III. TRADE POLICIES AND PRACTICES BY MEASURE

(1) INTRODUCTION

1. During the period under review, India continued to streamline customs procedures and implement trade facilitation measures. An electronic system for customs clearance has been introduced, and a risk management system is also in place to selectively screen high and medium risk cargo for customs examination. Despite these measures, India's import regime remains complex, especially its licensing and permit system, and its tariff structure, which has multiple exemptions that vary according to product, user, or specific export promotion programme.

2. India's tariff is announced in the annual Budget but individual tariff rates may be changed during the year. In addition to the standard tariff rate, importers are required to pay an additional duty ("countervailing duty") and a special additional duty instead of local taxes. To determine the "effective" applied tariff rate (i.e. basic duties and other customs duty) on a particular product, separate customs and excise tax schedules must be consulted, which adds to the complexity of the tariff. India's tariff comprises mainly *ad valorem* rates (some 94% of tariff lines), levied on the c.i.f. value of imports; and some alternate or specific duties (6.1% of all tariff lines). During the period under review, the average tariff rate declined: the simple average applied MFN tariff was 12% in 2010/11, down from 15.1% in 2006/07. This is reflected in a decrease in both agricultural and industrial average tariffs due to India's shift towards lower tariffs.

3. Import restrictions may be imposed on grounds of, *inter alia*, health, safety, moral, and security reasons, and for self-sufficiency and balance-of-payments reasons. India links the use of import restrictions and licensing, and other non-tariff measures (NTMs) to domestic policies; for example, NTMs are relaxed when imports are necessary to alleviate inflation or shortages. State trading is also used as a policy tool, to ensure, *inter alia*, a "fair" return to farmers, food security, the supply of fertilizer to farmers, and the functioning of domestic support price systems. India is one of the most active users of anti-dumping measures among WTO Members. Since its last Review in 2007, India has also imposed several safeguard measures. As a result of an amendment of the legislation as of 2010, safeguard measures may also take the form of quantitative restrictions.

4. As in the case of imports, export prohibitions and restrictions are mainly in place to ensure domestic supply of specific goods and thus may be removed and applied as the circumstances require. In order to reduce the anti-export bias inherent in India's import and indirect tax regime, a number of duty remission and exemption schemes are in place to facilitate exports. Tax holidays are also available to investors through the export-processing zones and export-oriented units.

5. India grants direct and indirect assistance to various sectors. Most central government subsidies are destined for agriculture. Other key subsidies include those for diesel and fertilizers. The states provide additional subsidies, especially for basic services such as education and health, and electricity and water. Price controls apply to some commodities and are used as a means to provide subsidies to farmers and a population under the poverty line, and to ensure a "reasonable price" for quality drugs.

6. Since its last Review, India has made several amendments to its main competition policy legislation and the Competition Commission of India (CCI) created under the Competition Act 2002 started operations in 2009. In addition, some aspects of the law affecting mergers and acquisitions recently entered into force. India became an observer to the WTO Agreement on Government Procurement in February 2010. Its procurement system continues to be decentralized, comprising a multiplicity of entities at different levels of Government (including numerous central public-sector

enterprises), and no common legislation governing procurement. Public procurement is considered as an important instrument of government policy and is used to obtain certain socio-economic objectives. As a result, the Central Government has set reservations and price preferences as part of the procurement system. However, competition from foreign suppliers is ordinarily allowed.

7. India has made improvements in IPR enforcement through increased border protection, and its IP offices continued to pursue promising modernization efforts.

(2) MEASURES DIRECTLY AFFECTING IMPORTS

(i) Customs procedures

(a) Registration and documentation

8. Since its last Trade Policy Review in 2007, India has continued the process of changing to paperless, electronic customs clearance. Importers (Indians and foreign nationals), with a few exceptions, must register with the Directorate General of Foreign Trade (DGFT) and obtain an importer-exporter code (IEC) number to be able to import commercially (Table AIII.1).[1] Since 2007, registration has been online, through application and provision of supporting documents (e.g. bank certificate and income tax permanent number).[2]

9. India has six regimes for entry of imports: (a) imports for home consumption; (b) warehousing; (c) transhipment; (d) transit; (e) re-importation; and (f) imports for special economic zones (SEZs). For home consumption, importers may clear goods after payment of the duties and charges, or for warehousing without immediate payment of duties. Imports cleared for warehousing require a bill of entry, filed with all supporting documents as required for goods for home consumption. The duty payable is determined by Customs. Duties are not paid at the time of warehousing but at the time of the ex-bond clearance, for which an ex-bond bill of entry is filed. The final duty rate is determined when an import declaration is presented for warehoused goods to be imported into the domestic tariff area (DTA). Warehoused goods may be moved from one warehouse to another without payment of taxes (included inter-state taxes). Inter-state tax would be payable only if the movement from one warehouse to another entailed an inter-state sale: in this case, the transaction would be subject to sales tax, entry tax (charged by some states[3]), and octroi if goods are sold to a warehouse located in the State of Maharashtra. In general, transhipment of containers at Indian ports is allowed without any examination by Customs. Transhipped good require a transhipment bill of lading.[4] Transit of goods through India is allowed without payment of duty and without examination by Customs, except if customs officials are informed of the possibility of illegal trade. Goods exported from India may be re-imported within three years but there must be no change in the classification of the goods. Re-imported goods are subject to duties, except goods exported for repairs abroad[5], for exhibitions, or as samples, which may be re-imported duty free. Special economic zones (SEZs) are deemed foreign territory for trade operations. Imports into SEZs enter without

[1] Foreign Trade (Development and Regulation) Act 1992, as amended by the Foreign Trade (Development and Regulation) Amendment Act 2010.

[2] An application in ANF (Aayaat Niryaat Form) 2A is required to register. See Directorate General of Foreign Trade (DGFT) online information. Viewed at: http:dgft.gov.in.

[3] Entry tax on goods is levied in several states, including Jammu and Kashmir, Himachal Pradesh, Rajasthan, Uttar Pradesh, Uttaranchal, Haryana, Punjab, Andhra Pradesh, Karnataka, Tamil Nadu, Kerala, Bihar, Assam, Orissa, Arunachal Pradesh, Chhattisgarh, West Bengal, Maharashtra, Goa, Madhya Pradesh, and Gujarat.

[4] Customs Act 1962, Chapter VIII (Goods in Transit).

[5] In this case, duties are levied on the cost of repair and insurance and freight (Jain, 2007).

payment of taxes, duties or cess. They are not subject to customs examination at the port; any required examination will take place at the zone.

10. To clear goods for home consumption, importers must file a bill of entry, which may be processed manually or through the electronic data interchange (EDI) system. Supporting documents (e.g. invoice, packing list, and bill of lading/airway bill) must be filed along with the bill of entry if it is processed manually. Import licences from the DGFT, and sanitary and phytosanitary certificates from the Ministry of Agriculture must be obtained prior to importation and submitted along with the customs declaration. Additional documentation may also be required (e.g. a country of origin certificate) for goods imported under a preferential trade agreement or under an export incentive scheme and qualifying for duty reductions (section (iv)(e) and (3)(vii)(c)).[6] The bill of entry may be filed prior to the arrival of the goods to allow for faster clearance, but no earlier than 30 days before the arrival date of the vessel or aircraft carrying the goods.[7]

11. Importers that use the EDI system to clear imports are required to file a bill of entry in electronic format containing all the relevant information; the supporting documents must be submitted when imports undergo physical examination. EDI facilities are available at 92 customs offices.[8] About 97.5% of all import documents are processed electronically; about 0.67 million registered IEC holders use EDI facilities.[9]

12. In 2005, India introduced a risk management system (RMS) as a measure of trade facilitation to selectively screen only high and medium risk cargo for customs examination. The RMS consolidated the "green channel" clearance facility and other fast-track facilities to clear goods. The RMS for processing imports is operational at 48 customs offices; some 85% of India's imports are processed via this system. In addition, importers with a good track record and complying with qualifying criteria, are entitled to be accredited for special clearance procedures under the Accredited Client's Programme (ACP).[10] As at early 2011, 250 ACP importers are allowed to self-assess their consignments with no need for examination, in line with India's commitments to simplify and harmonize Customs' procedures under the revised Kyoto Convention.[11]

13. Under the RMS, importers file an electronic bill of entry and the system indicates which import certificates, permits, or licences are required. The RMS reviews the documents and provides one of four possible instructions for both ACP (if cargo is considered risky) and non-ACP importers: (a) imports may be discharged without further assessment (i.e. of their classification, rate of duty or valuation) or examination; (b) imports may be cleared with no further assessment but subject to

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[6] WTO (2007).

[7] Department of Valuation online information, "Procedure for Clearance of Imported and Export Goods". Viewed at: http://www.dov.gov.in/newsite3/clearance_procedure.asp.

[8] There are some 300 customs posts in India. According to the authorities, posts that are not automated are mainly remote land stations where trade is almost nil.

[9] Information provided by the authorities.

[10] Qualifying criteria include, *inter alia*: (i) the value of imports must be at least Rs 100 million or customs duties paid must be at least Rs 10 million, in a financial year; (ii) at least 25 bills of entry must have been submitted in a financial year; (iii) there must be no case of tax violation during the last three financial years; (iv) there must be no duty demand pending on account of non-fulfilment of export obligations; and (iv) the importer must have a reliable system of record keeping and internal controls (Customs Circular No. 42/2005, 24 November 2005. For Customs Notifications, Circulars, and Instructions, see Central Board of Excise and Customs online information. Viewed at: http://cbec.gov.in/cae1-english.htm).

[11] Customs Circulars Nos. 42/2005 and 43/2005, 24 November 2005; and Chaturvedi (2009).

examination; (c) the release of imports requires further assessment but no examination; or (d) imports must be assessed and examined.[12]

14. Certificates of registration and import permits (e.g. certificates of origin, sanitary and phytosanitary certificates, and end-use certificates) issued by different agencies, are required to import specific goods, in certain instances, depending on their end-use.[13] These certificates must be submitted at the time of filing the bill of entry. Under the Insecticides Act 1968, products that are included in the Schedule to the Act, that have not been registered in India as insecticides, must be imported on the basis of import permit or end-use (no-objection) certificate for products used for non-insecticidal purpose (section (x)). For instance, imports of boric acid for insecticidal use must be registered with the Central Insecticides Board and Registration Committee (CIB & RC)[14], as well as an import permit issued by the CIB & RC.[15] However, in the case of imports of non-insecticidal boric acid the administrative ministry concerned (e.g. Ministry of Agriculture) also has to issue an end-use (no-objection) certificate prior to the importation, to regulate its use.[16] Without the no-objection certificate, which is issued only to end-users and not to importers in general, imports are not allowed.[17] If these requirements are not fulfilled, imports are confiscated and the importer may be fined and/or imprisoned; these measures are aimed at protecting public health.[18]

15. For imports under duty exemptions and free-trade zones schemes (section (3)(vii)), importers are required to "execute" a bond with Customs. The bond is equal to the amount of payable duty on the imported goods. If importers fail to fulfil the bond conditions, usually related to the fulfilment of post-importation conditions, they must pay the duty levied on these imports along with interest rates at the applicable rate.[19]

16. Customs clearance has been more efficient since 2007: on average, import procedures are completed in 20 days (41 days in 2007), including 8 days for document preparation and 4 days for customs clearance and technical inspections. The cost per container is US$960, including preparing documents (US$390) and clearing customs (US$120).[20] The implementation of the EDI system in 1994[21], and the RMS in 2005 at India's major customs offices, has helped to render border procedures more efficient. EDI facilities have been extended to 92 locations and all major customs ports. The number of documents processed through the EDI increased from 3.2 million in 2008/09 to 8 million in 2010/11 (as at December 2010).[22]

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[12] Customs Circular No. 43/2005, 24 November 2005.

[13] This is the case for imports of chemicals regulated by the Insecticides Act 1968.

[14] As at May 2011, 229 were insecticides registered under the Insecticides Act 1968, Section 9(3) (information provided by the authorities).

[15] Customs Circular No. 61/2004, 28 October 2004.

[16] WTO document G/LIC/Q/IND/12, 8 October 2008; Customs Circular No. 61/2004, 28 October 2004; and DGFT Circular No. 16(RE-07)/2004-2009, 22 October 2007 (for DGFT Circulars, Notifications, and Public Notices, see Directorate General of Foreign Trade online information. Viewed at: http://dgft.gov.in). A no-objection certificate is equivalent to an end-use certificate; they are used to monitor the trade of certain highly-regulated products used in manufacturing.

[17] Information provided by the authorities.

[18] Customs Instruction No. 528/9/2004, 6 October 2006.

[19] Department of Valuation online information, "Procedure for Clearance of Imported and Export Goods". Viewed at: http://www.dov.gov.in/newsite3/clearance_procedure.asp.

[20] World Bank/IFC Doing Business online information. Viewed at: http://www.doingbusiness.org.

[21] Comptroller and Auditor General of India (2002), Chapter 2: Indian Customs: Electronic Data Interchange System.

[22] Information provided by the authorities.

17. If an importer is not satisfied with the assessment (i.e. the classification, rate of duty or valuation) by the customs officer, the importer may appeal against the "assessment order" (i.e. a decision made in writing by an officer). No data is collected on the number of appeals against "assessment orders".

(b) Preshipment inspection

18. Preshipment inspection for imports of certain goods has been mandatory since 2004. Goods subject to preshipment inspection include unshredded metallic waste and scrap (since 2004), and shredded metallic waste and scrap (since 2009) (Table III.1).[23] Imports of unshredded metallic waste and scrap are permitted through 26 designated ports. Inspections ensure that consignments are free of arms, explosives, and radioactive-contaminated materials.[24] Preshipment inspection certificates are issued by accredited certifying agencies located inside and outside India.[25]

Table III.1
Metallic waste and scrap subject to preshipment inspection, 2011

ITC code	Description
7204.10.00	Waste and scrap of cast iron
7204.21.90	Other
7204.29.20	Of high speed steel
7204.29.90	Other
7204.30.00	Waste and scrap of tinned iron or steel
7204.41.00	Turnings, shavings, chips, milling waste, saw dust, fillings, trimmings and stampings, whether or not in bundles
7204.49.00	Other
7204.50.00	Remelting scrap ingots
7404.00.10	Copper scrap
7404.00.22	Brass scrap
7503.00.10	Nickel scrap
7602.00.10	Aluminium scrap
7902.00.10	Zinc scrap
8002.00.10	Tin scrap
8104.20.10	Magnesium scrap

Source: Department of Commerce (2010), *Handbook of Procedures 2009-2014,* Vol. I, incorporating Annual Supplement, 23 August. Viewed at: http://dgft.gov. in.

19. Imports of certain types of second-hand and defective steel products, as well as textiles and clothing articles are subject to preshipment inspection on safety and health grounds.

