batteries and sodium metal (Table III.11).

[35]WTO calculations based on WTO document WT/BOP/N/24, 22 May 1997.

[36]Pursell (1996).

Table III.11
Changes in items subject to import licensing since 31 March 1993

Items removed from licensing requirement	Items made subject to licensing requirement
Consumer goods: - chewingum - pineapples - nuts (prepared or preserved) - pineapple juice - tomato juice - grapejuice - instant coffee including decaffeinated - soya sauce - tomato ketchup and other tomato sauce - food flavouring material - all types of cameras and their parts Electronic items: - V set terminals - walkie-talkie sets - radio paging systems - cellular phone - video tapes and disc of educational nature - audio cassette of educational nature Drugs and pharmaceutical: - all types of drugs and pharmaceuticals items except seven items as mentioned in the Negative List of Imports of Chapter XV of EXIM Policy Items relating to small scale sector: - flavouring essences like gasmin concrete in bulk from cassia oil in bulk form - agar oil - spices oil - hair dyes (natural herbal or synthetic etc.) Miscellaneous items: - items like polyester staple fibre/tow - diesel generating sets upto 1.500 KVA - electric portable upto 3.5 KVA - different varieties of paintings - drawings and pastels - tailors dummies - vacuum flask - other vacuum vessels - cigarette lighters - ink pads Special categories: - newsprint with AU condition for newspaper industry	Safety, security and related items: - some Chloro Fluro Hydro Carbons Drugs and pharmaceuticals: - poly brominated biphenyls - poly cholinated biphenyls - tris (2,3 di-bromopropyl) phosphate - crocidolit - hazardous wastes - hazardous chemicals Miscellaneous items: - batteries and tyres of passenger automobile vehicles including two wheelers, three wheelers and personal type vehicles - Sodium metal

Source: GATT (1993), Trade Policy Review - India and Government of India (1997d), Export Import Policy 1997/98-2001/02.

Special Import Licence

62. The importation of some restricted items (including certain consumer goods) has been liberalized by permitting their importation through freely transferable Special Import Licences (SILs). Aside from being used as a step towards liberalization, SILs are also designed to provide an incentive to exporters. SILs are granted to large established exporters; exporters of electronic goods, electronic and

telecommunications equipment, diamonds, gems, and jewellery; deemed exporters[37]; and manufacturers who have acquired prescribed quality certification, in proportion to their export or foreign exchange earnings (Table III.12).

Table III.12
Access to Special Import License (SIL)

Category		Amount of SIL
1.	Large established exporter[a]	- 6 per cent to 12 per cent of exports (free-on-board) or 7.5 per cent to 15 per cent of net foreign exchange earnings. - Additional SIL is granted along the following principals: (i) 2 per cent if exporter is registered as a small-scale industry, provided exports are 50 per cent higher than previous year; (ii) 1 per cent for exporter of fruit, vegetables, floriculture, and horticulture, provided exports are 10 per cent higher than previous year; (iii) 1 per cent if products are manufactured and exported from North Eastern States, provided exports are 10 per cent higher than previous year; and (iv) 1 per cent if exports to a specified list of countries[b].
2.	Deemed exporter[c]	6 per cent of exports (free on rail/road)
3.	Exporter of electronic, telecommunications equipment	15 per cent to 25 per cent of net foreign exchange earnings
4.	Manufactures of quality products[d]	5 per cent of exports (free-on-board)
5.	Other exporters with exports (free-on-board) of more than Rs 50 million in the preceding year or annual average of Rs 20 million during the three preceding years.[e]	4 per cent of exports (free-on-board)

a Exporters are classified in one of the categories Export Houses, Trading Houses, Star Trading Houses or Super-Star Trading Houses depending on the size of the exports (Rs 0.2 billion to Rs 15 billion), or net foreign exchange earner (Rs 0.16 billion to Rs 12 billion).
b 43 countries listed in Appendix 33, Handbook of Procedures, Vol. 1.
c Refers to transactions in which the goods, supplied to a prescribed list of producers (Chapter 10 of the Handbook of Procedures, Vol. 1), do not leave the country.
d Exporter holding ISO 9000(series) or IS/ISO 9000(series) of quality certification.
e Exports of diamonds, gems and jewellery are counted at 50 per cent of the export value.

Source: Government of India (1997d), Import Export Policy 1997/98-2001/02, Handbook of Procedures, Vol. 1, Chapter 10 (category 2), 11 (category 3 and 5), 12 (category 1), and 14 (category 4).

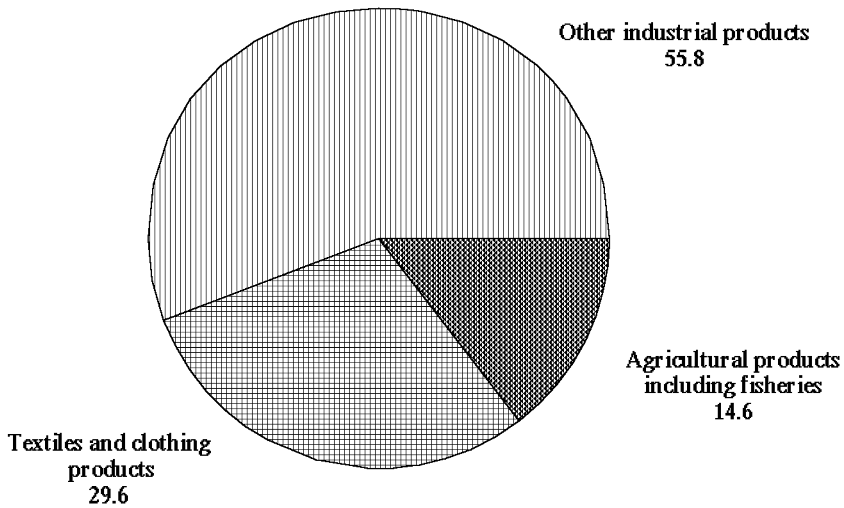
63. The coverage of SILs has gradually expanded since their introduction in 1992/93; tariff lines have typically being moved from the restricted list to the SIL list, and thereafter to the free list. As of 1 April 1997, roughly 10 per cent of total lines at the HS eight-digit level could be imported through an SIL, an increase of one third as compared to a year earlier.[38] The SILs are concentrated in industrial products (Chart III.5).[39]

[37]Deemed exporters refers to transactions in which the goods, supplied to a prescribed list of producers, do not leave the country.

[38]WTO calculations based on WTO document WT/BOP/N/24, 22 May 1997.

[39]See WTO document WTO/BOP/N/24, 22 May 1997 for a complete list of the restricted products, by HS-eight digit, that may be imported with a SIL.

Chart III.5
Coverage of Special Import Licences (SILs) by product, 1 April 1997
(Per cent)



Note: Coverage at HS eight-digit level.

Source: WTO Secretariat estimates based on WTO document WT/BOP/N/24, 22 May 1997.

(d) State-trading (canalization)

64. Canalization agencies are state-trading agencies with special import privileges (or exports privileges, section 3(v)). However, imports of canalized items by private agents may also be permitted against a licence granted by the Director General of Foreign Trade. Such imports, which are generally of a smaller quantity and may not be handled by the canalizing agency, are allowed to private individuals/firms against a No Objection Certificate (NOC) issued by the canalizing agency concerned. Data are not available on the amounts imported by private agents. According to the authorities, the main objectives of canalization policy are to obtain better terms of trade through bulk transactions and to realize economies of scale in trade operations.

65. The list of canalized items, by broad categories, has increased from seven to eight since 1993, as a result of the canalization of cloves, cinnamon and cassia in the 1997/98 Budget (Table III.13). Some sub-items have been de-canalized, such as kerosene, liquified petroleum gas, naphtha, and some fertilizers; others have been canalized, such as high-speed diesel. However, currently some of the canalized items, including cloves, cinnamon and cassia (equivalent to 47 items out of 176 items in total) are also under the SIL regime. Imports of canalized imports fell from 27 per cent of merchandise imports in 1988/89 to 19 per cent in 1996/97. Canalized imports have been dominated by petroleum products, accounting for about 78 per cent of total canalized imports in 1996/97, followed by edible oils (12 per cent).

Table III.13
Canalizing agencies and products (imports)

Products		Agency
1 April 1997	**31 March 1993**	**1 April 1997**
(1) Petroleum products, namely: (a) Aviation turbine fuel (b) Crude oil (c) Motor spirit (d) Bitumen (asphalt) - paving grade (e) Furnace oil (except low sulphur heavy stock, low sulphur waxy residue) (f) High speed diesel	(1) Petroleum products, namely: (a) Aviation turbine fuel (b) Crude oil (c) Kerosene (d) Liquified petroleum gas (LPG) (e) Motor spirit (f) Bitumen (asphalt) - paving grade (g) Naphtha (h) Furnace oil	Indian Oil Corporation Limited
(2) All types of nitrogenous, phosphatic, potassic fertilizers except DAP, MOP, MAP, SOP, NP and NPK fertilizers	(2) All types of nitrogenous, phosphatic, potassic and complex chemical fertilizers except DAP fertilizer	Minerals and Metals Trading Corporation of India Limited
(3) Coconut oil, RBD palm oil, and RBD palm stearin	(3) Oils (coconut oil, groundnut oil, safflower oil, palm oil (all types, including palmolein and other fractions), rapeseed oil, sunflower oil, soya bean oil, cotton seed oil)	State Trading Corporation of India Limited and Hindustan Vegetable Oils Corporation Limited
(4) Seeds (copra, groundnut, palm, rapeseed, safflower, soya bean, sunflower, cotton)	Same as in 1997	As above
(5) All other non-edible oils but excluding tung oil, China wood oil and natural essential oils, seeds or any other material from which oil can be extracted not specifically menioned above or elsewhere in the policy	(5) All other oils or seeds or any other material from which oil can be extracted (whether edible or non-edible) including vegetable fats not specifically mentioned above or elsewhere in this policy (but excluding tung oil/China wood oil and natural essential oils	As above
(6) Palm stearin, excluding crude palm stearin; palm kernal oil; and tallow amines of all types	Same as in 1997	State Trading Corporation of India Limited
(7) Cereals, excluding feed grade maize poultry or animal feed	Same as in 1997	Food Corporation of India
(8) Cloves, cinnamon and cassia	Not canalized	Spices Trading Corporation Limited and National Agricultural Cooperative Marketing Federation of India Limited

Source: GATT (1993), Trade Policy Review - India, and Government of India (1997d), Export Import Policy 1997/98-2001/02, Negative List of Imports, Part II.

66. The Government is guided by a number of factors in deciding on the appropriate level of canalized imports, including the balance of payments and domestic production and prices situation. In the case of fertilizers, crude oil, and petroleum products, availability of foreign exchange is the major consideration in deciding the quantity of imports. Import of cereals and edible oils is undertaken from time to time on the advice of the Government.[40] The authorities have also noted that, although canalizing agencies retain special and exclusive privileges regarding imports and exports, all public sector

[40] WTO document G/STR/N/IND, 31 January 1996.

undertakings, including canalizing agencies, are required to follow commercial principles in carrying out their operations.

(viii) Import quotas

67. India does not apply quantitative restrictions in the form of fixed quotas as part of its licensing system. However, the licensing system implicitly places ceilings on the products covered.

(ix) Import cartels

68. Import cartels that indulge in restrictive trade practices are prohibited under Indian law (Monopolies & Restrictive Trade Practices Act, 1969).

(x) Countertrade

69. Indian importers are not required to enter into agreements on countertrade. However, global tenders often include a clause providing preferences to companies willing to agree, *ceteris paribus*, to countertrade operations. The major state-owned companies that have engaged in countertrade are the Indian Minerals and Metals Trading Corporation (for imports of many fertilizers and exports of minerals) and the State Trading Corporation (for imports of certain agricultural goods). The MMTC and STC entered into countertrade contracts of about Rs 190 billion or 2 per cent of GDP in 1995/96; according to the authorities, MMTC and STC did not enter into any countertrade arrangements in 1996/97.

(xi) Standards and other technical regulations

70. The main objectives of India's standards and certification procedures are to ensure that products are safe, of high quality and conform to the relevant Indian standards. According to the authorities, the intent of policy to integrate India into the international economy, has resulted in a greater emphasis on bringing Indian standards up to international levels. There remains, nevertheless, strong sentiment that measures by industrialized countries to provide "special and differential treatment", to developing countries are not being adequately addressed. Most standards in India are voluntary although health and safety regulations are mandatory for several products. Progress has been made since the last Review of India in harmonizing Indian standards with those set by international bodies, such as the International Organization for Standardization (ISO), but there remain a number of non-transparencies in the system regarding the relationships between the various standard setting and enforcing bodies. Some policies may act against imports, such as distinctions made between imported and domestically produced bulk grains and compulsory product certification for some goods that may not be extended to imported goods. Enforcement of compulsory standards may also be a problem although steps are being taken to improve this.

(a) Standards, testing and certification

71. The Bureau of Indian Standards (BIS), established as a statutory body under the Bureau of Standards Act, 1986, replaced the Indian Standards Institution (ISI) set up in 1947 and is responsible for formulating and setting national standards. Its role includes the development of activities relating to standardization, certification of product and quality systems, testing and calibration, enforcement, international cooperation and the creation of awareness among consumers. Over the past decade an emphasis has been placed on harmonizing national standards with international and regional standards; thus international standards are often adopted as Indian standards under the numbering system of

ISO/IEC, or are harmonized with international standards in areas of India's trade interests. Nearly 3,500 Indian standards have been harmonized with ISO/IEC or EC standards so far. The BIS participates in technical and policy-making committees of the ISO[41], the International Electrotechnical Commission (IEC) and also has bilateral cooperation memoranda of understanding with the national standards bodies of China, Cuba, Germany, Israel, Mauritius, Russia and Turkey.

72. The BIS is headquartered in Delhi and has five regional and 19 branch offices. A national screening committee was also established in 1995 to determine priorities for subjects to be taken up for standards formulation, in keeping with changing industrial requirements. To improve, harmonize and promote standardization activities throughout India, state-level committees on standardization and quality systems were established in 23 States and Union Territories.

73. Almost 17,000 standards for some 1,400 items have been issued by the BIS since its formation in 1986, covering all sectors. BIS also issues certificates under a voluntary scheme for products, quality systems and environmentally friendly products. At present, around 12,700 certificates have been issued, covering 956 products. Although the scheme is voluntary, to ensure health and safety standards, the Government has made certification compulsory for 136 of these 956 products. Since the BIS does not issue certification for imported goods, it is not clear whether this constitutes a barrier to imported goods falling within the group of 136 products for which certification is mandatory.

74. In view of the importance of international trade in the present national policy, BIS activities to harmonize Indian standards with those of international organisations have been stepped up. The Quality System Certification Scheme (QSCS), which has been operational since 1991 and is accredited by the (Dutch) Raad voor Accreditatie (RVA), has seen the granting of 308 new licences under the IS/ISO 9000 series.[42] The rules, procedures and documentation practices of the QSCS are in line with the ISO/IEC Guide and with the European Standard EN 45012. India at present has no agreement to accept standard marks of other countries, although, according to the authorities, discussions are ongoing with Bhutan, Israel, Sri Lanka and South Africa.

75. Under the WTO Agreement on Technical Barriers to Trade, the Ministry of Commerce has nominated the BIS as the National Central Enquiry Point for information on Indian standards, technical regulations and certification in India and for notifications to the WTO on national standards and regulations.[43]

76. In order to implement its certification schemes, the BIS provides testing support through its central laboratory and seven regional laboratories. Some 28,000 samples are tested by these laboratories each year. In addition, the services of almost 100 national laboratories recognized by the BIS under the BIS Laboratory Recognition Scheme, are utilized for testing. The BIS also inspects export products on behalf of foreign laboratories including the Canadian Standards Association, Underwriters Laboratory, USA and the South African Bureau of Standards. There are presently 237 units operating for Underwriters Laboratory USA, 67 for the Canadian Standards Association and seven for the South African Bureau of Standards.

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[41]BIS is a founding member of the ISO, therefore taking an active role in promoting and harmonizing Indian with international standards.

[42]In order to clarify the relationship between Indian and international certification marks, the ISO 9000 series has been adopted as the IS/ISO 9000 series.

[43]WTO document G/TBT/Enq/1, 6 June 1995.

77. In an effort to improve compliance with standards the Bureau established a "Standing Committee on Enforcement" in 1994. The responsibilities of the Committee include the development of a strategy to deal with violations of quality control orders and also of the BIS Act, 1986. The Committee suggested the following: a review of existing statutory provisions in order to increase their effectiveness; education of concerned bodies in the Government and consumer organizations on the provisions of the BIS Act and other quality control orders; and encouragement of consumer organizations to actively participate in the enforcement of standards. The BIS has published an enforcement manual whose methods are to be uniformly applied across the country. An Enforcement Nodal Officer has been nominated at each BIS branch to coordinate these functions. In addition, BIS rules were amended to extend the powers of search and seizure available to inspecting officers under the Act.[44] Training exercises were held to increase awareness of the enforcement provisions of the Act for the relevant enforcement officers. Interaction between the BIS and State Governments was also increased through state level committees for standardization and quality control and workshops for state government officials.[45]

78. Although the BIS is the main standards setting and enforcement body in India, standards and certificates in specified sectors are also maintained and enforced by other bodies. For example, sanitary and phytosanitary measures are regulated by the Directorate of Marketing and Inspection in the Ministry of Agriculture, and the Ministries of Health and of Food Processing deal with standards and quality of processed foods. As standard setting by different ministries can lead to overlap and confusion, Sectoral Coordination Committees (SSCs) have been established for six sectors, namely food processing, power, steel, automotives, textiles, and information technology in order to develop harmonized standards at the national level.

79. Food safety and quality falls under the Prevention of Food Adulteration Act, 1954 as last amended in 1986. The Act, which is administered by the Ministry of Health but with State Governments responsible for licensing and quality control, aims to ensure high quality in food for consumers, to protect consumers from deception and to encourage fair trade practices. There are four Central and 81 State food laboratories, which carry out testing across the country, and food inspectors are appointed by the state and central government authorities for controlling quality. Penalties for offences relating to the Act can result in up to two years imprisonment along with a fine.[46]

80. Quality control of drugs is under the purview of the Drugs and Cosmetics Act, 1940, as amended in 1988. The Act and accompanying Rules are administered by the Ministry of Health and implemented by the State Governments; the Central Government formulates rules, updates the Indian pharmacopia and regulates the introduction of new drugs. Under the Drugs and Cosmetics Act and Rules, quality control is exercised through a licensing system for pharmaceutical products imported or produced and sold in India. The Act provides for inspection of premises on a regular basis and contains penal provisions for offences relating to the sale of adulterated, misbranded and spurious drugs. Standards, under the Act, are also maintained for alternative Indian medicines such as ayurveda, unani and siddha systems.

[44] A total number of 21 and 11 raids were carried out by the BIS and State Governments, respectively, during fiscal year 1994/95 under these search and seizure provisions (Bureau of Indian Standards, 1995).

[45] Bureau of Indian Standards (1995).

[46] These penalties may vary from State to State because of amendments made to Section 16 of the Act, which deals with penalties.

81. All imported drugs have to go through a process of quality testing before they are allowed into India. The Drugs and Cosmetics Rules stipulate that permission for the marketing of a new drug can only be granted once its safety, and efficacy for the conditions for which it is to be used, are ensured.[47] The Central Drugs Standard Control Organisation, headed by the Drugs Controller of India, is entrusted with controlling the quality of drugs imported into India, regulating standards in drugs and coordinating the activities of state and union territories drugs control authorities. Approval is generally given automatically for known importers and for known products.

(b) Labelling and packaging

82. In general, all products sold in India are required to carry a label indicating country or countries of origin. The authorities are in the process of ensuring that all products manufactured in India are marked with a "Made in India" label. Similarly, all imports into India must be marked with an indication of their origin. In addition, the Indian Government instituted an "Eco Mark" in 1991 to indicate "environmentally friendly" products, although, according to the authorities, it has yet to be successful. The Eco Mark is administered by the BIS for a number of products including packing material, cosmetics and toiletries, and electrical and electronic items.[48] The Government has also designated the BIS as the certifying body in India for environmental management systems (EMS) standards, or IS/ISO 14000. The scheme is expected to be launched shortly.

83. The Prevention of Food Adulteration Act, 1955 provides the legislative framework for food-packaging regulation in India. The Indian Institute of Packaging, established in 1966, is the primary agency for the promotion of better packaging standards and the dissemination of information on packaging. The Institute provides a number of services including testing, quality control, training, packaging development, feasibility studies and promotional programmes for improving packaging standards. It is recognized by the Directorate General of Shipping as the agency for testing hazardous cargo for U.N. certification. The Institute's laboratories are recognized by the BIS and approved as an R&D facility by the Department of Scientific and Industrial Research (DSIR) in the Ministry of Science and Technology. The Institute has also been entrusted with the establishment of a system of bar coding. EAN India, a member of EAN International in Brussels, has recently commenced operations to promote the use of bar coding in the country.

(xii) Government procurement

84. India's policies on government procurement are based on general principles laid down in the General Financial Rules of the Ministry of Finance. It is difficult to determine total procurement as it is undertaken both by the central purchasing agency, the Directorate General of Supplies and Disposals, and by a number of Ministries such as Railways, Public Works and Defence. The value of purchasing by the Directorate General of Supply has declined somewhat from around Rs 38.4 billion in 1993/84 to Rs 32.15 billion in 1996/97.

85. Although there is no separate Indian legislation for government procurement, rules for all government purchases are subject to guidelines established by the Department of Supply and must be consistent with the Government's General Financial Rules. The process of procurement is carried out by inviting tenders. A number of different possibilities exist in this respect; an open bid is globally

[47]This usually requires clinical trials in India before the new drug is permitted to be imported and marketed in the country (Gothoskar, 1983, pp. 223-228).

[48]Dun and Bradstreet (1996).

advertised and foreign and Indian firms responding to these tenders are given equal consideration. In some cases, limited tenders are issued to selected suppliers that are already known and registered with the issuing organization or Ministry.[49] In order for this list of suppliers to be selected, limited tenders are often preceded by an invitation for companies to register with the issuing organization, allowing quality and reliability to be judged. In granting procurement contracts, a price preference of 15 per cent is given to "indigenous equipment" suppliers, for example, in telecommunications.[50] In the shipping sector, price preferences of up to 30 per cent apply to Indian bidders on procurement contracts.

86. Depending on the nature and type of goods or equipment to be purchased, a two-bid system may be used, with technical and commercial bids submitted separately and in stages. Evaluations are first made on the basis of bids limited to the technical specifications, from which a shortlist of eligible suppliers is prepared. The companies on the shortlist are then asked to submit commercial specifications, for final consideration. The contract is usually granted within three months of submission. A single-bid system for products where "clear and detailed specifications" are available also exists. In this case, the bidders are required to submit their technical and commercial offers simultaneously for evaluation. To increase transparency in its bidding procedures, the Indian Government completed the development of standard bidding documents based on the World Bank's procurement guidelines, 1995/96, in July 1997. India has also adapted to Indian conditions, the World Bank's standard bidding document for the procurement of goods, works, supply and installation, and pharmaceuticals and vaccines, and has finalized national competitive bidding documents for use in World Bank funded projects in India. The India-specific standard bidding documents are expected also to be used in contract/procurement manuals for Government Ministers and Departments.

87. Although these are being phased out, a number of preferred sources exist for supplies of procurement. Policy places an emphasis on purchases being made from public sector enterprises and from the small-scale sector in order to ensure their viability in the long run. Thus, procurement of 405 specified products must be from the small-scale sector, including 75 items that may be procured from the handicraft and handloom sector. A price preference of up to 15 per cent applies to procurement from the sector on a tender-to-tender basis depending on whether the small-scale unit has successfully secured contracts by competing on a non-preferential basis with large-scale units.

88. Since 1993, there has been a gradual elimination in preferences for procurement from the public sector. Price preferences for the sector were eliminated in January 1992 and the number of items exclusively reserved for procurement from the public sector was reduced from eight to six, namely coal, arms and ammunition, mineral oils, atomic energy, minerals related to atomic energy, and railway transport. Mining of iron ore, manganese ore, chrome ore, gypsum, sulphur, gold and diamonds, copper, lead, zinc, tin, molybdenum and wolfram were removed from the list of industries reserved for the public sector in 1991.

(xiii) Local-content schemes

89. The Phased Manufacturing System (PMP), which required firms to agree to a list of components that would progressively be "Indianized", was discontinued for new projects in 1991, and has no longer been applicable for older projects since 1994. However, since 1995, Memoranda of Understanding

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[49] According to the authorities, limited tenders are adopted only under stringent conditions and when sufficient reason exists to indicate that it may not be in the public interest to call for tenders by advertising.

[50] To qualify as "indigenous equipment" at least 20 per cent value must be added to the equipment in India.

(MOU) with the Director General of Foreign Trade have been required from car manufacturers seeking import licences for CKD/SKD kits on the restricted list. The authorities state that the terms and conditions of the MOU differ between companies: however, it is reported that such memoranda generally contain provisions to indigenize production.[51] In December 1997, the terms of such MOU were standardized and certain conditions relaxed, although no precise information has been made available. Other schemes such as the Duty Exemption Scheme and arrangements for 100 per cent export oriented units implicitly require manufacturers to meet prescribed levels of domestic value added to be eligible for benefits (Table III.4).

(xiv) Anti-dumping and countervailing measures

90. Authority to introduce anti-dumping and countervailing measures is in the Customs Act, 1975 as amended by the Customs Tariff (Amendment) Act, 1995. The Act was passed to bring Indian legislation on countervailing and anti-dumping actions into conformity with the WTO Agreements on Subsidies and Countervailing Measures and Implementation of Article VI of the General Agreement on Tariffs and Trade 1994. The Act came into force on 1 January 1995.[52]

91. Under the Act, the Central Government has authority to impose an anti-dumping duty on goods imported into India at less than their "normal" value. The anti-dumping duty may not be greater than the difference between the export price of the good and its normal value. A provisional duty based on estimates of such value can be imposed pending the final determination of dumping in each case, and in the case of a difference between the provisional and final duty the excess shall be refunded to the producer. Provisional duties may not exceed the margin of dumping and must be imposed within 60 days of the public notice indicating initiation of the anti-dumping investigation by the authorities. Provisional duties may remain in force for six months, extendable to nine months.

92. An anti-dumping investigation is conducted by the Anti-Dumping Authority in the Ministry of Commerce and must be terminated within one year of the date of initiation; at that point the Authority is required to submit to the Central Government details of the export price, normal value and the margin of dumping, and whether injury has been caused to the domestic industry. Individual dumping margins will be determined for each producer under investigation. The final findings must be available within one year from the date of initiation of the investigation and the imposition of the final duty must be made by notification in the Official Gazette.

93. Once final action has been taken, the anti-dumping duty imposed automatically expires after five years, if not revoked earlier; however, the Central Government may renew, upon review, the duty for a further period of five years if it is believed that there will be continued dumping or injury. If the initial five years expire while a review is in progress the anti-dumping duty can be extended for a maximum period of one year.

94. India's countervailing legislation requires the investigating authority to issue a public notification as well as to inform the exporting country upon initiation of an investigation. The investigating authority is the designated authority. The procedures followed are similar to those under an anti-dumping investigation; they involve determination of material injury and a link between injury caused and the imported goods. The authority must give its final findings within one year from the date of initiation

[51] US Trade Representative (1997).

[52] Notification by India to the WTO: documents G/ADP/N/1/IND/2, G/ADP/N/1/IND/2/Corr.1 and G/ADP/N/1/IND/2/Suppl.1.

of the case and final duty must be imposed within three months of the date of publication of these findings. The continued need for the duty must be reviewed by the Central Government within a year of imposition of the final duty.

95. Appeals against an anti-dumping or countervailing duty can be made to the Customs, Excise and Gold (Control) Appellate Tribunal and must be filed within ninety days of the date of imposition of the duty. One appeal has been made so far, under these provisions. The appeal, filed in 1996, was not accepted by the Tribunal.