(ii) Customs valuation and clearance

20. The Customs Act 1962 (Section 14), the Customs Valuation (Determination of Price of Imported Goods) Rules 1988, its amendments, and the Finance Act 2007 regulate customs valuation in India. The latest amendments to customs valuation legislation entered into force on 10 October 2007.[26] Under Customs Notification No. 93/2007, Section 14 of the Customs Act was substituted by Section 95 of the Finance Act 2007. The amended section stipulates that the

[23] DGFT Public Notices Nos. 16/2004-09, 15 October 2004; and 163(RE-2008)/2004-2009, 23 March 2009.
[24] Department of Commerce (2010b). Checking for excess radiation levels has been mandatory since 2009 (DGFT Public Notice No. 17/2009-2014, 13 November 2009).
[25] WTO (2007).
[26] Customs Circular No. 38/2007, 9 October 2007; and Customs Notifications Nos. 93/2007 and 94/2007, 13 September 2007.

determination of value of imports should be based on the transaction value, i.e. "the price actually paid or payable for the goods when sold for export to India", including any amount paid or payable for costs and services (e.g. commissions and brokerage, royalties and licence fees, transport and insurance costs, and handling charges). The calculation is based on the exchange rate in force when the bill of entry is presented to Customs. For goods sold on "high-seas" sale contracts, the price paid by the last buyer constitutes the transaction value.[27] The transaction value method may be rejected if "reasonable doubt" arises on the accuracy of the declared value.[28] There are six circumstances under which a customs officer may raise reasonable doubt.[29] Raising reasonable doubt does not lead to an upfront rejection of the import value presented, which, if justified by the importer, is accepted. If the transaction value is not used, the value is determined according to other methods, in sequential order: transaction value of identical goods; transaction value of similar goods; deductive value; computed value; and residual method.[30] The Rules 2007 also clarify that royalties and licence fees must be included in the transaction value, if not included in the price actually paid or payable (Rule 10(1)); and the transport cost includes the ship demurrage charges on charted vessels, and lighterage or barge charges (Rule 10(2)).

21. A landing charge (for loading, unloading, and handling) of 1% of the c.i.f. value is added to the c.i.f. value, to calculate the transaction value (earlier known as "assessable value").[31]

22. The Central Board of Excise and Customs is authorized, by notification in the *Gazette of India*, to fix "tariff values" (reference prices) for any type of imported (exported) good.[32] At present, India uses "tariff values" to calculate customs duty applicable on imports of, *inter alia*, palm oil and palmolein oil (crude and RBD), as well as crude soybean oil, poppy seeds, and brass scrap.[33] According to the authorities, "tariff values" are revised every two weeks and are adjusted to align with international market prices; however, "tariff values" for edible oil remain unchanged since 2006 (Table III.2).

23. Importers may file an appeal against customs decisions on valuation matters to the Appeals Commissioner or the Customs, Excise, and Service Tax Appellate Tribunal (Customs Act 1962, Sections 128-129).[34] No data are collected on the number of appeals.

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[27] "High-seas" sale is a sale carried out while goods are still at sea or after dispatch from the port/airport of origin and before arrival at the port/airport of destination. See also Customs Circular No. 11/2010, 3 June 2010.

[28] Customs Valuation (Determination of Value of Imported Goods) Rules 2007, Section 12.

[29] These circumstances are: (a) a significantly higher value at which identical or similar imports at (or about) the same time, in comparable quantities and comparable commercial transaction, were assessed; (b) the sale value involves an abnormal discount/reduction from the ordinary competitive price; (c) the sale involves special discounts limited to exclusive agents; (d) there are mistakes in the declaration of goods, e.g. description, quality, quantity, country of origin, and year of manufacture or production; (e) the import declaration is incomplete, e.g. lack of brand, grade, and any other specification that could have a bearing on assessing the value of the goods; and (f) fraudulent manipulation of documents.

[30] For details, see Customs Valuation (Determination of Value of Imported Goods) Rules 2007, Sections 4-9. The amended Rules introduced a proviso under Sections 4, 5, and 9.

[31] Updates on Indian Taxation and Corporate Laws online information, "Value for Imports". Viewed at: http://www.dateyvs.com/custom02; and Central Excise Madurai online information, "Central Excise: A guide to Assesses". Viewed at: http://www.centralexcisemadurai.tn.nic.in/what_central.html.

[32] Customs Act 1962, Section 14(2).

[33] "Tariff values" (i.e. reference price) were introduced in 2001 through Customs (non-tariff) Notification No. 36/2001, 3 August 2001, and last amended through Customs (non-tariff) Notification No. 37/2011, 31 May 2011.

[34] WTO document G/VAL/W/173, 29 October 2008.

Table III.2
Tariff values (reference prices), 2006-11

		Tariff value (US$/tonne)					
HS code	**Description**	**2006**	**2007**	**2008**	**2009**	**2010**	**2011[a]**
1511.10.00	Palm oil (crude)	447	447	447	447	447	447
1511.90.10	Palm oil (RBD)	476	476	476	476	476	476
1511.90.90	Palm oil (others)	462	462	462	462	462	462
1511.10.00	Palmolein (crude)	481	481	481	481	481	481
1511.90.20	Palmolein (RBD)	484	484	484	484	484	484
1511.90.90	Palmolein (others)	483	483	483	483	483	483
1507.10.00	Soyabean oil (crude)	580	580	580	580	580	580
7404.00.22	Brass scrap (all grades)	4,524	4,205	3,252	3,476	4,320	4,360
1207.91.00	Poppy seeds	n.a.	5,398	4,238	3,144	3,445	2,520

n.a. Not applicable.

a Up to 31 May 2011.

Note: "Tariff values" for poppy seeds were introduced through Customs (non-tariff) Notification No. 116/2007, 3 December 2007. Reference prices are for end year.

Source: Customs (non-tariff) Notifications Nos. 130/2006, 1 December 2006; 122/2007, 17 December 2007; 141/2008, 31 December 2008; 188/2009, 31 December 2009; 03/2010, 31 December 2010; and 37/2011, 31 May 2011.

24. India maintains, in the WTO, the special and differential treatment provisions invoked under the Tokyo Round Agreement.[35] Hence, India continues to maintain a reservation concerning the reversal of the sequential order of Articles 5 and 6, and a reservation to apply Article 5.2 whether or not the importer so requests.[36] In 2009, India decided to lift the reservation on minimum values entered under paragraph 3 of the Protocol to the Agreement on Implementation of Article VII of the GATT 1994, and in paragraph 2 of the WTO Agreement.[37] The authorities indicated that India did not apply minimum values despite the reservation maintained until 2009.

25. The transaction value is generally used to assess the additional duty on imports.[38] However, it is not used to assess the additional duty on imports of packaged goods, which, if produced domestically, would be subject to a maximum retail price (MRP).[39] In this case, to assess the additional duty, the value of the goods is determined using the MRP declared on the package minus an "abatement" for the like domestic goods.[40] The "abatement" takes into account taxes payable on goods and freight, which are included in the MRP. In March 2011, 143 items were subject to a MRP-based excise duty payment and the "abatement" ranged from 20% to 40% of the retail price.[41]

[35] WTO document WT/L/38, 15 February 1995.

[36] WTO document G/VAL/W/162/Rev.1, 15 October 2009.

[37] WTO document G/VAL/M/48, 23 December 2009.

[38] Customs Tariff Database online information, "Special CVD in Lieu of Sales Tax under Section 3(5) of CTA 1975". Viewed at: http://custadaindia.com/CUSTADA-Online/document/document/Special%20CVD%20in%20Lieu.htm.

[39] The basic duty on goods subject to an MRP is levied on the transaction value.

[40] The excise duty on domestic goods is levied on their value; which should be the retail sale price declared on the goods less an amount of abatement, if any, from the retail sale price, as allowed by the Central Government by notification in the *Gazette of India* (Central Excise Act 1944, Chapter II, Section 4A (Valuation of excisable goods with reference to retail sale price).

[41] "Retail sale price" means, except for medicaments (other than those used exclusively in Ayurvedic, Unani, Siddha, homeopathic or bio-chemic systems), the maximum price at which the excisable goods in packaged form may be sold to the ultimate consumer, when the price is the sole consideration for such sale. It includes all taxes (local or otherwise), freight and transport charges, commissions to dealers, and all charges towards advertisement, delivery, packing, forwarding, etc. For medicaments, "retail sale price" means the retail

If more than one retail sale price is declared for the imported good, the highest price is used to assess the duty. MRP-based valuation is not applicable to products sold in bulk to industries, and to packages containing more than 25 kg or litres (excluding cement and fertilizer sold in bags of up to 50 kg.

(iii) Rules of origin

26. India does not apply non-preferential rules of origin.[42] Preferential rules of origin are applied under regional and bilateral trade agreements (Table III.3); these have not changed since the last Review of India. Maximum foreign-content requirements range from 30% to 70%; other criteria to determine origin are sufficient transformation and change in tariff classification. There are also product-specific rules of origin under the SAFTA (180 products), and agreements with Korea, Rep. of (1,780 products)[43], and Singapore (380 products).[44]

Table III.3
Rules of origin under preferential trade agreements, 2011

Agreements	Maximum foreign-content requirements	Minimum cumulative local-content requirements
Regional		
Asia-Pacific Trade Agreement (APTA)	55% of the f.o.b. value (LDCs: 65%)	60% of the f.o.b. value (LDCs: 50%)
Global System of Trade Preferences (GSTP)	50% of the f.o.b. value (LDCs: 60%)	60% of the f.o.b. value (LDCs: 50%)
South Asian Free-Trade Areas (SAFTA)[a]	60% of the f.o.b. value (LDCs: 70%; Sri Lanka: 65%) and change in tariff classification	50% of the f.o.b. value, 20% of the f.o.b. value[b] and change in tariff classification
South Asia Preferential Trade Arrangement (SAPTA)	60% of the f.o.b. value (LDCs: 70%)	50% of the f.o.b. value (LDCs: 40%)
Bilateral		
Afghanistan	50% of the f.o.b. value and change in tariff classification	40% of the f.o.b. value and 30% of the f.o.b. value[b]
ASEAN[a]	65% of the f.o.b. value and change in tariff classification	35% of the f.o.b. value and change in tariff classification
Bhutan	n.a.	n.a.
Chile	60% of the f.o.b. value[c] and change in tariff classification	40% of the f.o.b. value and change in tariff classification
Korea, Rep. of[a]	65% of the f.o.b. value and change in tariff classification	35% of the f.o.b. value and change in tariff classification
MERCOSUR	40% of the f.o.b. value[c]	60% of the f.o.b. value
Nepal	70% of the f.o.b. value and change in four-digit tariff classification	n.a.
Singapore[a]	60% of the f.o.b. value and change in tariff classification	40% of the f.o.b. value and change in tariff classification
Sri Lanka	65% of the f.o.b. value and change in tariff classification	35% of the f.o.b. value and 25% of the f.o.b. value[c]
Thailand[d]	60% of the f.o.b. value and change in tariff classification	40% of the f.o.b. value and change in the tariff classification

Table III.3 (cont'd)

price displayed by the manufacturer under provisions of the Drugs (Prices Control) Order 1995 (Central Excise (non-tariff) Notification No. 49/2008, 24 December 2008, as amended by Central Excise (non-tariff) Notifications Nos. 18/2009, 7 July 2009; 9/2010, 27 February 2010; and 11/2011, 24 March 2011. For Central Excise Notifications, Circulars, and Instructions, see Central Board of Excise and Customs online information. Viewed at: http://www.cbec.gov.in/cae1-english.htm).

[42] WTO document G/RO/N/1, 9 May 1995.

[43] Information provided by the authorities.

[44] Department of Commerce online information, "International Trade: Trade Agreements". Viewed at: http://commerce.nic.in/trade/international_ta.asp?id=2&trade=i.

Agreements	Maximum foreign-content requirements	Minimum cumulative local-content requirements
Other preferential areas		
Mauritius, Seychelles, and Tonga	50% of ex-work price of five specific items[e] and 75% ex-work prices for others	50% of ex-work price of five specific items[e] and 25% ex-work prices for others
Least-developed countries	70% of the f.o.b. value and change in tariff classification for not wholly produced or obtained category	30% of the f.o.b. value and change in tariff classification for not wholly produced or obtained category

n.a. Not applicable.

a Product-specific rules of origin apply.
b Domestic value content in the exporting country.
c Foreign contents should not exceed 15% of the f.o.b. value for sets, as defined in General Rule 3 of the Harmonized System.
d Not notified to the WTO.
e Manual sewing and knitting machines (and parts thereof) or those which require less than one quarter of one brake-horsepower for their operation; cycles (other than motor cycles) and parts and accessories thereof, excluding rubber tyres and tubes; motor cars including taxi cabs and articles (other than rubber tyres and tubes) to be used as parts and accessories thereof; motor omni-buses, chassis of motor omni-buses, motor vans and motor lorries, and parts of mechanically propelled vehicles and accessories excluding rubber tyres and tubes; and motor cycles and motor scooters and articles (other than rubber tyres and tubes) adapted for use as parts and accessories thereof.

Note: Rules of origin are not covered under the India-Bhutan preferential trade agreement.

Source: Department of Commerce online information, "International Trade: Trade Agreements". Viewed at: http://www.commerce.nic.in/trade/international_ta.asp?id=2&trade=I; Customs General Exemption Nos. 70 and 71. Viewed at: http://www.cbec.gov.in/customs/cst-809/cs-gen66-90.pdf; and information provided by the Indian authorities; and information provided by the authorities.

(iv) Tariffs

(a) Applied tariff structure

27. Under the Customs Tariff Act 1975, the MFN tariff is based on the standard rate, which is a statutory duty; however, the "effective" tariff may be lower because of general- or industrial-use-based exemptions. India's tariff is announced in the annual Budget at the end of February each year; however, additional changes to individual tariff rates may be made during the year by the Ministry of Finance's Central Board of Excise and Customs, through notifications published in the *Gazette of India*; this adds to the complexity of the tariff. During 2007-10, the Government issued some 230 tariff-rate amendment notifications.[45] In addition to the standard rate, importers are required to pay an additional duty ("countervailing duty") and a special additional duty instead of local taxes (section (v)). To determine the applied tariff (and other customs duty) rate applicable to a particular product, separate customs and excise tax schedules must be consulted. These schedules should, in addition, be cross-checked with any applicable customs or excise notification that may have raised or reduced the rate on the product.

28. The 2010/11 applied tariff (HS2007 nomenclature) has 11,328 tariff lines at the eight-digit level, comprising rates ranging from zero to 150%. Some 94% of tariff lines are *ad valorem*; duty is levied on the c.i.f. value of imports. Alternate or specific duties apply to 6.1% of all tariff lines, unchanged since 2006/07 (Table III.4). The simple average applied MFN tariff was 12% in 2010/11, down from 15.1% in 2006/07.[46] Both agricultural and industrial average tariffs declined reflecting India's shift towards lower tariffs. India provides a number of exemptions on imported inputs for certain sectors or importers, depending on the industrial use of the import. As a result of these

[45] During 2007-10, the Indian Government issued 554 tariff rate amendment notifications. These included 225 notifications related to changes in tariff rates; and others related to imposition of anti-dumping and safeguard duties, or to give effect to commitments under international agreements (information provided by the authorities).

[46] Calculations exclude specific rates and include the *ad valorem* part of the alternate rates.

exemptions, the effective applied tariff is considerably lower than the simple average standard rate. However, because a large majority of the exemptions relate to industrial use, they cannot be included in the general tariff analysis. To the extent that a tariff exemption is clearly related to a particular tariff line, the Secretariat has tried to incorporate it in the tariff analysis.

Table III.4
Tariff structure, 2006/07 and 2010/11
(%)

		MFN effective applied rates		Final bound rate[a]
		2006/07	2010/11	
1.	Bound tariff lines (% of all tariff lines)	75.2	75.6	75.6
2.	Simple average rate	15.1	12.0	46.4
	Agricultural products (HS01-24)	38.2	35.1	119.1
	Industrial products (HS25-97)	11.8	8.6	33.7
	WTO agricultural products	36.2	33.2	118.3
	WTO non-agricultural products	12.0	8.9	32.0
	Textiles	12.2	9.6	26.9
	Clothing	12.5	10.0	37.1
3.	Duty free tariff lines (% of all tariff lines)	2.7	3.2	1.9
4.	Domestic tariff "peaks" (% of all tariff lines)[b]	2.5	2.2	6.5
5.	International tariff "peaks" (% of all tariff lines)[c]	12.5	11.9	87.7
6.	Overall standard deviation of tariff rates	15.0	14.2	40.8
7.	Coefficient of variation of tariff rates	1.0	1.2	0.9
8.	Non-*ad valorem* tariffs (% of all tariff lines)	6.1	6.1	8.0
9	Nuisance applied rates (% of all tariff lines)[d]	0.5	0.7	0.0

a Based on 2010/11 tariff schedule. Implementation of final bound rates was completed in 2005. Calculations are based on 8,567 bound tariff lines, of which 8,503 are fully bound and 64 partially bound.
b Domestic tariff peaks are defined as those exceeding three times the overall simple average applied rate.
c International tariff peaks are defined as those exceeding 15%.
d Nuisance rates are those greater than zero, but less than or equal to 2%.