96. India's first provisional anti-dumping duties were imposed in 1993 against five producers for PVC resin. Since then India has initiated a total of 45 anti-dumping cases, covering 18 products, with definitive duties imposed on 11 cases.[53] A ruling of no injury was reached in two cases (Table III.14). No countervailing duties were imposed during the same period.

97. As with many other developing countries India has become a fairly active user of the anti-dumping mechanism. The total number of anti-dumping cases initiated between 1995 and end of June 1997 was 37, including five reviews, compared to 16 for the period between 1992 and 1995. Dumping allegations have also become more common among industrialists especially in traditionally protected sectors such as chemicals. Evidence that the authorities anticipate a greater number of anti-dumping cases in the future is clear in the Export and Import Policy's intention to strengthen the anti-dumping cell in the Ministry of Commerce and to upgrade it to an anti-dumping directorate.[54]

Table III.14
Anti-dumping actions, up to 30 June 1997

			Provisional Measures	Final Measures
Product	**Exporting country**	**Date of initiation**	**Date, dumping margins[a]**	**Date, dumping margins[a]**
Antidumping cases				
PVC resin	Argentina	10/06/1992	02/02/1993 (Rs 1,050/mt)	No injury (18/01/94)
PVC resin	Brazil	10/06/1992	02/02/1993 (Rs 2,490/mt)	18/01/1994 (Rs 2,036/mt)
PVC resin	Mexico	10/06/1992	02/02/1993 (Rs 2,070/mt)	18/01/1994 (Rs 1,619/mt)
PVC resin	Korea	10/06/1992	02/02/1993 (Rs 1,700/mt)	18/01/1994 (Rs 1,253/mt)
PVC resin	United States	10/06/1992	02/02/1993 (Rs 1,970/mt)	18/01/1994 (Rs 504/mt)
Styrene butadiene rubber	Republic of Korea	12/08/1992		No injury (17/02/1993)
Styrene butadiene rubber	Japan	12/08/1992		No injury (17/02/1993)
Bisphenol-A	Japan	12/08/1992	10/08/1993 (8.9% of cif value)	11/03/1994 (Rs 7,477/mt)
Isobutyl Benzine	China	07/01/1994	20/09/1994 (Rs 13,809/mt)	31/08/1995 (Rs 10,634/mt)
3,4,5 TMBA	China	11/08/1994	20/03/1995 (Rs 237/kg)	20/10/1995 (Rs 237/kg)
Theophylline	China	30/08/1994	31/01/1995 (Rs 108/kg)	30/10/1995 (Rs 108/kg)
Caffeine	China	30/08/1994	31/01/1995 (Rs 101/kg)	20/10/1995 (Rs 101/kg)

Table III.14 (cont'd)

[53]Four of these cases are reviews of anti-dumping cases initiated in 1992.

[54]Economic Times, 4 April 1997.

Product	Exporting country	Date of initiation	Provisional Measures Date, dumping margins[a]	Final Measures Date, dumping margins[a]
Acrylointrile butadiene rubber (NBR)	Japan	28/10/1994		14/11/1995 (Rs 19,306/mt))
Potassium permanganate	China	30/12/1994		05/09/1995 (Rs 5,992/mt)
Bisphenol 'A'	Brazil	30/12/1994	30/08/1994	26/12/1995 (Rs 10,263/mt)
Bisphenol 'A'	Russia	30/12/1994	05/09/1995	26/12/1995 (Rs 12,559/mt)
Acrylonitrile butadiene rubber (NBR)	Germany	15/03/1995	31/01/97 (174.15%)	
Acrylonitrile butadiene rubber (NBR)	Korea	15/03/1995	31/01/97 (24.62%)	
Deadburnt magnesite	China	15/05/1995	10/06/1996	20/12/1996
Low carbon ferro chrome	Kazakhstan	06/06/1995	23/05/1996	
Low carbon ferro chrome	Russian Federation	06/06/1995	23/05/1996	
Low carbon ferro chrome	Ukraine	06/06/1995		
Sodium ferrocyanide	China	11/10/1995		20/12/1996
Bisphenol 'A'	USA	20/11/1995	27/11/1996 (US$ 1,253/mt)	
8HQ	China	04/03/1996	16/10/1996 (US$ 9.30-9.74/kg)	
Catalysts[b]	Denmark	06/09/1996	20/06/97 (0-153.97%)	
Acrylic Fibres	Republic of Korea	13/09/1996	25/04/97 (40.69%)	
Acrylic Fibres	Thailand	13/09/1996	25/04/97 (18.47%)	
Acrylic Fibres	USA	13/09/1996	25/04/97 (0-64.29%)	
Graphite Electrodes	Austria	30/09/1996		
Graphite Electrodes	Belgium	30/09/1996		
Graphite Electrodes	China	30/09/1996		
Graphite Electrodes	France	30/09/1996		
Graphite Electrodes	Germany	30/09/1996		
Graphite Electrodes	Italy	30/09/1996		
Graphite Electrodes	Spain	30/09/1996		
Graphite Electrodes	USA	30/09/1996		
PVC Resin (revew)	Brazil	30/09/1996		
PVC Resin (review)	Republic of Korea	30/09/1996		
PVC Resin (review)	Mexico	30/09/1996		
PVC Resin (review)	USA	30/09/1996		
Newsprint	Canada	20/12/1996		
Newsprint	Russia	20/12/1996		
Newsprint	USA	20/12/1996		
PTA	Indonesia	20/12/1996		
PTA	Republic of Korea	20/12/1996		
PTA	Thailand	20/12/1996		
Bisphenol 'A' (review)	Japan	30/12/1996		
Acrytonitrile butadiene rubber (NBR)	Germany	15/03/1996	31/01/97 (174.15%)	
Acrytonitrile butadiene rubber (NBR)	Korea	15/03/1996	31/01/1997 (24.62%)	
Vitamin C	Japan	26/05/1997		
Vitamin C	China	26/05/1997		
Isobutyl benezene	China	04/04/1997		

a Dumping margins are expressed as a percentage of export prices unless otherwise indicated.

b Hydrotesulpherization (32.61-85.19%), zinc oxide desulphurization (76.06-90.36%), high temperature shift (135.58-153.97%), low temperature shift (100-113.90%), secondary reforming (0-152.71%) and methanation catalysts (134.74%).

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

(xv) Safeguard actions

98. India does not have any outstanding, nor has it used, GATT Article XIX safeguard measures. The legal authority to take such measures was established in February 1997 with the introduction of a new Section 8A in the Customs Tariff Act, 1975.[55] Section 8A provides for the imposition of safeguard duties on products causing or threatening to cause injury to the domestic industry. The Director General for Safeguards, within the Ministry of Finance, is entrusted with the task of examining safeguard cases and must issue a public notice with regard to preliminary findings; the Ministry of Commerce and the Ministry of Finance must be informed. Final findings must also be notified by public notice within eight months of the date of initiation. Final safeguard duties, if approved, must not exceed the amount that has been found adequate to prevent or remedy serious injury and must be notified by the Central Government in the Official Gazette. Final safeguard duties will expire after four years from the date of imposition.[56] India notified initiation of its first safeguard investigation in January 1998.[57]

(xvi) Measures implemented in exporting countries

99. Indian companies are not party to any restraint agreements with foreign countries to restrict imports into India.

(xvii) Balance-of-payments measures

100. India has for many years claimed cover under GATT Article XVIII:B, on restrictions for balance-of-payments reasons, for its licensing measures on imports, particularly of consumer goods, and has consulted regularly in the Committee on Balance-of-Payments Restrictions. In May 1997, India presented to the Committee a plan for eliminating these restrictions, in three phases, each of three years, starting on 1 April 1997. Under the proposal, 704 tariff lines were included in the first phase, from 1 April 1997 to 31 March 2000; 1,216 lines in Phase II, from 1 April 2000 to 31 March 2003 and the remaining 794 lines in phase III from 1 April 2003 to 31 March 2006.[58] The plan was considered by the Committee on Balance-of-Payments Restrictions in June-July 1997; in the resumed meeting in July, India presented a revised phase-out programme covering seven years, with most restrictions removed in six years as a result of the divergence of opinion among WTO Members on, *inter alia*, the length of the plan, and the justification for the measures. It was agreed to conclude the consultations without consensus on a recommendation to the General Council.[59] Subsequently, Australia, Canada, the European Communities, New Zealand, Switzerland and the United States requested dispute settlement consultations with India; pursuant to these consultations, bilateral, mutually agreed solutions were reached with Australia, Canada, the European Communities, New Zealand and Switzerland as well as with Japan which had third party interests. These understandings envisage the elimination of quantitative restrictions, including on imports of textiles and clothing, with 1,137 tariff

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[55]WTO document SG/N/2/IND/2, 31 August 1995.

[56]Unless the Central Government is of the opinion that a safeguard duty should continue to be imposed for helping the domestic industry to adjust, in which case an extension can be granted for not longer than ten years from the date of imposition.

[57]WTO document SG/N/6/IND/1, 7 January 1998.

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

[59]WTO document WT/BOP/R/32, 18 September 1997.

lines in Phase I (1 April 1997 to 31 March 2000), 1,149 tariff lines in Phase II (1 April 2000 to 31 March 2002) and 428 tariff lines in Phase III (1 April 2002 to 31 March 2003). At the request of the United States, a panel was constituted in November 1997 to examine the allegation that continued maintenance of quantitative restrictions by India is inconsistent with its obligations under the WTO Agreement (Chapter II(6)(v)).

(xviii) Import privileges extended to free-trade zones

101. Export-processing zones (EPZs) form an important component of the Government's policy to increase India's exports. Approval for setting up in an export-processing zone is given by the Development Commissioners of the EPZs, and by the Secretariat for Industrial Approvals in the case of 100 per cent Export Oriented Units. If a proposal meets the conditions for automatic approval, clearance is given within 15 days. In other cases, it normally takes the authorities 45 days to clear the proposal. Foreigners are treated on an equal basis with Indians and non-resident Indians.

102. 100 per cent EOUs are provided the same privileges as other firms operating in EPZs but they are offered wider locational options to suit their input, technological, employment and infrastructure needs. They tend mainly to be concentrated in the textiles and yarns, food processing, agriculture, aquaculture, engineering, chemicals, electronics, and mineral ores sectors. As of March 1997, there were 513 units operational in the EPZs and a further 1,042 EOUs. EOUs and the EPZs together showed a 32 per cent increase in exports in 1996/97, compared to the national average of 10.5 per cent in the same year.

103. EOUs and firms in EPZs are also given special import privileges including:

- duty-free import of all importable goods (except prohibited items on the Negative List of Imports and Basmati paddy/brown rice), including capital goods; and

- EOUs engaged in agriculture, animal husbandry, floriculture, horticulture, pisciculture, viticulture, poultry or sericulture, may only import goods free of customs duty if accompanied by a Customs Notification.

104. India's Export, Trading, Star Trading and Super Star Trading Houses are granted access to Special Import Licenses (SILs) for imports.[60] In July 1997, there were five Super Star Trading Houses, 39 Star Trading Houses, 321 Trading Houses and 2157 Export Houses. The total estimated exports by these Houses was Rs 865 billion in 1996/97.

(3) Measures Directly Affecting Exports

(i) Registration and documentation

105. Most exporters must register with the Director General of Foreign Trade (DGFT) to obtain an Importer-Exporter Code (IEC) number, in order that they may engage in international trade. Exporters exempt from this requirement are those covered by Clause 3(2) (except (i) and (k)) of the Foreign Trade (Exemption from Application of Rules in Certain Cases) Order, 1993; Ministries and

[60] The eligibility criterion for these Houses is based either on the f.o.b./net foreign exchange value of exports, made directly by the exporter, during the preceding three licensing years, or the preceding licensing year, at the option of the exporter (Government of India, 1997d).

Departments of the Central or State Governments; persons exporting goods for their personal use, not connected with trade or manufacture or agriculture; and persons exporting goods to Nepal or Myanmar (provided that the c.i.f value does not exceed Rs 25,000).[61]

106. The application for an IEC number must be supported by (i) a profile of the exporter which includes information regarding the Permanent Account Number (PAN) of Income Tax; (ii) bank receipt or demand draft evidencing payment of application fee of Rs 1,000; (iii) certificate from the applicant's banker that (s)he maintains an account with the bank; and (iv) two passport size photographs of the applicant attested by the banker. The DGFT may suspend or strike off any registered exporter who, in the view of the DGFT, has infringed the law or who has engaged in commercial transactions causing severe harm to India's external trade relations.

107. A trader wishing to obtain a licence to export a restricted good (on the Negative List of Exports) or to receive any concession granted under the Export and Import Policy 1997/98-2001/02, is required to furnish a Registration-cum-Membership Certificate (RCMC).[62] The RCMC is issued by the relevant Export Promotion Council (EPC), or if the product is not covered by any EPC, by the regional licensing authority concerned.[63] Licence application fees are levied according to the value of exports; rates in April 1997 ranged from Rs 200 to Rs 150,000.[64] There is no deposit or advance payment requirement associated with the issuance of an export licence.

108. Other documents required for the purpose of obtaining licences for export of items in the Negative List are export orders and end-users' certificate in cases of dual-use chemicals, special materials, equipment and technologies.

(ii) Preshipment inspection and quality control

109. The Export (Quality Control and Inspection) Act, 1963, empowers the Government to make goods for export subject to quality control and inspection; specify the type of quality control and inspection applied to such commodities; and prohibit the export of these commodities unless accompanied by a certificate of export worthiness issued by one of the Inspection Agencies recognized under the Act. The Export Inspection Council of India (EIC), a statutory council set up under the Act, is responsible for the enforcement of quality control and any necessary inspection of these commodities prior to export.

110. Some 988 items of engineering, chemicals and allied products, food and agricultural products, jute and jute products, coir and coir products, footwear and footwear components, cashews, and fish and fishery products, are currently covered by the Compulsory Quality Control Inspection system; coverage has remained approximately the same since India's previous Review, when 995 items were

[61]Government of India (1997d), Chapter IV.

[62]Government of India (1997d), Chapter XI.

[63]Government of India (1997d), Chapter XIII.

[64]Six additional fees are levied: application for duplicate licence (Rs 200); Speed Post (Rs 200); application for an identity card (Rs 200); application for a duplicate Identity Card in the event of loss of original card (Rs 100); extension of the period of shipment of an import licence (Rs 200); and application for a split-licence (Rs 1,000 per licence); and application for licence under Duty Exemption Passbook Scheme (Rs 5 per 1,000, subject to a minimum of Rs 200).

subject to control. Egg products were brought under the Compulsory Quality Control Inspection System in 1997.

111. The bulk of preshipment inspection is undertaken by five export inspection agencies (EIAs).[65] Inspections are carried out either on a consignment basis (inspection of a sample of the consignment), by in-process control (the responsibility is on the manufacturer and processors to ensure quality, with random checks made by the agency), or by self-certification (available to manufacturers passing stringent requirements and guidelines laid down by the Government). During 1996/97, exports valued at Rs 16.4 billion were certified under these schemes. The EIAs also undertake inspection on a voluntary basis, where desired, by foreign buyers. Moreover, the EIAs have been authorized to issue certificates of origin under the Generalized System of Preferences (GSP) for exports to Canada, east European countries, the EU, Japan and the United States.[66] During 1996/97, almost half a million such origin certificates were issued by the EIAs. In addition, the EIAs are authorized to issue certificates of origin under GSTP, SAPTA and the Bangkok Agreement.

112. In tandem with the liberalization of the Indian economy, the need for quality control and preshipment inspection appears to have diminished, e.g. the adoption of a market-determined exchange rate reduces the benefits from under-invoicing exports (Box III.1). To shift some of the responsibility for ensuring the quality of exports to the exporters, compulsory control and preshipment inspection systems were simplified and streamlined. Among the measures introduced were the exemption from the compulsory preshipment inspection of all products of Star and Super Star Trading Houses, Trading Houses and Export Houses, industrial units set up in the export-processing zones, and 100 per cent Export Oriented Units (section 2(xviii) and 3(xv)).[67]

Box III.1: Diminished role for preshipment inspection in a liberalized environment

Preshipment inspection services are widely used in developing countries (about 30 countries in 1993). In the early years of the industry's existence (1963 to mid-1980s), services were heavily focused on addressing capital flight. Over-invoicing of imports was often used to circumvent exchange controls and foreign currency rationing. In more recent years, liberalization of trade regimes, as well as removal of capital controls, has drastically reduced the need for addressing over-invoicing of imports. Instead, preshipment services have shifted to activities related to customs revenue. In a country with relatively high customs duties, the incentives for traders to under-invoice imports could be significant.

Some of the other reasons for over-invoicing of imports and/or under-invoicing of exports are black market arbitrage, transfer ownership of assets, evasion of direct and export taxes, and transfer of illicit funds; over-invoicing of exports could be used to capture export subsidies.

Source: Low (1995), Preshipment Inspection Service, World Bank Discussion Papers, No. 278.

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[65]The Government has also recognized 21 private inspection agencies and seven government inspection agencies to undertake quality certification. Moreover, 15 agencies have been recognized for the fumigation of export cargo. In order to meet the demand for testing of engineering products, particularly from the small-scale sector, the EIC has set up a Pilot Test House at Bombay.

[66]The Government has nominated nine authorities for issue of GSP certificates of origin; EIC is one of them. EIAs, being the field organizations, issue GSP certificates of origin on behalf of the EIC.

[67]GATT (1993), page 130.

(iii) Export taxes, charges and levies

113. Under the Customs Tariff Act, 1975 (Section 8), the Government has the authority to introduce or increase duties on exports. Twenty-six product categories that may be covered by export "tariffs" (duties and cesses) are listed in Schedule II of the Customs Tariff Book of 1997/98; these products include coffee, certain peppers, some tobacco, certain ores and some textiles.

114. However, Government Notification 100 of 1 March 1989 (as amended) exempts almost all of the 26 categories listed in Schedule II from export taxes, leaving only snake skins, some lamb skins and other hides and leathers, and certain wool and leather products effectively subject to export taxes, which is the same number as in India's previous Review.[68] Rates as at 1 April 1997 were 10 per cent for snake skins and raw fur lamb skins, and 15 per cent for hides, skins and non-finished leather (equivalent to 12 items at the HS six-digit level).

115. Revenues from export taxes are estimated at some 0.11 per cent of total 1997/98 budget revenues, compared to 0.12 per cent in 1993/94. Export taxes do not discriminate between the export destination of the products.

(iv) Minimum export prices

116. Products that may be covered by minimum export prices include wheat and wheat products; coarse grains; and stone boulders. However, minimum export prices (of US$ 18 per tonne) are fixed only for exports of stone boulders to Bangladesh; all other items mentioned above are exportable without any minimum export price requirement. At the time of the previous Review, minimum export prices were declared for basmati and non-Basmati rice; cotton; and soft and hard cotton waste.

(v) Export prohibitions, licensing and state trading

(a) Legal and administrative basis

117. The legal and administrative framework for exports is the same as for imports (section 2(i)).

(b) Export prohibitions and other controls

118. Goods subject to export prohibition are listed in the Negative List of Exports, Part I, of the Export and Import Policy 1997/98-2001/02. The list of prohibited items (ten items at the HS six-digit level) is, by broad categories, the same as at the time of India's previous Review (Table III.15). These prohibitions are maintained, according to the authorities, for socio-cultural and environmental reasons and to give effect to obligations arising out of commitments to international conventions such as the Chemical Weapons Convention and the Convention of International Trade in Endangered Species (CITES).

[68] Exports of "wool-on leather" are exempt from tax if they are manufactured in free-trade zones or by export oriented units.

Table III.15
Export prohibitions, 1993 and 1997

As at 31 March 1993	1 April 1997
All forms of wild life including their parts and products prohibited.	All forms of wild life including their parts and products, except peacock tail feathers including handicrafts made thereof and manufactured articles and shavings of shed antlers of chital and sambhar.[a]
Prohibited	Exotic birds
Prohibited, except wild flora included in Appendix II of the Convention of International Trade in Endangered Species.	All items of plants included in Appendix I and II of the Convention of International Trade in Endangered Species, wild orchids, as well as some plants.[a]
Prohibited	Beef
Prohibited	Human skeletons
Prohibited	Tallow, fat and/or oils of any animal origin excluding fish oil
All forms of wood and wood products in the form of logs, timber, stumps, roots, barks, chips, powder, flakes, dust, pulp and charcoal.	Wood and wood products in the form of logs, timber, stumps, roots, barks, chips, powder, flakes, dust, pulp and charcoal, except sawn timber products made exclusively out of imported logs/timber.[a]
Prohibited	Chemicals included in Schedule 1 of the Chemicals Weapons Convention of the United Nations as specified in the Public Notice issued by the Director General of Foreign Trade.
Prohibited, except sandalwood oil.	Sandalwood in any form, but excluding finished handicrafts made of sandalwood; machine finished sandalwood products; and sandalwood oil.[a]
All forms of red sanders wood prohibited.	Red sanders wood in any form, whether raw, preserved, or unprocessed as well as any product made thereof, except some value-added products of red sanders.[a]

a Subject to specification and conditions laid out in Schedule 2, Appendix 1, 2 or 4 of the book "ITC (HS) Classification of Export and Import Items".

Source: GATT (1993), Trade Policy Review - India, and Government of India (1997d), Export and Import Policy 1997/98 - 2001/02, Negative List of Exports, Part I.

119. As noted above, India maintains trade embargoes on Iraq, based on U.N. Security Council resolutions, and on Fiji, with which it has no diplomatic relations. Exports of some equipment of the oil and gas industry to Libya are prohibited, also based on U.N. Security Council resolutions.[69]

120. In addition, as in the case of imports, the export licensing system may act to effectively prohibit some exports.

(c) Export licensing

121. Goods subject to export licensing are listed in the Negative List of Exports, Part II, of the Export and Import Policy 1997/98-2001/02. By broad categories, 31 goods (equivalent to 90 items at the HS six-digit level), comprising mainly agricultural items, are subject to export licensing.[70] The

[69]Government of India (1997d), Chapter IV.

[70]Goods subject to export licensing are, by broad category: beche-de-mer; cattle; camels; fertilizers; dress materials with imprints of the Holy Quran; some de-oiled groundnut cakes; some silver pomfrets; fur of domestic animals; fodder; hides and skins; horses; mineral ores and concentrates; pasewa; pulses; paddy; rice bran; seeds and planting materials; some seashells; some seaweeds; silk worms; vegetable and groundnut (continued…)

number of goods are about the same as at the time of India's Review in 1993 (Table AIII.4). Since 1993, metals and their compounds have been de-licensed, while imported sugar, and some materials, equipment, and technologies have become subject to licensing.[71] As a signatory to the Montreal Protocol, India restricts, through licensing, chemicals included in Annexure A and B to the Protocol on substances that deplete the ozone layer. Other licensing restrictions are maintained, according to the authorities, for security, socio-cultural or environmental reasons, conventions, including under major international conventions, and to ensure domestic availability of some raw material.

(d) State trading (canalization)

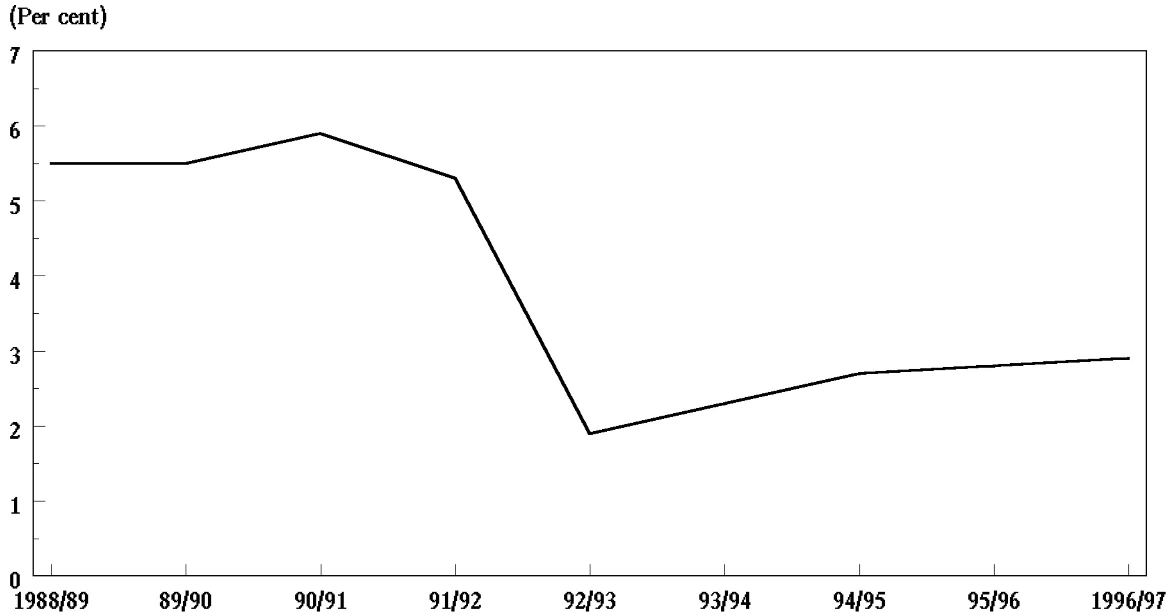
122. Exportation of some items is canalized through designated state-trading agencies. As with imports, exports of these items may also be undertaken by a private trader against a licence granted by the Director General of Foreign Trade (DGFT). However, only small amounts of canalized items have been exported by private exporters.

123. The number of canalized goods, by broad categories, has decreased since India's last Review, from seven to six (equivalent to 23 items at the HS six-digit level) (Table AIII.5). Since 1993 milk products have been de-canalized, and some sub-items within the broad category of mineral ores and concentrates have been added or removed. Goods now subject to export canalization are: petroleum products, gum karaya, mica waste, mineral ores and concentrates, niger seeds, and onions. Canalized exports as a share of total merchandise exports fell during the 1990s from 5.9 per cent in 1990/91 to 2.9 per cent in 1996/97 (Chart III.6 and Table AIII.6).

[70](…continued)
oil; vintage motor cars and motorcycles; viscose staple fibre; human blood plasma; waste paper; some chemicals; imported sugar; some materials and equipment; and chemicals included in the Montreal Protocol.

[71]As specified in Schedule 2, Appendix 6 of the book "ITC (HS) Classifications of Export and Import items".

Chart III.6
Canalized exports to total merchandise exports, 1988/89-1996/97



Note: Year beginning 1 April.

Source: GATT (1993), Trade Policy Review - India; and WTO document G/STR/N/1/IND, 31 January 1996.

(vi) Export quotas

124. Currently, seven items are subject to export quotas: non durum wheat (for supply to the International Red Cross Society, Peshawar/United Nations World Food Programme) and wheat products; manufactured articles and shavings of shed antlers of sambhar and chital; powder milk (skimmed or full cream/whole) and infant milkfood; grain and flour of coarse grains; peacock tail feathers, including handicraft items and articles made thereof; brown sea weeds and agarophytes, excluding G-edulis of Tamil Nadu Coast origin in processed form; and sugar. At the time of India's previous Review in 1993, by broad category, six products were subject to export quotas, including some cotton and certain grains.[72]

[72]These goods were, by broad category: brown seaweed and Agarophytes, excluding G-edulis and Tamil Nadu coast origin in processed form; raw and yarn cotton; a wide range of grains; peacock tail feathers including handicrafts and articles made thereof; sunflower seeds; and meat of Indian sheep and Indian goat.

(vii) Export cartels

125. Indian law on competition (Monopolies and Restrictive Trade Practices (MRPT) Act, 1969, Section 15) explicitly states that no order made with respect to any monopolistic or restrictive trade practice shall operate "to restrict the right of any person to export goods from India, to the extent that the monopolistic or restrictive trade practice relates exclusively to the production, supply, distribution or control of goods for export".

(viii) Voluntary restraints, surveillance and similar measures

126. According to the Indian authorities, outside the area of textiles and clothing, India does not participate in any arrangements designed to curb or control exports to third markets at the request of foreign governments. Under the WTO Agreement on Textiles and Clothing, India maintains restraint agreements on certain exports of textiles and clothing to Canada, the European Union, Norway and the United States.