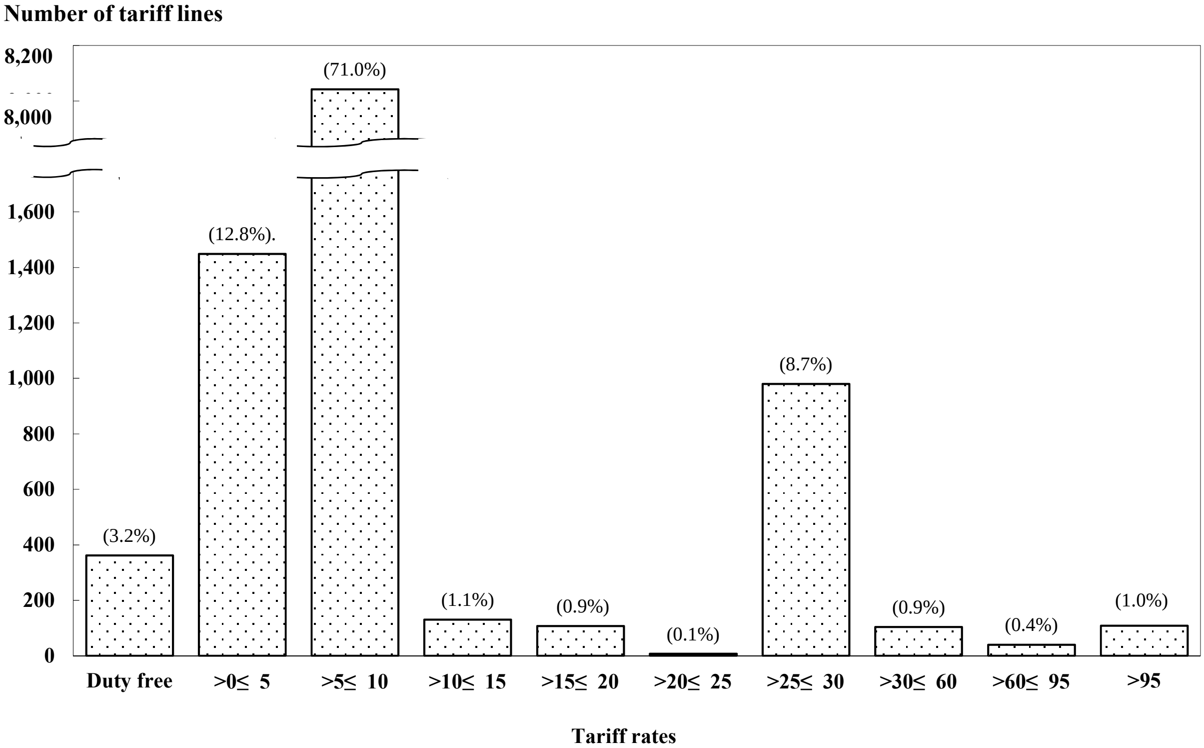
Note: The 2006/07 tariff is based on HS02 nomenclature, consisting of 11,695 tariff lines; the 2010/11 tariff is based on HS07 nomenclature consisting of 11,328 tariff lines. Calculations exclude specific rates and include the *ad valorem* part of alternate rates. MFN applied rates include exemptions, applicable at the full eight-digit tariff line.

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

29. Non-*ad valorem* rates apply to 690 tariff lines: five are specific rates (i.e. almonds, shelled and in shell (two HS lines), and platinum (three HS lines)), while 685 (6.1% of all tariff lines) are alternate rates (textiles and clothing). The simple average applied MFN tariff in 2010/11 was 13.4% including AVEs (12% without AVEs). The inclusion of AVEs affects only industrial average tariffs, which increase from 8.6% to 10.3% (10.6% under WTO non-agriculture). Mainly affected are textile and clothing, with average protection of 16.2% and 25.7%, respectively, and of 9.6% and 10% if AVEs are not included in the tariff analysis. This confirms that protection may increase considerably by the use of specific rates: some goods have protection of around 600% (e.g. shawls, scarves (exceeding 60 cm) and the like of silk (HS 6214.10.20 (598.32%)), women's or girls' suits of silk (HS 6104.19.20 (620%)), and scarves of silk measuring 60 cm or less (HS 6214.10.10 (656.41%)).

30. In 2010/11, tariffs range from zero to 150%. The majority of lines (71% or 8,042) carry a rate greater than 5% but less than 10%, while 12.8% of total lines have a tariff rate greater than zero but less than 5% (Chart III.1). This is a major change from 2006/07, when 65% of all lines were within the 10-15% range, and 10.4% of lines at 25-30%. The number of duty-free lines has increased slightly. Although average rates have declined, some products continue to bear very high rates, notably some beverages, spirits, and coffee and tea. Dispersion remains high: the standard deviation shows only a slight decrease, from 15 at the time of the last Review of India to 14.2.

Chart III.1
Distribution of MFN applied tariff rates, 2010/11



Note: **Calculations include the *ad valorem* part of alternate rates. Figures in parentheses denote the share of total lines.**

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

31. Average tariff protection declined from 15.1% to 12% in 2010/11. Since 2007, the simple average tariff for agricultural goods (WTO definition) has declined from 36.2% to 33.2%, but remains substantially higher than for manufactured goods (Table III.5). Beverages and spirits bear the highest protection, followed by coffee and tea, dairy products, and sugar and confectionary. Non-agricultural products face an average tariff of 8.9%, down from 12% in 2007. The decrease in the average rate reflects a decrease from a peak rate of 12.5% in 2006/07 to rates of 10% and 7.5%. However, fisheries and transport equipment still bear above average tariff protection of 29.5% and 21.5%, respectively.

32. India's tariffs are higher for agriculture goods and processed goods than for semi-manufactures. This responds in part to the strategy of protecting agriculture and promoting the development of manufacturing activities, which require imports of intermediate goods. It may also reflect India's policy of granting import duty concessions for intermediate goods under different export and investment promotion schemes (section (3)(vii)(c)).

Table III.5
Summary analysis of the tariff, 2006/07 and 2010/11

	2006/07 effective applied rates (MFN)			2010/11 effective applied rates (MFN)			Bound tariff
	No. of lines	Average (%)	Range (%)	No. of lines	Average (%)	Range (%)	Range (%)
Total	**11,695**	**15.1**	**0-150**	**11,328**	**12.0**	**0-150**	**0-300**
HS 01-24	1,466	38.2	0-150	1,433	35.1	0-150	10-300
HS 05-97	10,229	11.8	0-100	9,895	8.6	0-70	0-150
By WTO definition							
Agricultural products	1,492	36.2	0-150	1,431	33.2	0-150	10-300
Animals and products thereof	108	30.7	5-100	106	30.8	5-100	35-150
Dairy products	32	35.3	30-60	32	34.4	30-60	40-150
Fruit, vegetables, and plants	376	28.3	0-100	355	27.6	0-100	10-150
Coffee and tea	75	74.7	17.5-100	75	74.7	17.5-100	17.5-150
Cereals and preparations	138	32.8	0-90	137	30.4	0-90	35-150
Oils seeds, fats, oil, and their products	204	42.7	0-100	196	18.5	0-100	15-300
Sugars and confectionary	38	33.4	10-60	38	33.4	10-60	45-150
Beverages, spirits, and tobacco	122	73.1	10-150	123	78.7	7.5-150	35-150
Cotton	11	13.2	0-30	11	5.5	0-30	100-150
Other agricultural products, n.e.s.	388	24.9	0-70	358	25.1	0-70	10-150
Non-agricultural products (incl. petroleum)	10,203	12.0	0-70	9,897	8.9	0-70	0-150
Non-agricultural products (excl. petroleum)	10,185	12.0	0-70	9,879	8.9	0-70	0-150
Fish and fishery products	164	29.5	5-30	176	29.5	5-30	35-150
Minerals and metals	1,955	9.1	0-10	1,912	7.1	0-10	0-40
Chemicals and photographic supplies	2,511	12.1	0-10	2,471	8.1	0-10	0-150
Wood, pulp, paper, and furniture	530	11.5	0-10	495	9.2	0-10	25-40
Textiles	1,579	12.2	5-10	1,555	9.6	5-10	10-40
Clothing	419	12.5	10-10	397	10.0	10-10	35-40
Leather, rubber, footwear, travel goods	338	12.5	0-70	322	10.2	0-70[a]	3-40
Non-electric machinery	1,099	11.3	0-10	1,094	7.1	0-10	0-40
Electric machinery	560	9.8	0-10	537	6.7	0-10	0-10
Transport equipment	246	32.8	0-60	244	21.5	0-60	3-40
Non-agricultural products, n.e.s.	784	10.8	0-10	676	8.6	0-10	0-40
Petroleum	18	9.7	0-10	18	8.2	0-10	n.a.
By sector[b]							
Agriculture, forestry and fisheries	659	29.5	0-100	621	28.8	0-100	10-150
Mining	229	5.7	2-12.5	232	5.1	0-10	5-40
Manufacturing	10,806	14.4	0-150	10,474	11.1	0-150	0-300
Manufacturing excl. food processing	9,934	12.0	0-100	9,605	8.8	0-60	0-150
By stage of processing							
First stage of processing	1,300	23.6	0-100	1,261	22.5	0-100	5-150
Semi-processed products	4,465	11.7	0-100	4,339	8.6	0-60	0-150
Fully processed products	5,930	15.8	0-150	5,728	12.2	0-150	0-300

n.a. Not applicable.

a Tariff lines with applied rates at 70% are unbound.
b ISIC Rev.2 classification. Electricity, gas, and water is excluded (1 tariff line).

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

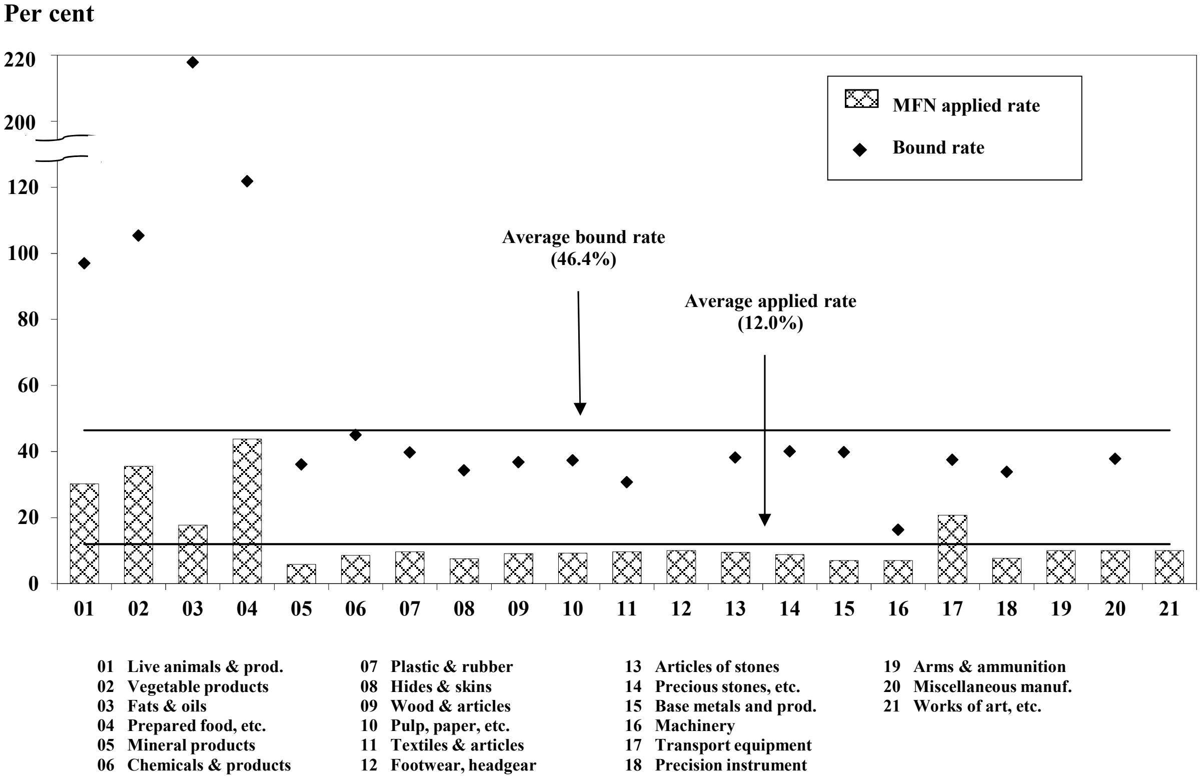
Source: WTO Secretariat calculations, based on data provided by the Indian authorities.

(b) Bound tariff

33. The implementation of India's Uruguay Round tariff commitments was completed in 2005. Some 75% of India's tariff is bound, 100% for agricultural (WTO definition), and 71.6% for non-agricultural products. Bound rates are mainly *ad-valorem* (90.2%); non-*ad valorem* bound rates apply mainly to textile and clothing. India did not bind any tariff lines in HS sections 12 (footwear

and headgear), 19 (arms and ammunitions), and 21 (works of art); partial bindings are mainly in HS section 11 (textiles and clothing) (Chart III.2). Bindings range from zero to 40% for non-agricultural products, with some exceptions such as fish products (150%); and range from 10% to 300%, for agricultural products, with most bound at 100% and 150%. Some edible oils are bound at 300%. The average bound tariff is 118.3% for agricultural products (WTO definition) and 32% for non-agricultural products. Bound rates exceed applied rates; the average bound tariff is 46.4%, compared with an average MFN tariff of 12%.

Chart III.2
Average applied MFN and bound tariff rates, by HS section, 2010/11



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

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

34. The gap between applied and bound tariff rates provides the authorities with scope to raise applied tariffs. These gaps allow the Government to modify tariff rates in response to domestic and international market conditions. If domestic agricultural prices rise, tariff rates are lowered to create downward pressure on domestic prices and minimize the impact on consumers; when prices fall, the rates are often increased to protect farmers by raising the overall cost of imports.

35. Under Article XXVIII:5 of the GATT 1994, India reserved the right to modify its Schedule XII during the three-year period commencing 1 January 2009.[47]

[47] WTO document G/MA/208, 6 October 2008.

(c) Tariff-rate quotas

36. Tariff-rate quotas are maintained on five lines at the HS six-digit level (19 tariff lines at the HS eight-digit level according to the authorities): milk and milk powder; maize (corn); rape, colza, and mustard oil; and crude sunflower seed and safflower oil.[48] More recently (22 December 2010), due to a shortage of natural rubber, natural rubber (five tariff lines at the HS eight-digit level) was put under a tariff quota regime for the remainder of the financial year 2010/11.[49] A tariff quota was also put in place for butter and other animal fats.

37. Tariff quotas are allocated by the Directorate General of Foreign Trade (DGFT), upon request by designated agencies: the National Agricultural Cooperative Marketing Federation of India Ltd.; the State Trading Corporation of India Ltd.; PEC Ltd.; and the National Dairy Development Board. The authorities noted that the fill ratio of these quotas is low, apparently because of lack of demand (Table III.6).

Table III.6
Products subject to tariff-rate quotas, 2006-11
(Tonnes)

Description	HS No.	In/out of quota rate (%)[a]	In/out of quota rate (%)[b]	Tariff-rate quota (in-quota total imports)				
				2006/07	2007/08	2008/09	2009/10	2010/11
Skimmed milk powder/whole milk powder	0402.10 0402.21	15[c]/60	0[c, d]/60	10,000 (0.0)	10,000 (0.0)	10,000 (0.0)	10,000 (3,000)	30,000 (..)
Maize (corn), other than seed quality	1005.90	15/60	0/50	500,000 (1,436)	500,000 (1,021)	500,000 (6,087)	500,000 (16,972)	500.000 (..)
Crude sunflower seed oil and safflower seed oil	1512.11	50/300	0	150,000 (95,883)	n.a.[e]	n.a.[e]	n.a.[e]	n.a.[e]
Rape, colza or mustard oil	1514.19 1514.99	45/75	7.5[f]	150,000 (0.0)	150,000 (0.0)	150,000 (0.0)	150,000 (0.0)	150,000 (..)
Butter and other fats[d]	0405.10 0405.90.10 0405.90.20	n.a.	0/30	n.a.	n.a.	n.a.	n.a.	15,000 (..)
Butter and other fats[d]	0405.20 0405.90.90	n.a.	0/40	n.a.	n.a.	n.a.	n.a.	..

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

a Based on WTO document W/LET/440, 4 April 2003.
b Based on the Indian tariff 2010/11.
c Applicable to cumulative imports of goods under tariff lines 0402.10 and 0402.21.
d Customs Notification No. 33/2010, 12 March 2010.
e Given that the applied tariff rate is 0%, the tariff quota has not applied since 2007.
f The 2010/11 tariff does not show an out-of-quota rate for rape, colza or mustard oil but just an applied rate of 7.5%, depending upon the product (information provided by the authorities).

Source: WTO documents W/LET/440, 4 April 2003; G/MA/TAR/RS/66, 1 May 2000; and G/AG/N/IND/5, 7 March 2011; Central Board of Excise and Customs online information, "Customs: Notifications". Viewed at: http://cbec.gov.in/cae1-english.htm; and information provided by the Indian authorities (Indian tariff 2010/11).

38. Under the free-trade agreement with Sri Lanka, India maintains tariff-rate quotas on clothing and tea imports (Chapter II). No data were available on the extent to which these preferential tariff-rate quotas have been filled in recent years.

[48] WTO document G/MA/TAR/RS/66, 1 May 2000.
[49] Customs Notification No. 128/2010, 22 December 2010.

(d) Tariff concessions

39. Under Section 25(1) of the Customs Act 1962, the Central Government is empowered to exempt any goods from customs duties on grounds of public interest. Tariff concessions are announced in the annual Budget and throughout the year through notifications by the Ministry of Finance.[50] These concessions are both product-specific and based on end-use. During the review period, revenue forgone as a result of customs duty concessions increased from 29% to 39% of total revenue, amounting to some US$168 billion during 2006-07/2009-10.[51]

40. Goods imported under processing-for-export regimes (e.g. special economic zones (SEZs) and export-oriented units (EOUs)) are eligible for tariff concessions (section (3)(vii)(a)). Other programmes to promote exports and investment also provide for tariff concessions (section (3)(vii)(c)).

(e) Preferential tariffs

41. Preferential rates are granted for certain articles under GSTP, regional (SAFTA, APTA, MERCOSUR, and ASEAN), and bilateral agreements (Singapore, Korea, Rep. of, Chile, and Sri Lanka). Under the GSTP, India has granted tariff concessions to 12 countries on a limited number of products.[52] Only preferences under the SAFTA II (at 2.3%) and under the Sri Lanka FTA (at 2.3%) are significantly lower than the simple average applied MFN of 12% (Table III.7). In other instances, preferences are not substantial (Korea, Rep. of) or the number of tariff lines subject to preferences is minimal (e.g. MERCOSUR and Chile).

Table III.7
Summary analysis of the preferential tariff, 2010/11

		Total		WTO agriculture		WTO non-agriculture		Textiles		Clothing	
	Preferential lines[a] (% of all tariff lines)	Avg. (%)	Duty-free rates (%)	Avg. (%)	Duty-free rates (%)	Avg. (%)	Duty-free rates (%)	Avg. (%)	Duty-free rates (%)	Avg. (%)	Duty-free rates (%)
MFN		12.0	3.2	33.2	5.6	8.9	2.8	9.6	0.0	10.0	0.0
Regional agreements											
SAFTA I[b]	69.3	8.9	3.2	22.5	5.6	6.9	2.8	7.4	0.0	10.0	0.0
SAFTA II[c]	87.6	2.3	89.2	15	66.7	0.5	92.4	0.04	98.7	6.5	34.8
ASEAN[d]	79.1	8.8	3.5	28.8	5.6	5.9	3.2	6.4	0.0	6.7	0.0
APTA[e]	10.3[f]	11.5	4.3	33.1	5.6	8.4	4.1	9.6	0.0	10.0	0.0
MERCOSUR[g]	3.4	11.9	3.2	33.2	5.6	8.9	2.7	9.5	0.0	10.0	0.0
Bilateral agreement (FTA)											
Sri Lanka[h]	91.6	2.3	79.1	6.4	91.9	1.7	77.3	7.1	4.4	5.0	0.0
Korea, Rep. of[i]	50.8	11.0	4.8	30.5	5.6	8.2	4.7	9.0	0.5	9.4	0.0
Singapore[j]	43.0	8.8	22.5	31.0	12.4	5.7	23.9	7.9	13.7	8.7	0.0

Table III.7 (cont'd)

[50] Ministry of Finance (2007a), (2008), (2009), and (2010c).
[51] Ministry of Finance (2007a), (2008), (2009), and (2010c).
[52] Customs Notification No. 236/89, 1 September 1989.

	Preferential lines[a] (% of all tariff lines)	Total		WTO agriculture		WTO non-agriculture		Textiles		Clothing	
		Avg. (%)	Duty-free rates (%)	Avg. (%)	Duty-free rates (%)	Avg. (%)	Duty-free rates (%)	Avg. (%)	Duty-free rates (%)	Avg. (%)	Duty-free rates (%)
Thailand[k]	5.6	11.8	5.4	33.1	6.1	8.7	5.3	9.6	0.0	10.0	0.0
Chile[l]	1.3	11.9	3.2	33.1	5.6	8.9	2.8	9.6	0.0	10.0	0.0
LDCs[m]	90.4	6.6	3.2	25.0	5.6	4.0	2.8	4.0	0.0	6.1	0.0

a The 2010/11 MFN tariff consists of 11,328 tariff lines, of which 359 are duty free. The number of preferential lines includes only lines on which the rates, at fully applied eight-digit level, are lower than the corresponding MFN applied rate.
b Preferential rates for Pakistan and Sri Lanka (Customs Notifications Nos. 133/2010 and 134/2010).
c Preferential rates apply to SAFTA LDC members: Bangladesh, Bhutan, the Maldives, and Nepal (Customs Notifications Nos. 126/2007, 36/2010, and 133/2010). For Bangladesh, duty-free in-quota rates apply to textiles (Customs Notification No. 51/2008).
d ASEAN: preferential rates applicable to Malaysia, Singapore, and Thailand (Customs Notification No. 135/2010).
e Asia-Pacific Trade Agreement: preferential rates apply to Bangladesh, China, Korea (Rep. of), and Sri Lanka (Customs Notifications Nos. 89/2006 and 134/2006).
f For Bangladesh, the percentage of preferential lines equals 10.9%.
g MERCOSUR: preferential rates apply to Argentina, Brazil, Paraguay, and Uruguay (Customs notification No. 57/2009).
h Customs notifications Nos. 43/2003, 57/2005, 128/2006, 3/2007, 52/2008, 126/2002, 75/2007, and 2/2007. Duty-free in-quota rates apply to clothing products (Customs Notification No. 52/2008). In-quota rates are applied to tea (Customs Notification No. 60/2000) and to desiccated coconut (Customs Notification No. 2/2007).
i Customs Notifications Nos. 151/2009 and 137/2010.
j Customs Notifications Nos. 73/2005, 74/2005, 75/2055, 69/2009, and 131/2010.
k Customs Notifications Nos. 85/2004 and 86/2006.
l Customs Notification No. 101/2007.
m Customs Notifications Nos. 96/2008 and 95/2010. Preferential rates apply to 21 African and 5 Asian countries.

Source: WTO Secretariat, based on data provided by the Indian authorities and Central Board of Excise and Customs online information, "Customs: Notifications". Viewed at: http://www.cbec.gov.in/customs/cs-act/notifications/cs-notfns-idx.htm.

(v) Other charges affecting imports

42. India applies a number of duties and charges on imports, other than tariffs. These include: the additional customs duty, the special additional duty, the education cess and the secondary, higher education cess. Some charges and cesses are also applied on specific products (see below).

43. The additional customs duty (AD) is aimed at removing or reducing what the Government considers a pro-import bias resulting from the application of central excise duties to domestically manufactured goods, in accordance with India's trade legislation.[53] To this end, the AD rate should be equivalent to the central excise duty, also referred to as Central Value Added Tax (CENVAT), on domestically produced goods of the same tariff classification.[54] The general AD rate was 10% in 2010. However, some goods may have lower rates of 4% and 0% and specific or compound rates.[55] The rate and its exceptions are defined in each Budget or through subordinate legislation (notifications). The 4% special additional customs duty (SAD) continues to be imposed on imports, with few exceptions (14.8% of all tariff lines)[56], to partially compensate for the sales tax, state value-added tax, local tax or any other charges leviable on a like article on its sale, purchase or

[53] Customs Tariff Act 1975, Section 3(1).
[54] The excise and tariff nomenclatures are harmonized at HS eight-digit level.
[55] This is the case of the additional duty on petroleum products (Central Excise Notifications Nos. 4/2006, 1 March 2006; 4/2008, 1 March 2008; and 14/2009, 7 July 2009).
[56] Some 12 lines in HS 71 (articles of jewellery) have SAD duty of 1%.

transportation in India.[57] However, as the SAD is an across-the-board tax applied at a flat rate on most goods, it may not always be equivalent to local sales taxes on similar domestically produced goods, which may be higher or lower. The SAD paid on imports subsequently sold within India and for which the importer has paid state-level value-added taxes, may be refunded.[58] The application of the AD and SAD was the subject of a dispute in the WTO in 2007.[59]

44. Since 2004, an education cess has been charged on imports at the rate of 2% on all aggregate customs duties (excluding safeguard, countervailing or anti-dumping duties if applicable).[60] The secondary and higher education cess of 1%, which entered into force through the Finance Bill of 2007, is also levied on all imports. This cess is calculated on the aggregate value of all excise duties (including the additional and the special duties or any other duty or excise), but excluding the education cess and safeguard, countervailing or an anti-dumping duty if applicable.

45. Calculation of all charges applied imports including landing charges, the effective customs duty, the additional customs duty, the special additional customs duty, and the education cess show an average protection of 25.6% compared to 12% (Table III.8). The authorities noted that some of these charges are "in lieu" of domestic taxes.

Table III.8
Summary analysis of India's imports charges, 2010/11

	No. of lines	Effective applied rates (MFN)		Total duty rate, incl. extra charges[a]	
		Average (%)	Range (%)	Average (%)	Range (%)
Total	**11,328**	**12.0**	**0-150**	**25.6**	**0-527.4**
HS 01-24	1,433	35.1	0-150	42.6	0-527.4
HS 05-97	9,895	8.6	0-70	23.1	0-107.1
By WTO definition					
Agricultural products	1,431	33.2	0-150	41.8	0-527.4
Animals and products thereof	106	30.8	5-100	36.4	9.4-111.1
Dairy products	32	34.4	30-60	39.7	30.9-68.3
Fruit, vegetables, and plants	355	27.6	0-100	33.9	0-111.1
Coffee and tea	75	74.7	26.9-100	87.8	36.1-111.1
Cereals and preparations	137	30.4	0-90	39.1	0-192.6
Oils seeds, fats, oil, and their products	196	18.5	0-100	23.0	0-103
Sugars and confectionary	38	33.4	10-60	51.8	10.3-85.9
Beverages, spirits, and tobacco	123	78.7	7.5-150	98.0	23.9-527.4
Cotton	11	5.5	0-30	7.3	0-36.1
Other agricultural products, n.e.s.	358	25.1	0-70	33.5	0-79
Non-agricultural products (incl. petroleum)	9,897	8.9	0-70	23.2	0-107.1
Non-agricultural products (excl. petroleum)	9,879	8.9	0-70	23.3	0-107.1
Fish and fishery products	176	29.5	5-30	34.1	5.2-36.1
Minerals and metals	1,912	7.1	0-10	21.0	0-31.7
Chemicals and photographic supplies	2,471	8.1	0-10	23.6	0-26.8
Wood, pulp, paper, and furniture	495	9.2	0-10	21.1	0-26.8
Textiles	1,555	9.6	5-10	23.5	9.4-26.8
Clothing	397	10.0	10-10	22.0	15-26.8
Leather, rubber, footwear, travel goods	322	10.2	0-70	25.2	0-79
Non-electric machinery	1,094	7.1	0-10	22.4	0-26.8

Table III.8 (cont'd)

[57] Customs Tariff Act 1975, Section 3(5).
[58] Customs Notification No. 102/2007, 14 September, 2007.
[59] WTO document series WTO/DS360 (India: additional and extra-additional duties on imports from the United States).
[60] Department of Revenue, D.O.F. No. 334/3/2004-TRU, 8 July 2004; and Finance Act 2004, Section 93. For example, if the import duty for a certain product is 10%, the education cess on that product would be 2% of 10%, that is 0.02%.

	No. of lines	Effective applied rates (MFN)		Total duty rate, incl. extra charges[a]	
		Average (%)	Range (%)	Average (%)	Range (%)
Electric machinery	537	6.7	0-10	22.7	0-26.8
Transport equipment	244	21.5	0-60	40.4	0-107.1
Non-agricultural products, n.e.s.	676	8.6	0-10	22.1	0-26.8
Petroleum	18	8.2	0-10	9.0	5-10.3
By sector[b]					
Agriculture, forestry and fisheries	621	28.8	0-100	36.4	0-111.1
Mining	232	5.1	0-10	9.1	0-25.6
Manufacturing	10,474	11.1	0-150	25.3	0-527.4
Manufacturing excluding food processing	9,605	8.8	0-60	23.6	0-107.1

a Calculation for averages with extra charges include landing charges, effective custom duty, additional duty, special additional duty, and education cess.
b ISIC Rev.2 classification. Electricity, gas, and water is excluded (1 tariff line).

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

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

46. Additional cesses are levied on imports and domestic products for the development of specific industries and are not part of the fiscal revenue (Table AIII.2). The authorities noted that these cesses are charged as part of the excise duty, thus in the case of imports they are part of the additional duty (AD). The stated objective of the authorities is to eliminate the cesses once the Goods and Services Tax is implemented.

47. Some imports are also subject to specific duties. For instance, imports of high-speed diesel oil and petrol (i.e. motor spirits) are subject to a fuel cess (previously the additional excise duty or road cess) at a rate of Rs 2 per litre[61], to finance the Central Road Fund. (Chapter IV(3)(iv)).[62] According to the authorities, this cess is charged as part of the additional duty (AD).