(ix) Measures maintained by importing countries

127. India closely monitors other countries' measures that it believes restrict its exports. Pakistan limits private sector imports to a list of 595 items (down from 5,464 in 1995) at the HS eight-digit level.[73] All other imports from India are prohibited.[74] Other areas of concern include quantitative restrictions, standards, subsidies, anti-dumping measures, countervailing duties, and visa restrictions. According to the authorities, India's exports of textiles, marine products, professional services, certain agricultural items and certain engineering items are severely constrained by these measures. The relevant non-tariff barriers (NTBs) are summarized below and a complete list of measures, as described by the authorities, is provided in Table AIII.7.

- specific quantitative restrictions on textiles and clothing cover a large share of India's exports. The share of textiles and clothing exports to the United States affected by the quotas increased from 16 per cent in 1986 to 89 per cent in 1996;

- steel, clothing and textile products are among the products affected by anti-dumping and countervailing actions. Actions taken by the United States, the EU (India's two largest export markets) and other countries since November 1990 are listed in Tables AIII.8 and AIII.9;

- export constraints on agricultural products include regulations related to seafood, (section 609 of Public Law 101-162 of the United States prohibits imports of shrimps that have been harvested with technology that may adversely affect sea turtles); high standards for pesticide residues on mangoes, bananas, grapes and potatoes (EU, Japan and the United States) and sesame and tobacco (Japan); hormones in livestock production (EU); and tariff rate quotas on mushrooms (EU); and

- exports of professional services involving movement of persons, are constrained by restrictive visa requirements.

[73]Until recently, Pakistan limited imports from India to a total of 573 items at the HS eight-digit level. With effect from 1 March 1997, Pakistan has allowed imports from India of pharmaceutical raw materials and packing materials used exclusively in the manufacture of drugs. Pakistan also allowed imports of 14 additional items in the fiscal year 1997/98.

[74]Academy of Business Studies (1997), Appendix A, VII.

(x) Export subsidies

128. India does not provide direct subsidies to exporters. Instead, as described below, India relies on a wide range of indirect subsidies, including duty and tax concessions, export finance, export insurance and guarantee, and export promotion and marketing assistance.

(xi) Duty and tax concessions

129. Exporters benefit from a plethora of duty concessions on imported inputs, raw materials and capital goods, which according to the authorities are aimed at neutralizing the duties paid on these items. The features of the schemes are described in section(2)(iii)(e) and summarized in Table III.4.

130. Export income is exempt from income taxes (Section 80 HHC of the Income Tax Act, 1961). Data are not available on the amount of forgone revenue attributed to the exemption.

(xii) Export finance

131. Commercial banks provide administered export financing rates of interest, below market rates. The annual lending rates are prescribed by the Reserve Bank of India. Commercial banks do not receive subsidies from the Government to finance these loans. Commercial banks are also required to extend a minimum of 12 per cent of their net credit as export credit.

(xiii) Export insurance and guarantees

132. The objective of the wholly government-owned Export Credit Guarantee Corporation of India Limited (ECGC) is to provide exporters a range of insurance cover against the risk of non-realization of export proceeds due to political or commercial reasons, and to provide guarantees to financial institutions to facilitate the granting of credit facilities to exporters on a liberal basis.[75]

133. The ECGC is a service organization, with profit not being the sole motive. Recently, its operation has shown surpluses, provisionally estimated at Rs 19.1 million in 1996/97. The capital contribution from the Government was increased to Rs 750 million on 31 March 1997, and further enhanced to Rs 1.5 billion during 1997/98. Its activities have expanded since the early 1990s. The accumulated value of exports covered by ECGC policies, special schemes and guarantees increased from Rs 550 billion in 1991/92 to Rs 1,522 billion in 1996/97. Over the same period, the value of claims paid rose from Rs 1,054 million to Rs 2,030 million.[76]

134. There has been no change in the insurance cover made available by ECGC since India's previous Review in 1993. The ECGC provides four main types of insurance cover:

- standard export policies, covering exporters against non-payment when trading on cash terms or on short-term credit using bills of exchange. The maximum period of short-term credit is usually 180 days from the date of shipment. The policies cover commercial and political risk at a maximum rate of 90 per cent of the exporter's loss, either from the date of shipment or the date of contract. Premiums are set according to the country of export, increasing with the length of credit. The ECGC sets annual limits on the maximum liability

[75] Government of India (1996o).

[76] Government of India (1996o), Appendix XIV.

of the coverage of payments, taking into account the exporter's previous turnover and payment arrangements. The ECGC requires the exporter to offer for insurance all export shipments to be made during the following two years;

- specific policies covering contracts for exports of goods, turnkey projects, construction works or rendering services abroad which are not of a repetitive nature and involve medium-/long-term credits besides Indian overseas investment, are insured on a case-to-case basis;
- ECGC credit guarantees, covering short-term exports, including packing or preshipment and post-shipment financing, as well as project and term exports. These guarantees, which are extended to banks and financial institutions, reimburse up to 85 per cent of losses; and
- protection against exchange rate fluctuations for deferred receivables from the date of a bid up to 15 years after the award of the contract. The coverage is provided in Australian dollars, deutsche marks, French francs, Japanese yen, pounds sterling, Swiss francs, U.A.E. dirhams, and U.S. dollars. For payments specified in other currencies, the cover is provided at the discretion of the ECGC.

135. According to the authorities, the short-term insurance services as well as the credit guarantee business have been found viable. In the programmes covering medium- and long-term exports, ECGC has had to meet substantial claims leading to negative results.

(xiv) Export promotion and marketing assistance

136. The Government places strong emphasis on facilitating export promotion and marketing assistance. Organizations involved are listed in Table AIII.10. Since India's last Review, some new schemes have been established, increasing the number of schemes, by broad categories, to 15 in 1997/98.

137. Among the new programmes is the Indian Brand Equity Fund, promoting the image and marketing of generic Indian export products with proven quality.[77] The Export Promotion Industrial Parks (EPIP) scheme, introduced in August 1994, with a view to involving State Governments in contributing to India's export efforts, provides financial assistance to the State Governments to finance infrastructure; these parks are owned, managed, and maintained by the State Governments either directly or through its agencies, with up to 75 per cent of the cost (to a maximum of Rs 0.1 billion) provided by the Central Government. As of April 1997, the Central Government had approved 18 proposals in different States for setting up EPIPs.[78]

(xv) Free-trade zones

138. With the objective of promoting exports, the Government has established free-trade zones or export-processing zones (EPZs). Of the seven EPZs, the Santacruz Electronics EPZ is designed exclusively for export of electronics, gems and jewellery, whereas the other zones are multi-product zones. Hundred per cent export oriented units (EOUs), which are meant to be complementary to the EPZs, can be established outside the zones (section 2(xviii)). To promote the development and exports of the software industry seven Software Technology Parks (STPs) and an Electronic Hardware Technology Park (EHTP) Scheme are in place.

[77] Government of India (1996o).

[78] Academy of Business Standards (1997), Appendix B5.

139. Each of the zones provides basic infrastructure, such as developed land for construction of factory sheds, standard-design factory buildings including ready-built sheds, roads, power, water supply and drainage. In addition, customs clearance is arranged at the zone at no extra charge. The EOUs must provide their own infrastructure. While the EPZ units broadly fall under the product groups of electronics, engineering items, chemicals and allied products, gems and jewellery, textiles and garments, plastics and rubber products, EOUs are concentrated in textiles and yarns, food processing, agriculture, aquaculture, engineering, chemicals and plastics, granites, electronics, and minerals/ores.[79] As of March 1996, 511 units were in operation in the EPZs, and 704 under the EOU scheme. Combined exports by the EPZs, EOUs, STPs and EHTPS were about Rs 33,978 million, equivalent to 3 per cent of total exports in 1996/97.

140. A wide range of benefits are extended to the EPZs, EOUs, STPs and EHTPs. Units under the EOU/EPL Scheme are allowed, *inter alia*, zero duty on imports of raw materials, exemption from excise duty on domestic supplies; deferred payment of customs duty on capital goods during a bond period, corporate tax holidays for a block of five years in the first eight years of production, and facility to sell part of their output in the domestic market. EHTPs and STPs are allowed zero duty on all imports, 100 per cent foreign participation, and tax holidays (Table III.16). Estimated government expenditure in 1997/98 for the EPZs, is Rs 130 million. Government expenditure for the STPs during 1996/97 was Rs 10 million, while no expenditure was incurred during 1997/98. There is no government support for the EOUs and the EHTPs. Data are not available on the amount of total forgone revenue attributed to these fiscal benefits.

[79] Government of India (1996o).

Table III.16
Key benefits extended to free-trade zones, 1 April 1997

	EOUs/EPZs	STPs	EHTPs
Concessional import duty[a]:	Defer payment of customs duty on capital goods during the period of bonding. Duty-free import of raw materials all types of goods, including required for manufacture, production or processing provided they are not prohibited items in the Negative List of imports.	Zero duty on all imports	Zero duty on all imports
Foreign equity:	Foreign equity participation up to 100% is permissible	100 per cent	100 per cent
Tax holidays:	Complete tax holiday for five years in the first eight years of production.	Complete tax holiday for five years in the first eight years of production.	Complete tax holiday for five years in the first eight years of production.
Access to domestic market:	25 per cent of production is permitted for clearence in the domestic tariff area subject to achievement of the stipulated minimum value addition in the Letter of Approval/Letter of Permission granted for setting up the unit in the export-processing zone. For agro-products sale in domestic tariff area up to 50 per cent of production is permissible.	Sale in the domestic market in any mode, including data communications, permissible up to 25 per cent of the production in value terms.	Can sell up to 40 per cent of the production in value terms of electronic items including components manufactured in the unit subject to net foreign exchange earning as a percentage of exports. Alternatively the units can sell one half of the value of their production on an annual basis, in the domestic market and export the other half of production in value terms without any minimum foreign exchange earning stipulation, on payment of applicable duties as specifically notified for this facility. This is a one time option available to the EHTP units.
Concessional rent:	Concession in lease rent for industrial plots and built-up factory sheds for the first three years of production is granted at rates between 25 per cent and 75 per cent, linked to early commencement of commercial production.[b]	Not available.	Not available.
Other:	Goods sourced from domestic market are treated as deemed exports eligible for export incentives (Table III.4).	Goods sourced from domestic market are treated as deemed exports eligible for export incentives (Table III.4).	Goods sourced from domestic market are treated as deemed exports eligible for export incentives (Table III.4).

a See Table III.4 for related performance requirement.

b The units set up in the EPZs will be eligible for concessional rent for lease of industrial plots and standard design factory buildings and sheds allotted for the first three years at the following rates: (a) for plots, the concession is 75 per cent for the first year, 50 per cent for the second year and 25 per cent for the third year if production commenced in the first year or the second year. The concession is not available for the third year if production has not commenced by the end of the second year; and (b) for SDF buildings and sheds, the concession is 50 per cent for the first year and 40 per cent for the second year if production commenced in the first year. The concession is 25 per cent for the third year if production commenced in the first year. The concession is not available if production has not commenced by the end of the first year.

Source: Government of India.

(4) Measures Affecting Production and Trade

(i) Adjustment and regional assistance

141. The main form of adjustment assistance offered by the Government is for restructuring firms facing financial difficulties. The Sick Industrial Companies (Special Provisions) Act (SICA), passed by Parliament in 1985, was enacted to ensure "the timely detection of sick and potentially sick companies owning industrial undertakings"[80], and to take whatever action appropriate to facilitate their recovery. The Act was amended in 1991 and 1994. The 1991 amendment brought public sector companies under the purview of the Board for Industrial and Financial Reconstruction, the implementing agency of the SICA. In 1994, a number of changes were introduced, including a reduction of the minimum time before which a company can be declared sick from seven to five years; declaring a company to the Board for Industrial and Financial Reconstruction (BIFR) was made compulsory if its accumulated losses at the end of any financial year resulted in an erosion of 50 per cent or more of its maximum net worth during the four preceding financial years instead of the previous five years; the number of agencies that can declare a potentially sick company to the BIFR was expanded; and monitoring implementation of the rehabilitation scheme was made a statutory function of the Board.

142. The BIFR is a quasi-judicial body established in 1987 to implement the SICA.[81] By end-November 1997, the BIFR had received 2,991 referrals of "sick" industrial units, of which 2,065 were registered. Of the latter, 20.4 per cent were judged "non-sick", revival schemes were approved for 29.6 per cent and 27.3 per cent were recommended to the High Courts for closure. A total of 151 registered referrals were related to public sector enterprises (PEs) of which rehabilitation and closure was recommended for 29 and 18 per cent, respectively (Table III.17).[82]

[80] According to the authorities, industrial sickness can be caused by internal factors such as management difficulties, as well as external factors such as shortages of raw materials, power failures, transport and financial bottlenecks and marketing problems (Government of India, 1997c).

[81] The Board of Directors of a company deemed to be sick is required to inform the BIFR within 60 days of the company's annual audit. The BIFR must attempt to complete its investigation within 60 days of commencing the enquiry. If it decides that the company is indeed "sick", then it must appoint an "operating agency", by written order, to prepare a scheme by which the company may be restructured. Such a scheme would normally be prepared within a period of 90 days and would include measures such as the financial reconstruction of the firm, changes in management of the company, the amalgamation of the company with another company or the lease or sale of a part or whole of the company. If the Board decides that the firm is unlikely to become viable despite restructuring efforts, it may forward its opinion to the High Court, which can order the closure of the firm in accordance with the provisions of the Companies Act, 1956.

[82] According to the Reserve Bank of India, there are approximately 271,206 sick industrial units in India, of which 99 per cent are small-scale units (Government of India, 1997c).

Table III.17
Status of sick industry cases referred to the BIFR as of November 30, 1997

	Total	Public sector	Private sector
Referrals received	2,991	209	2,782
Referrals registered	2,065	151	1,914
Dismissed as non-maintainable	422	30	392
Rehabilitation schemes approved	611	44	567
Winding up recommended[a]	563	27	536
Winding up notice issued[a]	65	8	57
Stay ordered by Courts	38	7	31
Declared no longer sick	197	5	192

a Figures as of December 31, 1996.

Source: Government of India (1997c), Economic Survey, 1996/97, Ministry of Finance, New Delhi, BIFR, New Delhi.