48. The national calamity contingent duty (NCCD) is levied on pan masala (HS 2106.90.20); some cigarettes and tobacco products (HS 24.02 and 24.03); petroleum oils (HS 2709.00.00); telephones for cellular network or for other wireless networks; and vehicles and motor cycles (HS 8703, 8704, 8706, and 8711).[63] The NCCD is both specific and *ad valorem*, ranges from 1% to 45%, and is also levied on similar domestic products.[64]

49. The 2010/11 Budget introduced the "clean energy cess" (Rs 50/tonne) to be levied on coal, lignite, and peat produced in India and imported.[65] This cess is to finance the establishment of a National Clean Energy Fund to fund research and innovative projects in clean energy technologies. It is levied on raw coal (HS 2701), raw lignite (HS 2702), and raw peat (HS 2703) at a rate of Rs 50/tonne in addition to any other cess or duties levied on these goods.

50. The State of Maharashtra levies an entry tax (octroi) on entry of domestic and imported goods to the jurisdiction. The tax is regulated by the Maharashtra Tax on the Entry of Goods into Local

[61] Finance Act 1999.
[62] The special additional customs duty on motor spirit is leviable in accordance with the Finance Act 2002.
[63] Finance Act 2003, Section 134; and NCCD Incidence (7th Schedule of Finance Act 2001, as amended by the 13th Schedule of Finance Bill 2003 and 8th Schedule of Finance Bill 2008).
[64] NCCD Incidence (7th Schedule of Finance Act 2001, as amended by the 13th Schedule of Finance Bill 2003 and 8th Schedule of Finance Bill 2008).
[65] Central Excise Circular No. 01/2010, 24 June 2010.

Areas Act 2002, and applies currently to various petroleum products, tiles, and air conditioners. Rates range from 10% to 34% according to product. For petroleum products, the rate is mixed (a specific component (Rs 1/litre) is added to the *ad valorem* rate). Entry taxes are applied in several states.[66]

(vi) Import prohibitions, restrictions, and licensing

51. Import restrictions may be imposed under Section 3 of the Foreign Trade (Development and Regulation) Act 1992 and through notifications, under Section 11 of the Customs Act 1962, declaring the importation or exportation of any good as prohibited or restricted. Import restrictions may be imposed for security, self-sufficiency, balance-of-payments, health, and moral reasons.

52. In practice, India links the use of import restrictions and licensing, and other non-tariff measures (NTMs) to domestic policies, for example, by relaxing NTMs when imports are required to alleviate inflation or shortages. The use of NTMs raises the cost of exporting to India and, in some cases, may be equivalent to an import prohibition.

(a) Import prohibitions

53. Import prohibitions are generally for health and safety reasons and include a range of products from meat and offal of most wild animals, to animal fats, and ivory and ivory powder. During the period under review, certain mobile handsets and mobile phones have been included in the list of prohibited goods (Table III.9). For sanitary reasons, India has continued to ban imports of certain avian livestock and livestock products[67]; and has prohibited imports of milk and milk products from China since 2008.[68] In addition, imports of rough diamonds from Côte d'Ivoire, as well as some products from the Democratic People's Republic of Korea, Iran, and Iraq are prohibited under UN resolutions, as well as imports of rough diamonds (HS 7102.10, 7102.21 or 7102.31) from the Bolivarian Republic of Venezuela under the Kimberly Process Certification Scheme.[69] Imports of beef and products containing beef in any form remain prohibited.[70]

Table III.9
Import prohibitions, 2011

HS No.	Description	Status since 2007
0208.90.10	Other meat and edible meat offal of wild animals, excluding rabbits or hares, primates, whales and dolphins, and reptiles	Unchanged
0209.00.00	Pig fat, free or lean meat, and poultry fat, not rendered or otherwise extracted	Unchanged
0410.00.10	Edible products of wild animal origin	Unchanged
0504.00.31, 0504.00.41 0504.00.51	Gusts, bladders, and stomachs of wild animals	Unchanged

Table III.9 (cont'd)

[66] Entry tax on goods is levied in several states, including Jammu and Kashmir, Himachal Pradesh, Rajasthan, Uttar Pradesh, Uttaranchal, Haryana, Punjab, Andhra Pradesh, Karnataka, Tamil Nadu, Kerala, Bihar, Assam, Orissa, Arunachal Pradesh, Chhattisgarh, West Bengal, Maharashtra, Goa, Madhya Pradesh, and Gujarat.

[67] Department of Commerce (2010a), Schedule 1: Import Policy.

[68] DGFT Notifications Nos. 46(RE-2008)/2004-2009, 24 September 2008; 67(RE-2008)/2004-2009, 1 December 2008; 111(RE-2008)/2004-2009, 16 June 2009; 22/2009-2014, 23 December 2009; and 49/2009-2014, 24 June 2010; and No. 16 (RE-2010)/2009-2014, 3 January 2011.

[69] Department of Commerce (2010b).

[70] Under the current Import Policy Schedule (Foreign Trade Policy 2009-14), imports of beef and products containing beef in any form are listed as prohibited (under the General Notes Regarding Import Policy). However, meat of bovine animals (fresh, frozen or chilled) are also listed as restricted (i.e. subject to licences) under the Import Policy Schedule.

HS No.	Description	Status since 2007
0505.10.10, 0505.90.21 0505.90.31, 0505.90.91	Feathers, powder, waste, and other parts of feathers, and skins and other parts of wild birds	Unchanged
0511.99.99	Natural sponges	Unchanged
0506.10.11, 0506.10.21 0506.10.31, 0506.10.41 0506.90.11, 0506.90.91	Bones and horn-cores (crushed and non-crushed), bone grist, ossein, and bone meal of wild animals	Unchanged
0507.10.10, 0507.10.20	Ivory, and ivory powder and waste	Unchanged
0510.00.91	Wild animal products used in pharmaceutical products, excluding bezoar, ox gallstone, and placenta	Unchanged
0511.91.10, 0511.91.20 0511.91.30, 0511.99.21 0511.99.92	Fish nails and tail, and other fish waste; sinews and tendons of wild animals; and frozen semen (other than bovine embryo) of wild animals	Unchanged
1501.00.00	Pig fats (including lard) and poultry fat, other than that of Headings Nos. 0209 or 1503	Unchanged
1502.00.10, 1502.00.20 1502.00.30, 1502.00. 90	Fats of bovine animals, sheep, or goats, other than those of Heading No. 1503, including mutton tallow and fasts (unrendered, rendered or solvent extraction)	Unchanged
1503.00.00	Lard stearin, lard oil, oleostearin, oleo-oil, and tallow oil not emulsified or mixed or otherwise prepared	Unchanged
1504.10.99, 1504.20.30, 1504.20.90, 1504.30.00	Fats and oils of fish or marine mammals, excluding cold and squid liver oils; fish lipid oil; sperm oil; and other fats and oils of fish or marine mammals	Unchanged
1506.00.10, 1506.00.90	Neat-foot oil and fats from bone or waste, and other animal fats and oils	Unchanged
1516.10.00	Animal fat	Unchanged
1517.10.10, 1517.90.30	Margarine (excluding liquid margarine) and imitation of lard of animal origin	Unchanged
1518.00.40	Other vegetable oil and fats, excluding castor oil dehydrated and line seed oil	Unchanged
1522.00.10, 1522.00.20 1522.00.90	Degras[a] and soap stocks	Unchanged
3507.10.11, 3507.10.19 3507.10.91, 3507.10.99	Animal rennet	Unchanged
4302.19.20	Tiger-cat skins	Unchanged
4303.10.10, 4303.90.10	Articles of apparel and clothing accessories of wild animals covered under the Wild Life Protection Act 1972	Unchanged
8517	Mobile handsets without international mobile equipment identity (IMEI) number or with all zeroes IMEI, and CDMA[b] mobile phones without electrical serial number (ESN)/mobile equipment identifier (MEID) or with all zeroes ESN/MEID	Added
9601.10.00	Worked ivory and articles of ivory	Unchanged

a Residues resulting from the treatment of fatty substances or animal or vegetable waxes.
b CDMA stands for code division multiple access.

Source: Department of Commerce (2010), Schedule 1: Import Policy, *Foreign Trade Policy 2009-2014*, incorporating Annual Supplement, 23 August. Viewed at: http://dgft.gov.in; and DGFT online information, "Notifications". Viewed at: http://dgft.gov.in.

(b) Import licensing[71]

54. India applies an import licensing system to administer the importation of restricted items. Import licences are administered according to the Foreign Trade (Development and Regulation) Act 1992 and Foreign Trade (Regulation) Rules 1993. Licensing requirements may be eliminated without legislative approval.

55. The Import Policy Schedule lists the items that are restricted and items that are restricted with a condition.[72] Restricted items require a specific import licence issued by the Directorate General of Foreign Trade (DGFT). Restricted items subject to conditions, require import permits (e.g. sanitary

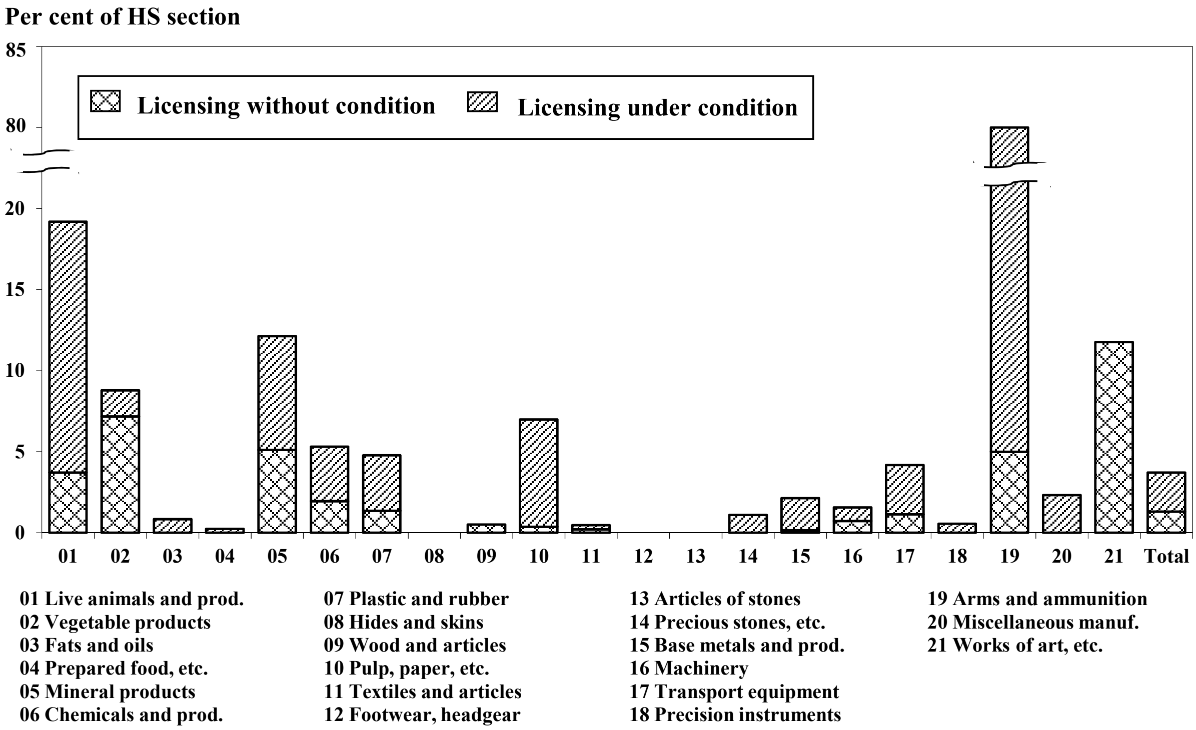
[71] This section is based on the Foreign Trade (Development and Regulation) Act 1992; Foreign Trade (Regulation) Rules 1993; and WTO documents G/LIC/N/3/IND/9-11, 3 September 2007 to 27 July 2010.

[72] The conditions are stipulated in Department of Commerce (2010a), Schedule 1: Import Policy, which is amended through DGFT notifications from time to time.

and phytosanitary permits), in addition to the specific import licence. It is not clear to the Secretariat which products require an automatic licence and which require a non-automatic licence.

56. Under India's current Import Policy Schedule (Foreign Trade Policy 2009-14), some 422 tariff lines at the HS eight-digit level are subject to import restrictions (up from some 415 tariff lines in 2007).[73] They represent around 3.7% of total tariff lines. Some 275 tariff lines are restricted while some 147 are restricted subject to conditions. Restrictions imposed in 2007 under HS sections 1, 2, 5, 19 (arms and ammunition), and 21 (works of art), remain unchanged (Chart III.3).

Chart III.3
Import licensing, by HS section, 2010/11



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

57. All importers holding a valid code number (IEC) may apply for a licence. Applications for import licences are made to the DGFT or to the regional licensing authority of the DGFT. The licensing authority may refer the application to the EXIM Facilitation Committee, which consists of technical authorities, for assistance to approve a licence. The practice of routing licence applications through sponsoring authorities has been dispensed with. The requirements for filing applications for imports licences are published in the Handbook of Procedures.[74]

58. Licences are granted on an MFN basis. They are valid for 24 months and may be revalidated for six months by the licensing authority, on merit. Licences are issued with an "actual user condition"[75] and are in general non-transferable.[76]

[73] Including Chapter 89, 427 tariff lines at the HS eight-digit level are subject to import restrictions.
[74] Department of Commerce (2010b).
[75] This means that the imported material must be used by the importer and cannot be sold.

59. Licences are subject to a licence application fee, which varies according to the c.i.f. value of imports.[77] At the time of the last Review, fees were Rs 2 per shipment of a c.i.f. value of Rs 1,000, subject to a minimum fee of Rs 200 and a maximum of Rs 100,000. For electronically filed applications, the fee was Rs 1 per shipment for a c.i.f. value of Rs 1,000 with a minimum of Rs 200 and maximum of Rs 50,000.[78] Imports by the Central Government, state government or any department/office of the Government are exempt from the application fees, as are imports to be used by educational, charitable or missionary institutions, or for personal use (except vehicles). Fees are not refunded.[79]

60. The DGFT or an authorized officer may, in writing, refuse to grant, renew, or suspend a licence to import (or export) on specific grounds (Box III.1). Any of these decisions may be appealed. However, in accordance with Indian legislation, a licence should not be denied if denial is likely to adversely affect trade.[80]

Box III.1: Grounds to refuse to grant or to cancel a licence, 2011

Grounds to refuse to grant a licence:

- the applicant has contravened any law relating to customs or foreign exchange;
- the application for the licence does not substantially conform to any provision of the Foreign Trade (Regulation) Rules;
- the application or any document used to support it contains false, fraudulent or misleading statement;
- an action against the applicant is pending under the Foreign Trade (Development and Regulation) Act 1992 or rules and orders made there under;
- the applicant fails to pay any penalty imposed on him under the Act;
- the applicant has tampered with a licence;
- the applicant or any agent or employee of the applicant with his consent has been a party to a corrupt or fraudulent practice for the purposes of obtaining any other licence;
- the applicant is not eligible for a licence if the applicant does not comply with the registration and documentation stipulated in the Export and Import Policy;
- the applicant fails to produce documents called for by the Director General or the licensing authority;
- in the case of a licence for import, no foreign exchange is available to import;
- if it has been decided by the Central Government to import through state trading enterprises and distribution thereof through special or specialized agencies.

Grounds to cancel a licence:

- the licence has been obtained by fraud, suppression of facts or misrepresentation; or
- the licensee has committed a breach of any of the conditions of the licence; or
- the licensee has tampered with the licence in any manner; or
- the licensee has contravened any law relating to customs or foreign exchange or the rules and regulations relating thereto.

Source: Foreign Trade (Development and Regulation) Act 1992; Foreign Trade (Regulation) Rules 1993; and WTO documents G/LIC/N/3/IND/9-11, 3 September 2007-27 July 2010.