143. Despite these recommendations of closure, none of the firms have been closed down by the High Courts. According to the authorities, the Board has no jurisdiction beyond recommending closure to the respective High Courts, unless the case is remanded back to the Board by the Courts; nor does the Board maintain information on the members of companies where the Board's recommendation for closure has been acted upon.

144. Most regional assistance from the Central and State Governments in India goes to the small-scale sector, defined as units with a maximum permissable investment of up to Rs 30 million. The number of units that qualify as small or tiny, rose from 2.38 million in 1993/94 to around 2.86 million in 1996/97, an increase of almost 8 per cent.[83] Output of the small-scale sector rose by 11.4 per cent (in 1990/91 prices) between 1994/95 and 1995/96 and is estimated to have risen by 11.3 per cent in 1996/97. The small-scale sector contributes around 40 per cent to gross turnover in manufacturing and around 33 per cent of total exports.

145. A number of policy measures have been taken to further develop the small-scale sector and to improve value added and quality. In March 1994, the Government launched the Integrated Infrastructure Development Scheme. A total of 32 projects have been approved, mainly for improving infrastructure in rural areas.

146. Of total priority bank lending to the small-scale sector, at least 40 per cent is reserved for the tiny sector, cottage industries, khadi and village industries and artisans (Table III.18). Concessional finance (linked to the size of the loan) is available through various facilities such as the Small Industries Development Bank of India (SIDBI) and the Rural Infrastructure Development Fund (RIDF), and a consortium of banks which provides loans to the tiny and village sector (section (ii)(b)).[84] The Government has also launched a number of specific credit facilities for this sector under the Jawahar Rozgar Yojana and the Rozgar Yojana, providing subsidized finance to small-scale firms as part of priority sector lending.[85]

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[83] A tiny unit is defined as a firm with a maximum permissable investment limit of Rs 2.5 million.

[84] Reserve Bank of India (1996).

[85] Under the Rozgar Yojana, for example, which helps to set up micro-enterprises especially to support weaker sections of society, the Government provides a subsidy of up to 15 per cent of the total project cost up to a ceiling of Rs 75,000 per entrepreneur (Government of India, 1995b).

Table III.18
Incentives/concessions offered to small-scale industries (SSIs)

Fiscal Incentives	Credit	Others
- Excise concessions available for both registered and unregistered units depending on turnover up to Rs 30 million.	- Priority sector lending.	- Reservation of products for SSI (821 items at present).
- The Integrated Infrastructure Development Scheme launched in 1994 to strengthen infrastructural facilities in rural and backward areas.	- 40 per cent of total commercial bank lending to SSI reserved for tiny sector and village and cottage industries.	- Government purchase and price preferences.
- Quality certification scheme launched to improve product quality. Financial support to acquire ISO 9000.	- Refinance and other schemes provided by the SIDBI.	- Infrastructural support to Entrepreneurship Development Institutes set up for training.
- Seven point action plan to improve flow of credit to SSIs, including the opening of specialized SSI branches.	- Concessional/fixed rates of interest for loans up to Rs 0.2 million.	- Technology and modernization programme jointly funded by the State Bank of India and SIDBI.
- National equity fund scope enlarged to support expansion, modernization and technology upgradation.	- Single-window scheme for projects up to Rs 10 million provided by SIDBI.	- Assistance to industrial associations and voluntary organizations to set up testing centres.
- Technology development and modernization scheme launched for modernization. SIDBI in charge of sanctioning money.	- Prime Minister's Rozgar Yojana provides funding for micro enterprises.	- Programmes on quality awareness, pollution control and vendor development.
- Scheme to create Technology Development Fund in the States launched with the help of State Governments and industry associations.[a]		

a Scheme ceases to operate from 1997/98.

Source: Government of India.

147. Other assistance programmes for regional development include the Transport Subsidy Scheme and the New Growth Centre Scheme. The Transport Subsidy Scheme was established in 1971 and was recently extended to 31 March 2000; its aim is to promote the development of industries in India's remote and hilly areas. Subsidies under the Scheme range from 50 to 90 per cent of the cost of transporting raw materials and finished goods to these areas. The New Growth Centre Scheme was announced in 1988 and was meant to provide basic infrastructural facilities such as power, telecommunications, water, and banking to attract industrial development. Thus far, 71 Growth Centres are proposed to be established through joint Centre-State funding.[86] The Central Government also continued until March 1996 to provide some assistance to the "Old Growth Centre Scheme", which was discontinued when the New Growth Centre Scheme was started. Annual expenditure by the Central Government for this scheme rose from Rs 70 million in 1993/94 to Rs 804 million in 1994/95, falling to Rs 471 million in 1995/96.

[86] The criteria used to select the areas for each growth centre include population, area and extent of industrial backwardness (Government of India, 1996r).

(ii) Subsidies and tax concessions

(a) Subsidies

148. Although the Central Government spends nearly 8 per cent of its annual budgetary expenditure on explicit subsidies through its non-plan spending, implicit subsidies provided by both State and Central Governments are considerably higher. Of the explicit non-plan subsidies, the fertilizer industry is the largest recipient; however the subsidy for domestic and imported fertilizers has declined from around 45 per cent of total non-plan subsidies in 1995/96 to a little over 40 per cent in 1997/98. In 1997/98, the food subsidy is expected to be around 41 per cent of total non-plan subsidies largely because of the larger grain procurement required for the Targeted Public Distribution System (TPDS) (Table III.19). Another subsidy that has risen rapidly in recent years is funding for concessional sales of fertilizers to farmers. In 1995/96 this was around 3.6 per cent of total non-plan subsidies but has risen to 10 and 11 per cent in 1996/97 and 1997/98, respectively. Other major recipients of total non-plan subsidies include the railways, for which subsidies have remained around 3 per cent since 1995/96, and the handloom industry, as well as compensation for exchange loss; support is also provided for public sector enterprises (section (iii)(e)).

149. In a recent discussion paper entitled "Government Subsidies in India", presented to Parliament, the annual level of implicit and explicit subsidies was estimated to be around 14.5 per cent of GDP in 1994/95 figures, including both Central and State Government spending. Of this amount "merit" goods or services, which include elementary education, public health, sewerage and sanitation, social welfare, soil and water conservation, scientific research and the PDS, amounted to around 3.7 per cent of GDP in 1994/95 or around Rs 300 billion. The share of Central Government subsidies on non-merit goods is around 35 per cent of the total, including for fertilizers, electricity, diesel and irrigation.

Table III.19
Explicit (non-plan) subsidies
(Rs million)

	1995/96	1996/97	1997/98[a]
Major subsidies			
Food subsidy	55,000.0	60,660.0	75,000.0
Fertilizer (indigenous and imported)	62,350.0	60,930.0	71,900.0
Concessional sales of fertilizers to farmers	5,000.0	16,740.0	20,000.0
Export promotion and market development	3,150.0	4,000.0	4,400.0
Other subsidies			
Price support for copra through NAFED	1,200.0	10.0	10.0
Payments to State Governments in lieu of sales tax on aviation fuel sold to international airlines (including Air India)	283.3	16.2	0.1
Subsidy for operations of charter flights for Haj pilgrims	170.5	373.8	420.0
Subsidy to the railways for dividend relief and other concessions	4,177.3	4,657.1	5,367.2
Insurance schemes for the poor	160.0	140.0	160.0
Subsidy for coal transport by rail-cum-sea route	0.5	0.0	0.0
Maintenance of buffer stocks for sugar	150.0	700.0	500.0
Reimbursement to State Trading Corporation for loss on edible oil imports	1,000.0	500.0	500.0
Subsidy to Shipping Corporation of India for uneconomic shipping lines	124.0	110.0	110.0
Subsidy to shipyards	356.8	282.6	517.8
- Cochin Ship Yard Ltd	104.1	0.0	104.1
- Trawler Development Support Fund	1.0	0.1	0.1
- Hindustan Shipyard Ltd	140.2	33.5	170.0
- Acquisition of Ships - interest differentials	111.5	249.0	243.6
Subidy on mill-made cloth	10.0	0.0	0.0
Handloom subsidy	1,473.3	977.7	840.0
- Special rebate on handloom cloth	663.8	530.0	400.0
- Subsidy on Janata cloth	770	407.7	400.0
- Others	39.5	40.0	40.0
Compensation for exchange loss	1,425.2	1,499.5	1,539.5
- Industrial Development Bank of India	466.5	451.3	297.3
- Industrial Credit and Investment Corpn. of India	346.7	479.8	413.2
- National Housing Bank	22.0	28.9	29.0
- Housing Development Finance Corpn.	590.0	539.5	800.0
Write-off loans	0.0	1,836.0	0.0
Subsidy for Assam gas project	750.0	750.0	750.0
Others	140.0	185.2	150.2
Interest subsidies	341.2	12,572.2	342.3
TOTAL	137,262.1	166,940.3	182,507.1

a Budgeted.

Source: Government of India (1996c), Budget 1996/97, Expenditure Budget; and Government of India (1997b), Budget 1997/98, Expenditure Budget.

(b) Credit policies

150. Priority sector lending targets for Indian banks require that 40 per cent of net bank credit lending is directed to certain "priority" sectors. Of this 40 per cent, 18 percentage points have to be made available to the agriculture sector, 10 to weaker sections of society[87], and the rest to the small-scale sector.[88] In addition to the 40 per cent lending requirement, the export lending requirement for Indian banks is 12 per cent of credit. Thus the total percentage of commercial bank lending that is required to be channelled into these activities by Indian-owned banks is 52 per cent. (The requirement on foreign-owned banks is 32 per cent, with no stipulation to lend to agriculture.) The actual percentage of priority sector lending to net bank credit of public sector banks has improved from 36.56 per cent recorded in March 1995, to 37.75 per cent in March 1996 and 41.72 per cent in March 1997. Lending to the agricultural sector has also increased from 13.9 per cent to 16.35 per cent during the same period, while the small-scale sector and weaker sections received 16.63 per cent and 8.69 per cent respectively as at March 1997 (Table AIII.11).[89]

151. Within the priority sector, in order to protect weaker sections and small-scale units, the Reserve Bank of India has set lending rates for small loans up to Rs 200,000. In the recent financial sector reforms, banks were given freedom to set their own rates of interest on loans over Rs 200,000. Interest rates for small loans up to Rs 25,000 are prescribed at 12 per cent and to 13.5 per cent for loans between Rs 25,000 and Rs 200,000.[90]

152. Other schemes include participation by SIDBI in venture capital funds promoted by public and private sector institutions; participation up to 50 per cent of the total value of the fund is possible with the provision that the fund is dedicated to financing small-scale industry. Public sector banks were required to open 100 specialized small-scale industries bank branches in 85 targeted areas by March 1996. As at the end of March 1997, 353 specialized branches had been established across the country.

153. The Industrial Development Bank of India (IDBI) is the major financial institution for credit to the industrial sector. Its lending is concentrated in the textiles, electricity generation, chemicals and pharmaceuticals, electrical and electronic equipment, steel and cement sectors. In October 1994, the IDBI Act, 1964 was amended which, *inter alia*, permits the IDBI to issue equity capital to persons other than the Central Government, up to a maximum amount of 49 per cent. Under the amendment the IDBI was allowed to make its first capital issue in July 1995 and presently it has nearly 400,000 public shareholders, giving it a reconstituted Board and greater autonomy and flexibility in its decision making.

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[87]Weaker sections were defined as (i) small and marginal farmers with landholdings of five acres and less, landless labourers, tenant farmers and sharecroppers; (ii) artisans, village and cottage industries where individual credit requirements do not exceed Rs 25,000; (iii) IRDP beneficiaries; (iv) scheduled castes and scheduled tribes; (v) beneficiaries under the DRI and SUME schemes and those under the scheme for Liberation and Rehabilitation of Scavengers (SLRS); and (vi) Self Help Groups under NABARDs pilot projects (Reserve Bank of India, 1996).

[88]The forfeit for not meeting these minimum lending requirements is to deposit the remaining finances with the National Bank for Rural and Agricultural Development (NABARD), the Small Industries Development Bank of India (SIDBI). These deposits are then distributed as appropriate to the priority sectors (Chapter IV(6)).

[89]Government of India (1995b).

[90]Reserve Bank of India (1996).

154. Selective credit controls, including minimum margins and levels of credit ceilings on bank advances, are applied by the RBI for price-sensitive essential commodities such as pulses, coarse cereals, sugar, cotton, vegetable oils and oilseeds. As of October 1996, selective credit controls were removed for all these commodities except buffer stock and unreleased stocks of sugar held by sugar mills; the RBI also included wheat under selective credit controls from 8 April-7 July 1997.

(c) Tax concessions

155. Section 80IA of India's Income Tax Act grants tax holidays for a period of five consecutive assessment years in a number of cases, including industrial undertakings, hotels, ships, the development and maintenance of any infrastructure facility, research and development, and the commercial production of mineral oil. In addition, tax deductions of up to 100 per cent of export profits are given to all industrial undertakings under Section 80-HHC. Newly established industrial undertakings in free-trade zones and 100 per cent export oriented units are also granted tax deductions on income.[91] A tax deduction of up to 50 per cent of profits may be claimed on income carried from foreign projects.

156. Excise concessions are also provided to a number of sectors. The small-scale sector is eligible for concessional excise duty from excise under the Central Excise Duty Exemption Scheme. Jute and all jute products are also exempt from excise duties, as are milking machines and diary machines, goods required for setting up new projects with non-ozone-depleting substances technology. In order to encourage investment in research and development, goods developed and patented in India, and in any of the countries of the European Union, the United States or Japan, are exempt from excise duty for three years.

(iii) <u>Industrial development policies</u>

157. With the emphasis of successive Five Year Plans on rapid industrialization, industrial development policies in India have exerted tight controls on the kinds of industries that could be set up and the price, supply and distribution of these industrial goods. However, as part of the general liberalization programme, many of these controls have been relaxed or removed.

(a) Industrial licensing

158. Since India's last Review in 1993, industrial licensing controls have been reduced. Compulsory industrial licensing is now required for nine product categories, including the distillation of alcoholic drinks, sugar, tobacco, plywood and other wood-based products, and consumer electronics, compared with 18 in March 1993 (Table III.20).[92] These sectors will continue to be subject to compulsory industrial licensing for "reasons related to security and strategic concerns, social reasons, problems related to safety and over-riding environmental issues and the manufacture of products of hazardous nature".[93] For products on this list, applications have to be made to the Secretariat of Industrial Approvals (SIA) for industrial licences.[94] Licensed capacity for these nine industries can only be

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[91]Income in this case does not include profits.

[92]A number of products within individual categories have also been removed from the list, reducing the total number of products subject to industrial licensing.

[93]Government of India (1996d); and Government of India (1991).

[94]Government of India (1996l).

increased upon obtaining Government permission. All applications for industrial licences or expansion of licensed capacity are considered by statutorily constituted committees who make their recommendations to the Government.

Table III.20
Industries subject to compulsory industrial licensing in India, December 1997

Industry	HS Classification
Distillation and brewing of alcoholic drinks	22.03, 22.04, 22.05, 22.06, 22.08
Sugar	170199.02, 170199.09
Coal and lignite	27.01, 27.02
Cigars and cigarettes of tobacco and manufactured tobacco substitutes	24.02
Petroleum (other than crude) and its distillation products	27.10, 27.11, 27.12, 27.13
Industrial explosives, including detonating fuses, safety fuses, gun powder, nitrocellulose and matches	36.01 to 36.06
Hazardous chemicals	22.07, 280110.00, 281119.01, 281210.01, 2815.11, 2815.12, 290121.00, 290122.00, 290124.01, 290220.0, 290230.00, 290241.00, 290242.00, 290243.00, 290244.00, 290531.00, 29.05, 292229.02, 292910.09, 380810.02, 380810.16, 380810.21, 380810.29 and 390110.00
Drugs and pharmaceuticals (according to Drugs Policy)	29.36 to 29.39, 29.41 to 29.42, 30.01 to 30.06
Electronics aerospace and defence equipment	87.10, 88.01 to 88.05, 8906.01, 93.01 to 93.07

Source: Government of India.

159. Similarly, amendments have been made to the number of industries reserved for public sector companies; their number has been reduced to six (with the removal of minerals not specified in the Schedule to the Atomic Energy (Controls of Production and Use) Order, 1953) (Chapter II(6)(i)). In addition to this, 836 items were reserved for production only by enterprises that are classified as small scale (Table III.21). The 1997/98 Budget has reduced this number to 821, removing rice milling, lentil milling, poultry feed except in pellet form, vinegar, synthetic syrups, biscuits, ice-cream, corrugated paper and boards, hair driers, automobile hub caps, automobile ornamental fittings, automobile spot lamps assembly excluding combination lamps, automobile stop lamps assembly, automobile tail lamp assembly and car ash trays.

Table III.21
Items reserved for the small-scale sector

Product	Number of items
Food and allied industries	12
Textile products including hosiery	22
Wood and wood products	14
Paper products	30
Leather and leather products including footwear	18
Rubber products	37
Plastic products	51
Chemicals and chemical products; laboratory chemicals and reagents	182
Glass and ceramics	27
Electrical machines, appliances and apparatus including electronics	56
Mechanical engineering excluding transport equipment	201
Transport equipment; boats and truck body parts and others	54
Bicycle parts, tricycles and perambulators	42
Mathematical and survey instruments, sports goods, stationery items, clocks and watches	75
Total	821

Source: Government of India.

(b) Price and distribution controls

160. As part of the Essential Commodities Act, 1955, the Government applies price controls to a number of essential items, including agricultural products, pharmaceuticals and some petroleum products. In 1995, the Act covered 44 items many of which are part of the Government's Public Distribution System (PDS). For a number of products, including the most important staple crops, the Government sets minimum support prices (MSPs) at the beginning of each season to support farmers. Farmers are not obliged to sell at this recommended price but millers are required to sell a certain percentage of their output to government procurement agencies. A central issue price (CIP) for essential foods is also set by the Government and is applied to the PDS; it has been uniform for all States since February 1994 (Chapter IV (2)(ii)). Products in other sectors, including petroleum and pharmaceutical products, are also subject to price controls. Reforms in 1997 reduced the number of products subject to price controls from 44 to 31.[95]

161. Minimum export prices (MEPs) were widely used before the 1991 reforms. Most of these were applicable to agricultural products, for which local prices were artificially depressed because of government price support programmes. The present policy may fix MEPs for wheat and wheat products, coarse grains and stone boulders; at present MEPs only apply for the export of stone boulders to Bangladesh.

[95]The items presently covered by price controls are cattle fodder, coal, automobile components and accessories, cotton and woollen textiles, drugs, foodstuffs including edible oilseeds and oils, iron and steel including manufactured products, paper, including newsprint paperboard and strawboard, petroleum and petroleum products, raw cotton and cotton seeds, raw jute, jute textiles, fertilizers, cement, textile machinery, textiles made from silk, yarn, household appliances, exercise books, cori fibre, insecticides and fungicides, tea, seeds of food and horticultural crops, switches, plugs and socket outlets.

162. Distribution controls especially for rice during the harvest seasons are still maintained (Chapter IV(2)(ii)(a)).

(c) Exit barriers

163. India's regulations on the closure of industrial units are complex and relatively inflexible, making industrial restructuring of sick and weak industrial units difficult (section (i) above).[96]

164. In order to facilitate the closure of firms considered to be uneconomic, the Government established a safety-net mechanism for displaced workers. The National Renewal Fund (NRF), established in 1992, consists of the National Renewal Grant Fund (NRGF), which finances voluntary retirement schemes for workers in public enterprises, re-training, redeployment counselling and placement services for displaced employees; and the Employment Generation Fund (EGF) for employment regeneration schemes in organized and unorganized sectors. Both schemes are expected to be operational for a maximum period of ten years. The NRF utilized approximately Rs 2.5 billion in 1994/95. The estimated number of workers that had used the NRGF by end-October 1997 to take voluntary retirement was 106,214.

(d) Reforming public sector enterprises (PEs)

165. Despite the intentions of the Board for Industrial and Financial Restructuring (BIFR) (section (i)), significant problems and delays have been encountered in restructuring the public sector enterprises. In order to encourage corporate reorganization in the PEs, the Government has recently given financial and managerial autonomy to nine "navratna" enterprises. According to the authorities, moreover, greater autonomy has been given to all PEs for making decisions on investment.

166. Public sector enterprises were established, according to the authorities, to fulfil a number of objectives, including the redistribution of income and wealth, the creation of employment opportunities and the promotion of balanced regional development, in addition to the overall goal of rapid economic and infrastructural growth. At end-March 1996, the public-enterprise sector consisted of around 243 central public enterprises[97] and around 800 state-level public enterprises.[98] It has been estimated that although public sector enterprises account for two thirds of India's productive industrial capital, their share in net value added is only one third.[99] A number of reasons were identified for the poor performance of these enterprises, including cost and time overruns, inappropriate investment and locational decisions, uneconomic pricing and tariff rates, and an inadequate allocation of resources.[100]

167. The programme on reforming public sector enterprises emphasized five areas:

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[96]Brahmbhatt, Srinivasan and Murrell (1996).

[97]Government figures exclude six insurance and two financial companies that have Central Government investment but which have no direct management responsibilities.

[98]Gouri (1996). These only include non-departmental public sector enterprises, i.e., those enterprises that have been established under the Companies Act and are legally separated from the Government, maintaining their own financial accounts.

[99]Gouri (1996).

[100]Government of India (1993).

- de-reservation, de-licensing and liberalization of trade to ensure that public sector enterprises are subject to competition;
- the amendment of the Sick Industrial Companies Act to refer all PEs to the BIFR;
- the creation of the NRF in 1992 to provide, *inter alia*, a safety-net for workers unemployed during the process of restructuring PEs;
- reduced budgetary support, such as loans to PEs; and
- disinvestment of up to 49 per cent of selected profit-making PEs.

The Government indicates tentative disinvestment targets each year in its budget, and has thus far raised Rs 100 billion from disinvestment. The recommended 49 per cent disinvestment has taken place in one PE, namely Hindustan Petroleum Corporation; in most other PEs government holdings range from 60 to 90 per cent.[101] According to the authorities, however, because of market conditions disinvestment up to 49 per cent is not expected to be reached in one step. In some cases, including the Mahanager Telephone Nigam Limited (MTNL), Videsh Sanchar Nigam Limited (VSNL), Bharat Heary Electricals Limited (BHEL), Bharat Petroleum Corporation Limited (BPCL) and Hindustan Petroleum Corporation Limited (HPCL), the Government has currently disinvested up to 30 per cent of its equity.

168. To provide more systematic disinvestment procedures a Disinvestment Commission was constituted in August 1996, to make decisions in a transparent manner. Since its formation, 40 PEs have been referred to the Commission and in its first report the Commission has made disinvestment recommendations for three of these 40 PEs, including the Gas Authority of India Limited (GAIL), MTNL, and the Container Corporation of India (CONCOR). In the 1997/98 Budget, the Government announced a target of Rs 70 billion from disinvestment in four companies, namely GAIL, MTNL, CONCOR and the Indian Oil Corporation (IOC). Following disinvestment, it is expected that the Government's share will decline to 52.6 per cent (from 65.73 per cent) in MTNL, 71.63 per cent (from 96.3 per cent) in GAIL, 66 per cent (from 77 per cent) in CONCOR and 86 per cent (from 91 per cent) in IOC.

169. For those companies recommended for restructuring, a programme of Memoranda of Understanding (MOUs) was introduced. MOUs are contracts, usually lasting one year, that chart the expected performance of the firm.[102] The evaluation of 95 companies' performance in 1994/95 by the Department of Public Enterprises showed that 39 were considered to have been excellent performers, 26 were very good, and only two companies were rated as poor.[103] Of the 95, 16 are still being evaluated of a further 104 PEs that signed MOUs in 1995/96, two were rated as poor. In 1996/97, out of 110 PEs evaluated, 46 were judged excellent performers, 27 very good, 19 good and 11 fair. Seven companies were rated as poor performers.[104]

(e) Budgetary support to public enterprises

170. As part of its fiscal reform, the Government pledged a reduction in budgetary support for public enterprises (Table III.22). There was initially a decline in budgetary support from 0.7 per cent of

[101]Government of India (1997c).

[102]This includes financial parameters including profits and the net profit to capital ratio.

[103]A total of 99 companies signed MOUs although only 95 companies submitted information to the Department.

[104]The rankings are based on evaluations carried out by an Ad-hoc Task Force (ATF); companies that have performed better than their targets are classified as excellent, while companies that have met their targets are classified as very good.

GDP in 1990/91 to around 0.4 per cent in 1994/95, but this increased to around 0.7 per cent of GDP in 1996/97, partly due to payments to meet the restructuring requirements of PEs.

Table III.22
Budgetary support to public sector enterprises in India, 1996/97 and 1997/98
(Rs million)

Ministry	1996/97 Equity	Loans	1997/98[a] Equity	Loans
Agriculture	0.9	2,983.9	0.1	2,286.0
Chemicals and Fertilisers	749.1	7,178.3	1,168.5	5,909.9
- Chemicals and petrochemicals	131.0	459.0	293.5	326.5
- Fertilizers	425.0	6,719.3	875.0	5,583.4
Civil Aviation	116.3	83.7	207.4	150.0
Coal	0.0	2,293.2	0.0	3,148.5
Commerce	250.0	0.0	750.0	0.0
Defence	…	…	…	…
Finance	8,005.0	2,482.6	3,708.6	1,478.5
Food	178.6	0.0	200.0	0.0
Food Processing	15.0	5.0	15.0	0.0
Health and Family Welfare	16.6	6.0	7.6	7.5
Industry	1,140.0	4,786.2	1,300.0	3,772.8
- Heavy Industry	760.0	2,413.8	780.2	1,411.2
- Small-scale Industries and Agro and Rural Industries	380.0	2,372.4	519.8	2,361.6
Information and Broadcasting	1.0	1.0	0.0	0.0
Mines	41.3	270.0	110.0	295.0
Non-conventional energy sources	280.0	872.4	345.0	801.3
Petroleum and Natural Gas	0.0	1,000.0	0.0	0.0
Planning and Programme Implementation	16.5	8.7	1.0	0.0
Power	5,717.2	14,961.0	9,742.5	13,459.2
Railways	14,390.0	0.0	18,310.0	0.0
Science and technology	62.5	47.5	80.6	27.5
Steel	11.3	170.7	85.0	172.0
Surface Transport	2,174.1	1,938.9	5,211.5	3,446.2
Telecommunications	0.0	0.0	0.0	30.0
Textiles	13.0	4,692.5	33.7	2,944.0
Tourism	0.0	0.0	0.0	0.0
Urban Affairs and Employment	260.0	300.0	460.0	690.0
Water Resources	0.0	50.0	0.0	50.0
Welfare	1,765.1	4.1	2,700.1	4.1
Department of Atomic Energy	3,469.6	10.0	3,600.3	100.0
Department of Electronics	120.0	1.0	260.0	5.0
TOTAL	38,783.1	56,111.2	50,765.4	48,460.2

… Not available.

a Budgeted.

Source: Government of India (1997b), Budget 1997/98, Expenditure Budget 1997/98, Vol. 1, Statement 9 and 14, pp. 22-23 and pp. 51-56.

171. A major form of plan and non-plan support is through loans to the PEs. In 1996/97, total non-plan and plan loans to the PEs amounted to around 2.2 per cent of total budgetary expenditure, falling slightly to 1.7 per cent under the 1997/98 Budget. According to the authorities, these loans are in part to meet the restructuring requirements for PEs as recommended by the BIFR and that, in fact, the loans are made at rates of interest that are higher than commercial rates.

172. There has been an increase in the total amount loaned to PEs by the Ministry of Chemicals and Fertilizers, especially the Department of Fertilizers, although loans to the Department of Fertilizers is expected to decline to Rs 5.58 billion in 1997/98 from Rs 6.7 billion in the previous year. The other large group of recipients consists of PEs supported by the Ministry of Industry, especially the small-scale and agro-and rural-industries. The largest recipient is the power sector, receiving almost Rs 15 billion in loans under the 1996/97 Budget and an expected Rs 13.5 billion in 1997/98. Additional loans are also provided for the Khadi and Village Industries Commission (KVIC) and to the Housing and Urban Development Corporation (Hudco), for the renewal of past loans and for loans from the Central Government Employees Group Insurance Scheme Fund, respectively.