[76] The Foreign Trade (Development and Regulation) Act 1992; and Foreign Trade (Regulation) Rules 1993.

[77] WTO document G/LIC/N/3/IND/11, 27 July 2010.

[78] WTO document WT/TPR/M/182/Add.1, 20 July 2007; and Department of Commerce (2010b), Appendix 21B.

[79] Foreign Trade (Regulation) Rules 1993.

[80] Foreign Trade (Development and Regulation) Act 1992.

61. The goods imported under a licence cannot be exported without the written permission of the DGFT.[81]

62. Imports of certain goods (24 tariff lines) are subject to import restrictions depending upon their import price (Table III.10). These imports are restricted (i.e. subject to a licence) when the c.i.f. price is lower than the minimum price. Minimum import prices are set taking into account domestic and international prices and quality.[82]

Table III.10
Items whose import is free, subject to minimum import price, 2010/11

HS code	Description	Minimum import price
0802.90.11 0802.90.12 0802.90.13 0802.90.19	Betel nuts: whole Betel nuts: split Betel nuts: ground Betel nuts: other than above	Rs 35/kg
4012.11.00 4012.12.00 4012.13.00 4012.19.10 4012.19.90	Retreaded tyres, of a kind used on motor cars, Retreaded tyres: of a kind used buses or lorries Retreaded tyres: of a kind used on aircraft Other tyres: for two wheelers Other tyres	US$175/unit for buses, lorries, bigger size vehicles, and light commercial vehicles US$25/unit for passenger vehicles
4012.20.10	Used pneumatic tyres: for buses, lorries, and earth moving equipment	US$175/unit
4012.20.20	Used pneumatic tyres: for passenger automobile vehicles	US$25/unit
6802.10.00 6802.21.10 6802.21.20 6802.21.90 6802.91.00 6802.92.00	Tiles, cubes, and similar articles Marble tiles Marble monumental stone Other monumental or building stone Marble, travertine, and alabaster Other calcareous stone	US$50/kg
6810.11.10 6810.11.90 6810.19.10 6810.19.90 6810.91.00 6810.99.10 6810.99.90	Cement bricks Other building blocks and bricks Cement tiles for mosaic Other articles of cement Articles of cement: prefabricated structural components for building or civil engineering Concrete boulder Other articles of cement	US$50/kg

Source: Department of Commerce (2010), Schedule 1: Import Policy, *Foreign Trade Policy 2009-2014*, incorporating Annual Supplement, 23 August. Viewed at: http://dgft.gov.in.

(c) Import quotas

63. India maintains import quotas for marble and similar stones (HS 2515.11.00, 2515.12.10, 2515.12.20, and 2515.12.90) and for sandalwood (HS 4403.99.22). Quotas are established annually and administered on an MFN basis. There is no maximum limit to be allocated per applicant. Applications are examined upon receipt and assessed according the criteria stated in the notifications and circulars issued by DGTP on a yearly basis.[83] India does not maintain bilateral quotas.

64. Since the removal of most quantitative restrictions on imports in 2001, a mechanism has been set up to monitor imports of items considered to be sensitive. There are currently some 415 sensitive items, compared with 300 in 2007. Monitored sensitive items include milk and milk products, fruits and vegetables, pulses, poultry, tea and coffee, spices, food grains, edible oils, cotton and silk, marble

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[81] Foreign Trade (Development and Regulation) Act 1992; and Foreign Trade (Regulation) Rules 1993.

[82] Information provided by the authorities.

[83] DFGT Notification No. 36/2009-2014, 31 March 2010; and DGFT Circular No. 29/2009-2014, 31 March 2010.

and granite, automobiles, parts and accessories of motor vehicles, products produced by small-scale industries, and other products (bamboos, cocoa, copra, and sugar).[84]

65. As of 2010, India may impose quantitative restrictions by notification in the *Gazette of India*, on imports of goods that cause serious injury to domestic industry, as a result of a safeguard investigation (section (viii)).[85]

(d) Other import restrictions

66. Imports of certain items, including motor vehicles[86], and second-hand cars (less than three-year old)[87] must be imported through specified ports (Chennai, Kolkata, and Mumbai for new vehicles; and Mumbai for second-hand cars). Until 2008, imports from Sri Lanka that were subject to preferential tariffs (such as tea and garments) had to be imported through specific ports (Kochi and Kolkata for tea, and Chennai and Mumbai for garments).[88]

(vii) State trading[89]

67. State trading is used as a policy tool, to ensure, *inter alia*: a "fair" return to farmers as well as food security; the supply of fertilizer to farmers; and that the domestic support price system for kerosene and LPG are properly implemented through the importation by a single operator (section (4)(iv)).

68. India maintains state trading for certain agricultural goods (i.e. some cereals, copra, and coconut oil), urea, and petroleum oils (Table III.11). Seven state-trading companies (STEs) are authorized by the DGFT to trade in these goods. However, under the Foreign Trade Policy 2009-14, the DGFT may authorize other companies to import any goods subject to state trading, when STEs are not able to supply the market. The Indian Oil Corporation continues to have the monopoly on imports of natural gasoline liquid (HS 2710.11.20), other natural gasoline liquid (HS 2710.11.90), and light diesel oil (HS 2710.19.40); other STEs and private companies may market other hydrocarbons (Table III.11).

69. The exclusive right to import (or export) is granted to a state enterprise under the provisions of the Foreign Trade Policy 2009-14 (Paragraph 2.11). Also, under the Foreign Trade Policy, all STEs granted special privileges to import (export) must make such purchases (sales) in accordance with commercial considerations including price, quality, availability, marketability, and transportation. STEs should act in a non-discriminatory manner.

70. The value of imports by STEs during the period under review is shown in Table III.11. India last filed its STE notification in 2010; however, the statistics were on STEs imports up to 2006.

71. STEs also assist India in its goal of "balancing" Indian imports and exports through the use of countertrade, which involves an agreement for one country to sell goods to another in exchange for goods (perhaps also involving some cash or services) of an equal value from the second country. The

[84] Department of Commerce online information, "Trade Statistics: Imports of Sensitive Items". Viewed at: http://commerce.nic.in/tradestats/import.asp.

[85] Foreign Trade (Development and Regulation) Amendment Act 2010.

[86] iloveindia.com online information, "Importing Cars in India". Viewed at: http://www.iloveindia.com/cars/imported-cars/index.html.

[87] Imports of second-hand cars over three-years old are prohibited.

[88] Customs Notification No. 52/2008, 22 April 2008.

[89] WTO document G/STR/N/8/IND, G/STR/N/9/IND, G/STR/N/10/IND, and G/STR/N/11/IND, 6 May 2010.

practice is most prevalent between countries that have foreign exchange constraints or balance-of-payments issues.[90] India has stated that it has no countertrade requirements, although private companies are reportedly "encouraged to use countertrade" and MMTC Ltd. promotes countertrade operations on its website.[91] Most recent uses of countertrade by India involved capital goods.[92] Private companies are encouraged to use countertrade. Global tenders usually include a clause stating that, all other factors being equal, preference is given to companies willing to agree to countertrade.[93]

Table III.11
Value of imports subject to state trading, 2007-11

State-trading enterprises	Product	HS code	Import value (Rs million) 2007/08	2008/09	2009/10	2010/11[a]
Food Corporation of India	Wheat	1001.10.90, 1001.90.20, 1001.90.39	26,575.1	0.2	2,317.6	595.6
	Rye	1002.00.90	0.0	0.0	0.0	0.0
	Oats	1004.00.90	82.5	144.7	133.9	28.4
	Maize	1005.90.00	79.6	234.9	574.3	14.0
	Rice	1006.10.90, 1006.20.00, 1006.30.10, 1006.30.20, 1006.30.90, 1006.40.00	4.2	5.4	3.7	1.6
	Grain sorghum	1007.00.90	0.0	0.0	0.0	0.0
	Buckwheat, millet, canary seed, jawar, bajra, ragi, other cereals	1008.10.90, 1008.20.19, 1008.20.29, 1008.20.39, 1008.30.90, 1008.90.90	8.2	29.0	33.0	7.1
State Trading Corporation	Copra	120300.00	0.0	0.0	0.0	0.0
	Crude oil (coconut oil and its fractions)	1513.11.00	0.0	138.9	392.6	0.0
	Other (coconut oil and its fractions)	1513.19.00	352.6	675.3	137.7	0.0
Indian Oil Corporation; Bharat Petroleum Corporation Ltd.; Hindustan Petroleum Corporation Ltd.; Oil and Natural Gas Corporation Ltd.; Mangalore Refinery and Petrochemicals Ltd.; Numaligarh Refinery Ltd.; Reliance Industries Ltd.; Essar Oil Ltd.; and Shell India Pvt. Ltd.	Special boiling point spirits (other than Benzene Toulol) with nominal boiling point range 55-115°C[b]	2710.11.11	787.6	6,063.0	6,296.6	2,846.8
	Special boiling point spirits (other than Benzene, Benzol, Toluene, and Toulol) with nominal boiling point range 63-70°C[b]	2710.11.12	0.0	0.0	0.0	0.0
	Other special boiling point spirits (other than Benzene, Benzol, Toluene, and Toulol)[b]	2710.11.13	0.0	0.1	355.7	540.4
	Other motor spirit[b]	2710.11.19	5,280.1	12,110.6	11,890.1	8,174.2
	Aviation turbine fuel[b]	2710.19.20	124.1	326.6	3,939.3	540.5
	High speed diesel[b]	2710.19.30	86,256.4	103,837.4	67,387.1	24,390.6

Table III.11 (cont'd)

[90] Department of Commerce (2010a).

[91] WTO (2007); USTR (2009); and MMTC online information, "MMTC Inside". Viewed at: http://www.mmtclimited.com/frame.php?url=newsitejewellery/index.htm.

[92] *The Economic Times*, "Offsets in Indian Defence Sector", 22 May 2009; *FDI Magazine*, "Countertrade Still Thrives," 8 December 2003; *Indonesian Commercial Newsletter*, "Indonesia—India Agrees on Counter Trade," 26 March 2002; and *AsiaPulse News*, "India to Use 'Counter Trade' to Boost Grain Export," 25 March 2002.

[93] USTR (2010).

State-trading enterprises	Product	HS code	Import value (Rs million) 2007/08	2008/09	2009/10	2010/11[a]
Indian Oil Corporation	Natural gasoline liquid	2710.11.20	31.2	2.3	0.3	0.0
	Other natural gasoline liquid	2710.11.90	161,683.2	155,321.2	34,938.7	13,184.9
	Light diesel oil	2710.19.40	28.6	10.3	8.3	2.5
Indian Oil Corporation; Bharat Petroleum Corporation Ltd.; Hindustan Petroleum Corporation Ltd.; IBP; and State Trading Corporation	Superior kerosene oil	2710.19.10	55,830.4	71,914.3	25,688.6	11,545.2
State Trading Corporation; Minerals and Metals Trading Corporation; and Indian Potash Ltd.	Urea whether or not in aqueous solution	3102.10.00	79,445.9	95,876.5	5,549.7	9,464.0

a April to June.
b Bharat Petroleum Corporation Ltd., Hindustan Petroleum Corporation Ltd., and IBP have been granted rights to market these products (Ministry of Petroleum and Natural Gas, Resolution No. P-23015/1/2001-MKT, 8 March 2002).

Source: WTO document G/STR/N/8/IND, G/STR/N/9/IND, G/STR/N/10/IND, and G/STR/N/11/IND, 6 May 2010; Department of Commerce (2010), Schedule 1: Import Policy, *Foreign Trade Policy 2009-2014*, incorporating Annual Supplement, 23 August. Viewed at: http://dgft.gov.in; and information provided by the Indian authorities.

(viii) Contingency measures

(a) Anti-dumping and countervailing measures

Overview

72. India's anti-dumping and countervailing legislation is contained in the Customs Tariff Act 1975, as amended by the Customs Tariff (Amendment) Act 1995, and the Customs Tariff (Identification, Assessment, and Collection of Anti-Dumping Duty on Dumped Articles and for Determination of Injury) Rules 1995. This legislation was notified to the WTO in 1996.[94] The authorities noted that India considers anti-dumping duties, in particular, and trade remedial measures in general, as necessary protection instruments to eliminate injury caused to the domestic industry by unfair trade practices. Interventions are aimed at re-establishing a situation of open and fair competition in the Indian market.

73. Anti-dumping investigations may be initiated by the Directorate General of Anti-Dumping and Allied Duties (DGAD), in the Department of Commerce, upon a written application by or on behalf of domestic industry, or on its own initiative if there is justification to launch an investigation. An application is scrutinized by the DGAD to ensure it is adequately documented and provides sufficient evidence for initiation. If the evidence is not adequate, a "deficiency letter" is issued, normally within 20 days of the receipt of the application. For an investigation to be initiated, the investigation petitioners must account for at least 25% of total domestic production of the like article; and the domestic producers expressly supporting the application must account for more than 50% of the total production of the like article by those expressly supporting and opposing the application. In accordance with the Indian legislation, dumping *per se* is not actionable. For a petition to proceed, the DGAD must verify the accuracy and adequacy of the evidence provided and determine that there is sufficient evidence of dumping or injury (where applicable), and a causal link between the dumped

[94] WTO documents G/ADP/N/1/IND/1, 15 August 1995; G/ADP/N/1/IND/2/Corr.1, 9 January 1996; and G/ADP/N/1/IND/2/Suppl.1, 23 December 1996.

imports and the alleged injury, before initiating an investigation. In addition, other injury causes have to be investigated so that they are not attributed to dumping.[95]

74. The DGAD informs the government of the exporting country, and issues a public notice with details of the initiation and the time-limits for interested parties to provide comments. The public notification is usually issued within 45 days of receipt of documentation, and the time-limit for interested parties to express their views is a further 30 days. A preliminary finding regarding export price, normal value, and margin of dumping is normally issued in a public notice within 150 days of initiation of the investigation. Following this finding, the Department of Revenue may decide to impose a provisional duty not exceeding the margin of dumping. The provisional duty may be imposed only after the expiry of 60 days from the date of initiation of the investigation. It may remain in force for a period not exceeding six months, extendable to nine months upon the request of exporters representing a significant percentage of trade. The final determination is normally made within 150 days of the date of the preliminary determination, and within one year from the initiation of the investigation. This period may be extended by the Central Government by a maximum of six months under special circumstances, which include the complexity of the case and judicial interventions by courts.

75. The margin of dumping for each exporter or producer is determined by the DGAD, following which the Department of Revenue may, within three months of publication of the final findings, impose the anti-dumping duty by notification in the *Official Gazette*. Under Indian law, the Government is obliged to restrict the anti-dumping duty to the lower of the margin of dumping or the margin of injury. Anti-dumping duties may remain in place for five years unless revoked earlier or extended by the DGAD.[96]

76. Indian legislation provides for levying anti-dumping duty retrospectively, where there is a history of dumping that caused the injury or when the injury is caused by massive dumping, in a relatively short time, so as to seriously undermine the remedial effect of an anti-dumping duty. The retrospective application may not go beyond 90 days of the date of imposition of a provisional duty. No retrospective application prior to the date of initiation of an investigation is allowed. The authorities indicated that there has been no retrospective application of duties during the period under review.

77. An investigation may be terminated by the DGAD at any time if: there is a written request from or on behalf of the domestic industry at whose instance the investigation was initiated; there is insufficient evidence of dumping or injury; the injury is negligible; the margin of dumping is less than 2% of the export price; or the volume of the dumped imports is less than 3% of imports of the like product, unless the countries accounting for 3% individually account for over 7% collectively of imports of the like product.