173. Additional budgetary support is provided in the form of interest subsidies and government loan guarantees to PEs. Interest rate subsidies amounted to Rs 341.2 million in 1995/96. In 1996/97, they rose to Rs 12.5 billion, nearly three times the budgeted level, mainly because of increased support for heavy industry public enterprises (Table AIII.12). According to the authorities this was an unusual payment made mainly to help PEs restructure as recommended by the BIFR. Budgeted interest subsidies for 1997/98 are considerably lower, at Rs 342 million.

(iv) Assistance for research and development

174. Central Government funding for research and development is mainly channelled through various government departments such as the Department of Science and Technology (DST), Department of Biotechnology, Ocean Development, Department of Scientific and Industrial Research, Department of Agricultural Research and Education, Ministry of Health and others. Industrial research is mainly funded by the Council for Scientific and Industrial Research (CSIR), which has a network of 40 laboratories and 81 field stations across India and had a budget of Rs 4,440 million in 1996/97. Agricultural research is mainly funded by the Department of Agricultural Research and Education, which administers the Indian Council of Agricultural Research (ICAR). Budgetary support for ICAR in 1996/97 was Rs 5.6 billion.

175. The 1996/97 Budget provided Rs 300 million for the Fund for Technology Development and Application, which was created in September 1996 to help develop indigenous technologies and adapt imported technologies. The 1997/98 Budget provided a total of Rs 700 million for the Fund.

(v) Competition laws and regulations

176. The Monopolies and Restrictive Trade Practices (MRTP) Act, 1969 established a legal framework to restrict monopolistic tendencies and encourage competition in the economy. Its original focus was the prevention of economic concentration as described in Clauses (b) and (c) of Article 39 of the Indian Constitution.[105] The latest amendment to the MRTP Act in 1991 eliminates the need to seek prior government approval by large companies for establishing or expanding existing units. The provisions

[105] Article 39 (b) and (c) of the Constitution calls for the distribution of the ownership and control of material resources so as best to serve the common good and to ensure that the result of the economic system is not the concentration of wealth and means of production to the common detriment.

dealing with the concentration of power[106], such as mergers and takeovers, have been repealed and the present emphasis in the law is on controlling monopolistic, restrictive and unfair trade practices.[107]

177. The Monopolies and Restrictive Trade Practices Commission, a quasi-judicial body was established in 1970 under the MRTP Act. The Act authorizes the Commission to enquire into restrictive or monopolistic trade practices referred to it. Cases can be brought by the Central Government, or by the Office of the Director General (Investigation and Registration), which assists the Commission in its daily functioning; the Commission may also initiate cases. If the Commission finds evidence of restrictive or unfair trade practices it can pass "cease and desist" orders. The offending company and its defaulting officers, if found guilty, can be penalized through imprisonment for a period of between six months and three years or fined up to Rs 5,000 for each day that they contravened an order passed by the Commission. The Commission can also issue injunctions and compensation orders. The number of cases examined by the Commission since its inception in 1970 include 10,139 applications relating to monopolistic, restrictive and unfair trade practices, 14,562 applications for compensation and 2,222 applications for injunctions.

178. In order to introduce transparency in corporate takeovers, the Securities and Exchange Board of India notified the SEBI (Substantial Acquisition and Takeovers) Regulations in February 1997. Among other matters, the regulations aim to protect the rights of shareholders through disclosure requirements, a more exact definition of "control", and by ensuring that any purchases of shares made by persons in excess of 10 per cent of the paid up capital of a company should be made through a public tender offer.

(vi) Trade-related investment measures (TRIMs)

179. India allows foreign direct investment to varying levels of foreign equity participation, ranging from 24 to 100 per cent, depending on whether the sector is given priority (Chapter II(6)(i)). All sectors of the economy except those relating to security concerns such as defence, railways and atomic energy and also the insurance sector, are now open to foreign investment. Foreign investment in the small-scale sector is restricted to a 24 per cent foreign equity participation.

180. In general, since India's last Review, local-content requirements such as the phased manufacturing programme (PMP) have been discontinued. However, a new requirement is that investors in the automobile sector sign MOUs with the DGFT; it has been claimed that one of the requirements of such MOUs is to increase indigenization of production (section (2)(xv)).[108] Another measure that continues to be applied is the requirement of dividend balancing for foreign companies in 22 sectors (Chapter II(4)(i)).

[106]Monopolies and Restrictive Trade Practices Act, 1969; Chapter III, part A of the Act was repealed by the 1991 amendment. Chapter III-A of the original Act dealing with restrictions on the acquisition and transfer of shares by corporate bodies was also eliminated by the 1991 amendment.

[107]In this respect, monopolistic trade practices are taken to mean any practices that distort prices, supply or distribution of goods and services, limit technical development or capital investment, cause quality to deteriorate, or result in unreasonable increases in the profits of a firm; restrictive trade practices are defined as practices that have or may have the effect of preventing, distorting or restricting competition in any manner.

[108]US Trade Representative (1997).

(vii) Trade-related intellectual property rights (TRIPS)

(a) Overview

181. India is a member of the Berne Convention for the Protection of Literary and Artistic Works (since 1928), the Universal Copyright Convention, including the 1971 revision (since 1957) and the Geneva Convention for producers of phonograms. It ratified the Washington Treaty on Integrated Circuits in 1989. India has not signed the Paris Convention. Since the entry into force of the WTO Agreement, India has amended the Copyright Act, 1957 to meet the requirements of the TRIPS Agreement except for performers' rights: action to amend the Patents Act, 1970 and the Trade and Merchandise Marks Act, 1958 is under way, and legislation on geographical indications, plant variety protection and integrated circuits is in drafting.

(b) Administrative Procedures

182. India's patent law is defined by the Indian Patent Act of 1970, which grants and recognizes product and process patents for a period of 14 years from the date of application. An exception is provided for food, chemicals and pharmaceuticals, where the term of protection is reduced to seven years from the date of filing and only process patents are recognized and granted. An automatic licence of right is also present in the Act, which is provided after three years from the granting of a patent in the food, chemicals and pharmaceuticals sectors.[109]

183. As part of the TRIPS Agreement India is required to increase the term of patent protection to 20 years from the date of filing in all categories and is expected to provide both product and process patents.[110] Due to its developing-country status, India has five years from the entry into effect of the Agreement to implement these changes. In the case of pharmaceuticals and agricultural chemical technologies India has a maximum period of ten years in which to implement the Agreement.

184. Although India has until the year 2000 to amend its patent laws to comply with the TRIPS Agreement, it is required to provide a means for receiving product patent applications in the areas of pharmaceuticals and agricultural chemical products, and on fulfilment of certain conditions, to provide for exclusive marketing rights for pharmaceuticals and agricultural chemical products.[111] India notified an ordinance on 31 December 1994 to amend the Patents Act, 1970; the Bill to replace the ordinance was not passed because the legislative process could not be completed during Parliamentary time. According to the authorities, a means is nevertheless in place for the Patent Office to receive patent applications for pharmaceuticals and agricultural chemical products. A decision by a panel established under the WTO's dispute settlement mechanism in September 1997, however, stated that India was

[109] For all other patents applications for such a licence of right must be made to the Controller General of Patents who considers each application on its own merits (Section XVI of the Indian Patents Act, 1970).

[110] Some sectors, notably diagnostic, therapeutic and surgical methods for the treatment of humans or animals, plants and animals other than micro-organisms and essentially biological processes for the production of plants or animals other than non-biological and microbiological processes, are excluded from patentability (Article 27 (a and b) of the TRIPS Agreement). Countries must however provide either patent or sui generis protection or a combination of the two for new varieties of plants (Article 27(B)).

[111] Article 70, paragraphs 8 and 9 of the TRIPS Agreement.

in violation of its obligations under Article 70.8 and 70.9 of the TRIPS Agreement.[112] The decision with respect to these two articles was upheld by the Appellate Body in December 1997 (Chapter II(5)(vi)).[113]

185. India's law on copyrights is laid down in the Indian Copyright Act of 1957, as most recently amended in 1994. Copyright is provided to all "original literary, dramatic, musical and artistic works, cinematographic films and sound recordings".[114] The most recent changes bring sectors such as satellite broadcasting, computer software and digital technology under Indian copyright protection.

186. Section 14 of the Act, as amended, provides copyright protection for the lifetime of the author and an additional 60 years, while photographs, films, and sound recordings are provided copyright protection for a period of 60 years. In the case of anonymous or synonymous works, protection is provided for a period of 60 years from the date of publication.[115] To comply with its obligations under the TRIPS Agreement, India is required to extend a term of protection of at least 50 years to performers.[116] India intends to make use of the five-year transitional period granted to it as a developing country signatory to make this amendment.

187. The Copyright Act also establishes a Copyright Office, which is under the control of the Registrar of Copyrights, who in turn is appointed by the Central Government. A Copyright Board has also been established, which discusses questions of ownership, royalty, compulsory licensing and resale of intellectual property rights. The Registrar of Copyrights is the Secretary of the Copyright Board.

188. The present Indian Trade and Merchandise Marks Act, 1958 governs the use, registration and protection of trade marks. Trade marks are presently registered for seven years and can be renewed for further periods of seven years. They are granted for products that are distinctive. In order to be considered for registration, the mark should not cause confusion, should not comprise scandalous or obscene materials and should not cause any religious offence. Service marks and trade secrets are protected under Indian common law.

189. Although India's legislation on trade marks need not be amended to bring it into conformity with the TRIPS Agreement until the year 2000, a new trademark bill was introduced in Parliament in 1993. The bill could not be passed because the Lower House was dissolved before the legislative process could be completed.

190. A project to modernize the registration of trade marks was launched and completed in May 1996. The results of the project include an expanded capacity for registering trade marks by streamlining the application procedure and strengthening the head and branch offices for trade marks in India. Further

[112] WTO document DS50/5, 5 February 1997.

[113] WTO document DS50/AB/R, 19 December 1997.

[114] The Prevention of Food Adulteration Act, 1954, Chapter III.

[115] Indian Copyright Act, 1957, Sections 22-29.

[116] Performers are at present excluded from the Copyright Act.

efforts to computerize the process and providing on-line linkages with international patent and design databases are under consideration.[117]

191. Industrial designs are governed by the Designs Act of 1911, which provides protection to a design registered under the Act for a period of five years, with renewals for two further five-year periods each being possible, for a total of fifteen years. To be eligible for protection, the design must be original and novel. As with trade marks, India has until the year 2000 to make the appropriate changes to bring the Act into conformity with the TRIPS Agreement.

192. In new areas such as geographical indicators, layout designs of integrated circuits and the protection of undisclosed information, India provides no specific protection, although the Indian Courts have provided rulings of wrongful disclosure under common law in the past. India has until 1 January 2000 to bring its legislation in these areas into conformity with the TRIPS Agreement.

(c) Enforcement of intellectual property rights

193. The infringement of a patent can be challenged by any person in a domestic court of law under Section 104 of the Indian Patent Act. The Court has the power to grant an injunction against the infringing party and also to demand either damages or an account of profits. Failure to comply with these fines is punishable by imprisonment for a period of up to two years.[118] These penalties are applicable in the case of violation of the provisions of Sections 35 and 39 of the Act.

194. The investigation and enforcement of copyright violations is the responsibility of the States. The copyright law provides for both civil and criminal prosecutions, with a penalty of six months to three years imprisonment and a fine of between Rs 50,000 and Rs 200,000.[119] In an effort to improve enforcement, the Ministry of Human Resources Development which administers, the Act, has encouraged State Governments to establish special enforcement cells. Such cells are already functional in 23 States and Union Territories and are responsible for identifying copyright infringements and prosecuting such violations. If the State does not act appropriately in such a case, the Central Government can take action. The police have powers to "seize without warrant", all copies or means used for infringing the work if there is sufficient reason to believe that an infringement of copyright is taking place.[120] India has an interest in and is actively pursuing the enforcement of copyright law because of the importance of its own production of copyright material in the film, phonograph and computer software sectors.

(d) Parallel Imports and compulsory licensing

195. India does not prohibit parallel imports of goods and services containing any form of intellectual property rights. Imports are allowed on an m.f.n. basis with no preferential treatment given to any national. Any of these imports however, if they infringe the intellectual property rights of others, may be challenged in an Indian Court of Law.

[117]Government of India (1997c).

[118]The Indian Patents Act, 1970, Section 118.

[119]Indian Copyright Act, 1957, Art. 63.

[120]Indian Copyright Act, 1957, Article 64(1).

196. Chapters 16 and 17 of the Indian Patents Act, 1970 contain provisions relating to compulsory licensing of patents. Provisions are made for the granting of compulsory licences by the Controller General of Patents on determination that the "reasonable requirements" of the public have not been satisfied or that the price being charged is not "reasonable".[121] The Government is entitled to make an application to the Controller for a "licence of right" at any time after the end of three years from the granting of a patent if it is felt that these "reasonable" requirements have not been met. The patent may also eventually be revoked by the Controller after the end of two years following the granting of a compulsory licence if it is felt that the public is not being served. In practice however, compulsory licences are rarely ever invoked; during the last five years no applications for compulsory licences have been filed.

197. Under copyright law, compulsory licences are granted in a case where an author refuses to allow the republication of the work or has refused communication of the work to the public through other forms, such as by broadcast. In this case, the Copyright Board may, after holding an enquiry and giving the owner reasonable opportunity to be heard, grant a compulsory licence enabling the work to be republished. Compulsory licences can also be granted if the author is unknown, has died or cannot be traced. In this case, the applicant must publish the proposal in a newspaper with a broad circulation in India before the Board can grant a compulsory licence for publication.[122] No compulsory licences have been issued under these provisions.

[121]The term reasonable requirements in this case includes instances, for example, where the demand for the patented article is not being met to an adequate extent or on reasonable terms, or the failure of the patentee to manufacture the patented article to an adequate extent (The Indian Patents Act, 1970, Section 90).

[122]Indian Copyright Act, 1957, Art. 31.