78. Rules to initiate and conduct a sunset review (SSR) are contained in Trade Notice No. 1/2008 of 10 March 2008.[97] An SSR may be initiated upon petition of the domestic industry or may be self-initiated by the DGAD. In accordance with the rules, the DGAD must issue an alert letter to the domestic industry soon after the fourth year in which the anti-dumping measures are in place. The domestic industry must inform the DGAD, within 40 days of the dispatch of the letter, whether it intends to file an application to extend the anti-dumping measures. If so, an application on the need to keep the anti-dumping measures in force, must be received by the DGAD at least six months before the date of expiry of the anti-dumping measures. The DGAD may then initiate the SSR on the basis

[95] Directorate General of Anti-Dumping and Allied Duties (undated).
[96] Any review of a measure must be concluded within 12 months of initiation of the review.
[97] Department of Commerce online information, "Anti-dumping Trade Notices". Viewed at: http://commerce.nic.in/traderemedies/ad_tradenotices.asp?id=14.

of the domestic industry's application. If the DGAD decides to self-initiate the investigation, it must issue a questionnaire to the domestic industry; comments must be received by the DGAD within the following 40 days substantiating the need for the continued imposition of the anti-dumping measures. After receipt of the questionnaire, the DGAD may issue a letter to other interested parties regarding the need to continue or otherwise the AD measures; comments must be received by the DGAD within 40 days of the date of issuance of the letter. If there is sufficient ground for continuation of the anti-dumping measures (with or without modification) after receipt of information from various parties, the DGAD may recommend this to the Central Government. The investigation is closed if there is insufficient ground for continuation of the measure in force. The new procedures superseded all previous instructions or trade notices issued by the DGAD with regard to sunset reviews.

79. The DGAD conducts mid-term reviews to assess the need for continued imposition of anti-dumping duties. These reviews may be self-initiated or on request from an interested party and in view of changed circumstances. The review follows the same procedures prescribed for an investigation to the extent that they are applicable. In 2010, a trade notice was issued to clarify the initiation of mid-term reviews.[98] The notice indicates that an application for initiation of a mid-term review of an anti-dumping duty in force may be made to the DGAD by an interested party including exporters, importers, domestic producers, trade representative bodies, firms or institutions, which are representative of the domestic industry. The applicant must submit positive information substantiating the need for a review. The notice also indicates that the application for an interim/mid-term review may be accepted by the DGAD provided that a reasonable period of time, i.e. at least one year, has elapsed since the imposition of the definitive anti-dumping duty by the Central Government. However, the DGAD may review the need for the continued imposition of the duty, where warranted, on its own initiative.

80. The DGAD is required to carry out a review for determining margins of dumping for any new exporter or producer from a country that is subject to anti-dumping, provided that exporters or producers are new and not related to any of the other exporters.

81. The authorities may suspend or terminate an investigation if the exporter concerned accepts an undertaking to revise prices in order to remove the dumping or the injurious effect of dumping. No undertaking is accepted before a preliminary determination is made. During the period under review, a price undertaking was accepted from Sri Lanka in August 2009, as a result of the anti-dumping investigation concerning "Imports of Plain Medium Density fibre Board from China, Malaysia, New Zealand, Thailand, and Sri Lanka".

82. Anti-dumping duty is not payable on products imported by units in export-processing zones (EPZs) or export-oriented units (EOUs), or on products imported by Advance Licence holders (now Advance Authorization Scheme, Table AIII.6).[99] The final anti-dumping duty paid on imported goods used in the manufacture of export goods may be refunded as brand rate of duty drawback in accordance with the drawback rules.[100]

83. Countervailing measures may be imposed under the Customs Tariff Act 1975 (Part 9) and the Customs Tariff (Identification, Assessment and Collection of Countervailing Duty on Subsidized

[98] Department of Commerce, Trade Notice No. 1/2010 of 17 May 2010 introduced clarification regarding the initiation of mid-term reviews in terms of Rule 23 of the Anti-dumping Rules (Identification, Assessment and Collection of Anti-Dumping Duty on Dumped Articles and for Determination of Injury).

[99] Customs Notification No. 41/97, 30 April 1997.

[100] The brand rate of duty drawback comprises the actual taxes to which the exporter was subject. It is calculated after checking the documents for the different duties paid for all inputs and input services used in the manufacture of the exported good. In this fashion, any anti-dumping duty paid on imported goods used in the manufacture of goods for export may be refunded as brand rate of duty, in accordance with the drawback rules.

Articles and for Determination of Injury) Rules 1995. The decision to initiate an investigation must be notified through a public notice, with relevant information to be provided by interested parties within 30 days of the notice. Provisional duties may be imposed six months after the date of initiation of the investigation, and may remain in force for a maximum of four months. Final findings must be published by the DGAD within one year of the date of initiation; the period may be extended by the Central Government in exceptional circumstances, by a further six months. Definitive countervailing measures must be imposed by the Central Government on DGAD recommendation within three months of the final findings being published. Final measures may remain in force up to five years.

84. Anti-dumping and countervailing measures may be appealed to the Customs, Excise and Service Tax Appellate Tribunal (CESTAT), in accordance with Chapter XV (Section 129) of the Customs Act 1962. The appeal must be filed within 90 days of the final duty being notified by the Central Government.[101] Between 2006 and October 2010, 40 appeals were made to the CESTAT, of which 7 cases were settled. In five of the seven cases, the measures imposed were upheld and the appeals rejected; the appeal was successful in one case; and the other case was referred back to the DGAD. The CESTAT decision may be appealed to the Supreme Court. During 2006-10, two CESTAT decisions were appealed to the Supreme Court of India: in one case the decision was upheld.

Measures

85. India is one of the most active users of anti-dumping measures among WTO Members. From the inception of the WTO until 30 June 2010, India accounted for 436 of the 2,433 anti-dumping measures adopted by Members, that is 17.9% of the total. During the same period, India initiated 613 investigations, out of a total of 3,752. The initiations affected mainly China (137), Korea, Rep. of (47), Chinese Taipei (45), the EU (42), Thailand (36), Japan (30), the United States (29), Indonesia (24), Singapore (23), Malaysia (22), and the Russian Federation (19).[102]

86. Between January 2006 and 31 December 2010, India initiated 209 anti-dumping investigations against 34 trading partners, compared with 176 reported in its last Review (Chart III.4).[103] The products involved included chemicals and products thereof, plastics and rubber and products thereof, base metals, and textiles and clothing. As at 31 December 2010, 207 anti-dumping measures were in force, compared with 177 on 30 June 2006.[104] India did not take any countervailing actions during this period. Measures were applied on 30 trading partners.[105] The majority were applied on China (67 or 32.4% of the total), Korea, Rep. of (19 or 9.2%), Chinese Taipei (19 or 9.2%), Thailand (14 or 6.8%), the EU or its members states (12 or 5.8%), and Japan, Malaysia, and the United States (9 or 4.3% each).

[101] For further information, see CESTAT online information. Viewed at: http://cestat.gov.in/.

[102] Other countries/territories affected include: Iran (11), Hong Kong, China (10), Ukraine (10), Germany (9), South Africa (9), Brazil (7) (WTO online information, "Statistics on anti-dumping". Viewed at: http://www.wto.org/english/tratop_e/adp_e/ad_meas_rep_member_e.xls; and http://www.wto.org/english/tratop_e/adp_e/ad_init_rep_member_e.xls).

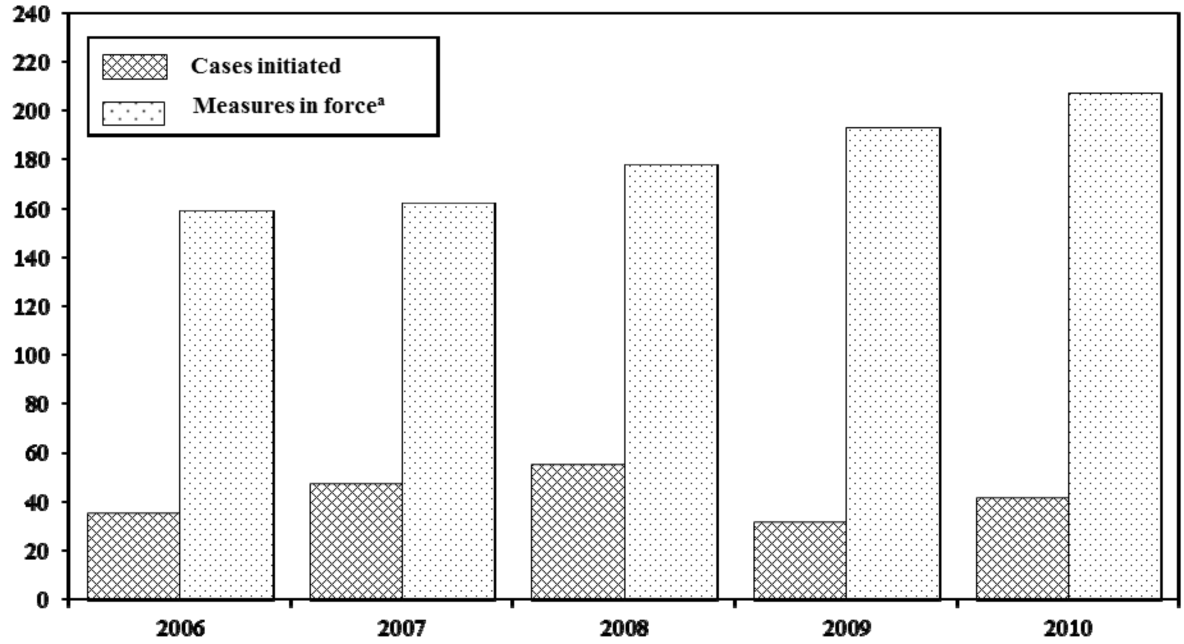
[103] Department of Commerce online information, "Anti-Dumping Cases in India". Viewed at: http://commerce.nic.in/traderemedies/ad_casesinindia.asp?id=2&criteria=&CurrPage=7; and WTO document WT/DAP/N/209/IND, 19 April 2011. The WTO Members most affected by the initiations during the period were: China (56), Korea and Thailand (17 each), Chinese Taipei (13), Malaysia (12), and the EU, Japan, and the United States (11 each).

[104] WTO (2007).

[105] Australia; Belarus; Bulgaria; China; the EU; France; Germany; Hong Kong, China; Indonesia; Iran; Japan; Kingdom of Saudi Arabia; Korea; Malaysia; New Zealand; Oman; Qatar; Russian Federation; Singapore; South Africa; Sri Lanka; Sweden; Switzerland; Chinese Taipei; Thailand; Turkey; the United Arab Emirates; the United Sates; and Viet Nam (WTO document G/ADP/N/209/IND, 19 April 2011).

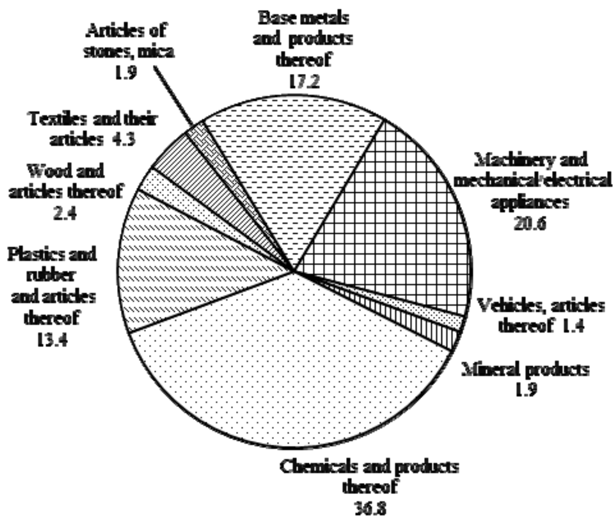
Chart III.4
Anti-dumping measures, January 2006-December 2010

(a) Number of cases initiated and measures in force

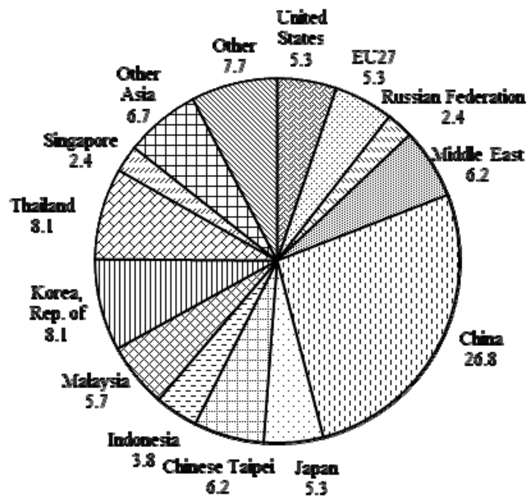


a On 31 December.

(b) Initiations by product
Per cent



(c) Initiations by origin
Per cent



Source: Notifications to the WTO.

87. As of 30 June 2010, the average length of an anti-dumping measure applied by India was 56.7 months. The longest lasting measure was 161 months (acrylonitrile butadiene rubber from Korea); 18 duties had been in place for over 10 years, and 81 measures for at least 5 years.

88. During 2006-10, 113 sunset reviews were initiated. They resulted in the elimination of the measure in 38 cases, and in re-imposition in 57 cases; the remaining cases were pending as of late 2010.

89. No definitive countervailing measure is currently in place (June 2011). An investigation, with respect to imports of sodium nitrite from China, was initiated in January 2008, but was terminated without the imposition of countervailing duties.[106]

90. Three of the anti-dumping measures applied by India have been challenged in the DSB; two cases are still pending, and one was settled between the parties.[107]

(b) Safeguards

Legislative and administrative framework

91. Indian safeguard legislation has been enacted under Sections 8B and 8C of the Customs Tariff Act 1975, with Section 8C relating specifically to imports from China. The Customs Tariff (Identification and Assessment of Safeguard Duty) Rules 1997, and the Customs Tariff (Transitional Products Specific Safeguard Duty) Rules 2002, describe the procedures for the application of safeguard measures. The authorities have noted that domestic legislation and its implementation follow Article XIX of the GATT 1994 and the WTO Agreement on Safeguards.

92. The Director General (Safeguards), in the Department of Revenue has responsibility for hearing the petitions and conduct investigations on safeguards. The Director General is also responsible for carrying out recommendations under the Indo-Singapore Trade Agreement (Safeguard Measures) Rules 2009. A request for a safeguard investigation must be made in writing to the Director General, by or on behalf of the domestic industry. The Director General may also self-initiate an investigation upon information received from any Commissioner of Customs. If the safeguard measures are requested to be imposed for more than a year, details of efforts made or planned in order to adjust positively to import competition, including details of progressive liberalization, must be provided, under the Safeguard Duty Rules 1997. Thereafter, the Director General may initiate an investigation to determine the existence of serious injury or threat thereof to the domestic industry, caused by the import of an article in such increased quantities, absolute or relative to domestic production. A safeguard investigation must be completed and notified publicly within eight months of initiation of the investigation (or within the period allowed by the Central Government). The proceedings of the Standing Board on Safeguards are not open to the public. Its views are placed before the Finance Minister for approval in respect of safeguard duties and before the Commerce Minister for imposition of quantitative restrictions.[108] If the Central Government, after

[106] WTO document G/SCM/N/212/IND, 6 September 2010.

[107] WTO document series: DS318 (India: anti-dumping measures on certain products from the Separate Customs Territory of Taiwan, Penghu, Kinmen, and Matsu (complainant: Chinese Taipei)), 28 October 2004: still pending, but inactive as at October 2010; DS306 (India anti-dumping measures on batteries from Bangladesh (complainant: Bangladesh)), 28 January 2004: settled between the parties in 2006; and DS304 (India: anti-dumping measures on imports of certain products from the European Communities (complainant: European Communities)), 8 December 2003: still open, but inactive as at October 2010.

[108] Directorate General of Safeguards online information, "FAQ". Viewed at: http://dgsafeguards.gov.in/faq.html.

conducting a safeguard investigation, is satisfied that any article is imported into India in such increased quantities and under such conditions as to cause or threaten to cause serious injury to domestic industry, it may, by notification in the *Official Gazette*, impose a safeguard duty on that article. The Central Government may exempt any article from payment of the whole or part of the safeguard duty upon notification in the *Official Gazette*. The notification must include the article exempted, the quantity exempted, and the article's origin.

93. If a request is made for provisional safeguard measures, full and detailed information regarding the existence of critical circumstances and how a delay in applying the measures would cause damage difficult to repair needs to be considered. The Director General may record preliminary findings in such cases and issue a public notice. These preliminary findings are placed before the Central Government thorough the Board on Safeguards.[109] Provisional measures may be imposed by the Central Government for up to 200 days.

94. The duty is levied only during the period necessary to prevent or remedy serious injury and to facilitate positive adjustment. It ceases to have effect four years after the date of imposition. However, if the Central Government is of the opinion that the domestic industry has taken measures to adjust to the injury or threat thereof and that the safeguard duty remains necessary, it may extend the period of imposition, up to a maximum of ten years from first imposition of the duty. A safeguard in place for more than one year must be liberalized progressively at regular intervals.

95. Until 2010, safeguard measures could only take the form of duty surcharges. The Foreign Trade (Development and Regulation) Amendment Act 2010 (No. 25 of 2010) amended India's safeguard legislation to allow for the use of quantitative restrictions as remedy measures.[110] The amendment allows "the Central Government, after conducting such enquiry as it deems fit, is satisfied that any goods are imported into India in such increased quantities and under such conditions as to cause or threaten to cause serious injury to domestic industry, it may, by notification in the *Official Gazette*, impose such quantitative restrictions on the import of such goods as it may deem fit." The quantitative restrictions may not be applied on imports of goods originating from a developing country if the share of imports does not exceed 3%; or on imports of goods originating from more than one developing country so long as the aggregate of imports from all countries does not exceed 9% of the total imports of such goods into India.[111]

96. The Director General's (Safeguards) decisions on safeguards cannot be appealed under the legislation[112], but appeals may be made to the High Court and the Supreme Court. If the period of imposition of a safeguard duty exceeds three years, the Director General must review the situation not later than the mid-term of such imposition and, if appropriate, recommend the withdrawal or the increase of the liberalization of duty.

Measures

97. Initiations of safeguard investigations increased substantially during the period under review. Although no investigations were initiated in 2006 and 2007, and only two were initiated in 2008, 13 investigations were initiated during 2009. A review investigation was initiated in the first quarter

[109] Directorate General of Safeguards online information. Viewed at: http://www.cbec.gov.in/info-act/dg/dg-safeguards.htm.

[110] Foreign Trade (Development and Regulation) Amendment Act 2010.

[111] The list of developing countries for the purpose of the Agreement on Safeguards is contained in Customs Notifications Nos. 103/98, 14 December 1998; and 62/99, 13 May 1999.

[112] Directorate General of Safeguards online information, "Legal Framework". Viewed at: http://www.dgsafeguards.gov.in/Legal%20Framework.html.

of 2010 and a new safeguard investigation (N1, 3-dimethyl butyl-N Phenyl paraphenylenediamine), in December 2010.[113] Another new investigation was initiated in the first quarter of 2011.

98. Over 2007-10, 18 investigations were initiated, some involving more than one of case. In eight of these cases (seven investigations), the Director General (Safeguards) recommended the application of measures: in one case (oxo alcohol), the Board on Safeguards rejected the recommendation; in one case, the Director General recommended the application of the safeguard measures for three months; in another case, for a year; in another, for two years; in two cases, for three years; and in one case, and the Director General recommended the application of safeguards for four years (aluminium products). In some cases, the Board decided to apply the measure for a shorter than that suggested by the Director General. The Board decided to apply the safeguard measure for one year in the case of phtalic anhydride instead of three, and for two years in the cases regarding dimethoate, aluminium flat rolled products, and aluminium foil (Table AIII.3). All safeguard measures consisted of an increase in tariffs at the same or lower rates than those recommended by the Director General. No safeguard measures were applied in the remaining 11 investigations; the investigation ended due to a withdrawal of the petition in seven cases (four investigations); the Director General recommended that no safeguard measures be applied in seven cases (six investigations), and the case initiated in December 2010 is still under investigation.

(ix) Standards and technical regulations

(a) Standards

99. According to the authorities, there were no major changes related to the process of standardization in India during the review period. Indian standards are established based on the provisions of the Bureau of Indian Standards (BIS) Act 1986 and BIS Rules 1987. The BIS is responsible for formulating and enforcing standards for 14 sectors.[114] Its role also includes the development of activities relating to certification of product and quality systems, testing and calibration, enforcement, international cooperation, and creating awareness among consumers. Other agencies are responsible for enforcement of standards in other areas (Table AIII.4). Sectoral coordination committees have been established for food processing, power, steel, automotives, textiles, and information technology, in order to develop harmonized standards at the national level. The BIS has been placing emphasis 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.

100. The BIS is a member of the International Organization for Standardization (ISO) and participates in ISO technical and policy-making committees.[115] The BIS is also a member of the International Electrotechnical Commission (IEC); it participates in 73 IEC technical committees and it is an observer in 83. The BIS has bilateral cooperation memoranda of understanding with the

[113] WTO document G/SG/N/6/IND/28, 7 January 2011.

[114] These are: production and general engineering; civil engineering (as of 1 January 2011); chemical (15 October 2010); electro-technical (1 July 2009); food and agriculture (9 June 2010); electronics and information technology (1 April 2010); mechanical engineering (1 April 2010); management and systems (1 Oct 2010); metallurgical engineering (6 July 2010); petroleum, coal, and related products (1 July 2010); transport engineering (1 January 2011); textile (1 April 2008); water resources (1 April 2010); and medical equipment and hospital planning (1 January 2011) (Bureau of Indian Standards online information, "Composition of Technical Committees". Viewed at: http://www.bis.org.in/sf/composition.htm).

[115] BIS holds secretarial responsibilities for five ISO technical committees (leather, cycles, lac, mica, and measurement of liquid flows) and for five subcommittees (spices and condiments, velocity area methods, sediment transport, raw hides and skins, and tanned leather) and participates in 51 technical committees.

national standards bodies of Afghanistan, Bhutan, Brazil, France, Germany, Israel, Mauritius, Nigeria, South Africa, the UAE, and the United States.[116] It also has an MRA with the national standards body of Sri Lanka.

101. There were around 18,623 Indian standards as at 31 March 2010 and about 84% were harmonized with international standards (Table III.12). This is a result of the emphasis placed on making Indian standards identical to or compatible with international standards to keep pace with India's increasing integration into the global economy.

Table III.12
Standards, 2007-10

	2007/08	2008/09	2009/10[a]
Total number of standards in force	..	..	..
Total number of Indian standards in force	18,470	18,592	18,592
Per cent equivalent to international standards	..	..	84

.. Not available.

a 31 March 2010.

Source: Information provided by the Indian authorities.

102. Indian standards are formulated according to the procedures stipulated in the BIS Rules 1987. A preliminary draft standard prepared by expert bodies (generally committee members) is considered by the respective technical committee.[117] Once the draft is approved by the technical committee, it is circulated amongst the various stakeholders and posted on BIS website for comments. Comments should be provided within two months. The technical committee finalizes the draft standard taking into account these comments. The finalized standard, its revisions, amendments, and cancellation are published in the *Official Gazette*. Most standards in India are voluntary, although health and safety regulations are mandatory for several products and have evolved into technical regulations.

(b) Technical regulations

103. Under the WTO Agreement on Technical Barriers to Trade, the Ministry of Commerce has nominated the BIS as the national WTO-TBT enquiry point for disseminating information on standards, technical regulations, and certification. The Ministry remains responsible for implementing the Agreement. India accepted the WTO TBT Code of Good Practice in 1995.[118] Between 2002 (India's first notification) and February 2011, India made 41 notifications to the TBT Committee, 20 were made during the review period.

104. Responsibility for the formulation of technical regulations is with the agency in charge of the respective area. The formulation of a technical regulation follows a similar process to the formulation of a standard. A draft technical regulation is sent out for comments prior to its adoption by the concerned ministry/department/organization and publication in the *Official Gazette*. Comments must be provided within 60 days of the publication of the notice. The draft technical regulations are also notified to WTO Members for comments. Comments received on the draft are examined by the ministry concerned. If divergent comments are received, an expert group examines and considers the comments and their incorporation in the final version. The process of finalization of draft regulations takes 6 to 12 months, including approval of the competent authority, vetting, and translation into

[116] Information provided by the authorities.
[117] BIS technical committees comprise manufacturers, consumers, governmental agencies, regulatory authorities, experts, and laboratories.
[118] WTO document TBT/CS/N/26, 29 January 1996.

Hindi. The final regulation (via a notification) is published in the *Official Gazette* giving its date of implementation; it is simultaneously notified to the WTO. Amendments to technical regulations are made through a similar process, from time to time, based on industry needs or due to new scientific developments, new sanitary and environmental circumstances, and harmonization with international standards.

(c) Certification and conformity assessment

105. The BIS is the national certifying body. Conformity assessment procedures are regulated by the BIS Act 1986 and the BIS Rules and Regulations 1988. The Central Government, on grounds of public interest, notifies which articles or processes should conform to an Indian standard and should bear the BIS certification mark under a licence from BIS.[119] Some 81 products are subject to the mandatory BIS certification mark.[120] As at May 2011 there were more than 1,000 products under voluntary certification.[121] According to the authorities, the requirements for the use of the BIS certification mark are the same for domestic and imported products. Besides the normal product certification scheme, the BIS also grants licences to environment-friendly products under a special scheme and awards the ECO mark to such products.

106. Foreign producers who wish to export products subject to mandatory certification must obtain a licence from the BIS. Foreign manufacturers must set up a liaison/branch office in India to obtain a licence if the BIS has not signed a MOU with the country where the manufactured goods originate.[122] Otherwise, foreign manufacturers may nominate an authorized representative in India responsible for checking compliance with the provisions of the BIS Act 1986, and its Rules and Regulations. The applicant needs to supply the prescribed BIS application along with the application fees. Fees under the Foreign Manufacturers Certification Scheme, in place since 1999, are: Rs 1,000 for the application, US$300 for processing, US$2,000 for marking, and a unit rate fee, which varies according to the product. The BIS licence is granted to the factory address at which the manufacturing takes place and the final product is tested to assess compliance with the relevant Indian standards. After receiving a licence the user must pay an annual fee of Rs 1,000, as well as a quarterly fee for units of production marked. The latter is fixed according to product.

107. Licences are initially valid for one year. They can be renewed for one or two years upon application to the BIS and payment of the required fees.[123] Products are not required to be tested at the time of renewing a licence. However, regular surveillance through random sampling is undertaken during the operation of the licence, by BIS laboratories and in accredited laboratories, to ensure standard conformity of certified products. If the product is found to be in non-compliance, a penalty is imposed, which may include stop-marking, deferment of licence or cancellation of licence. India recognizes foreign laboratories under the provisions of the BIS Act 1986. Once manufacturers (domestic or foreign) obtain a licence, they are allowed to self-mark their products. Products for which the BIS certification mark is mandatory may not be sold without it during the approval process.

[119] BIS Act, Section 14.

[120] For items subject to mandatory certification, see Bureau of Indian Standards online information. Viewed at: http://www.bis.org.in/.

[121] Information provided by the authorities.

[122] Bureau of Indian Standards online information, "Brief of Certification procedure for Foreign Manufacturers". Viewed at: http://www.bis.org.in/cert/fm.htm

[123] The renewal application fee is Rs 500, the licence fee is Rs 1,000 per year, and there is a minimum annual marking fee of US$2,000 and a marking fee based on production marked during the preceding operative year of licence payable in U.S. dollars less the amount already paid on a quarterly basis.

108. In order to implement its certification schemes, the BIS conducts conformity testing through its central laboratory at Sahibabad (near Delhi), and four regional and three branch laboratories.[124] The major areas covered at the central laboratory are electrical, mechanical, and chemical (testing), and electrical and mechanical (calibration). BIS laboratories have test facilities for most products under the Certification Marks Scheme. In addition to the BIS laboratories, services are provided by 115 national laboratories recognized under the BIS Laboratory Recognition Scheme.

(d) Accreditation

109. The National Accreditation Board for Testing and Calibration Laboratories (NABL), an autonomous body under the Department of Science and Technology, is the sole accreditation body for testing and calibration laboratories in India.[125] NABL is a partner of the Asia Pacific Laboratory Accreditation Cooperation (APLAC) Mutual Recognition Arrangement and is signatory to the International Laboratory Accreditation Cooperation (ILAC). NABL's accreditation system is in accordance with ISO/IEC 17011:2004 (General requirements for accreditation of bodies accrediting conformity assessment bodies). NABL accredits laboratories that are performing tests/calibrations in accordance with ISO/IEC 17025:2005 (general requirements for the competence of testing and calibration laboratories), and ISO 15189:2007 (particular requirements for quality and competence of medical laboratories) in the case of medical laboratories. These services are accessible to all testing and calibration laboratories in India and abroad, regardless of their ownership, legal status, size, and degree of independence.

110. Laboratories seeking accreditation must comply with the relevant standards of accreditation as well as with NABL's specific requirements, such as successfully completing a proficiency testing programme.[126] The accreditation process consists of five stages[127]; and accreditation is valid for two years. NABL conducts annual surveillance visits of the accredited laboratories to verify their continued compliance with the requirements. As at February 2011, the NABL had granted 2,267 accreditation certificates; a different certificate is issued for each type of accreditation service or category. Laboratories must apply for renewal of accreditation at least six months prior to the certificates' expiration date. Decision on accreditation may be appealed to the NABL, and may lead to an investigation; the NABL's decision is final.

111. The BIS runs a Laboratory Recognition Scheme for BIS product-testing needs for certification purposes in line with IS/ISO/IEC 17025:2005 (General Requirements for the Competence of Testing and Calibration Laboratories). Once laboratories are recognized under this scheme, they are subject to audits to ensure continued suitability. Recognition is granted for three years, renewable for similar periods, and there are two surveillance visits during this period. As at February 2011, 115 laboratories had been recognized under this scheme.

(e) Labelling

112. The Legal Metrology Act 2009 and the Legal Metrology (Packaged Commodities) Rules 2011 implemented as of 1 April 2011, replaced the Standards of Weights and Measures Act 1976, the Standards of Weights and Measures (Enforcement) Act 1985, and the Standards of

[124] Except for two of the branch laboratories, all laboratories are accredited by NABL.

[125] National Accreditation Board for Testing and Calibration Laboratories online information, "Introduction". Viewed at: http://www.nabl-india.org/nabl/html/about-intro.asp.

[126] Information provided by the authorities.

[127] For more information, see National Accreditation Board for Testing and Calibration Laboratories online information, "Laboratory Accreditation". Viewed at: http://www.nabl-india.org/nabl/html/about-lab-acc.asp.

Weights and Measures (Packaged Commodities) Rules 1977, which regulated labelling requirements in India. According to the authorities, labelling requirements are uniform across all states and for all foreign suppliers.

113. Packaged commodities must bear a label securely affixed. These labels should include the: name, trade name or description of food contained in the package; ingredients used; name and address of manufacturer or importer; net weight or measure of volume (in accordance with the metric system based on the international system of units) of contents; item/package sale price (MRP Rs __) (inclusive of all taxes); month and year of manufacture or packaging; date of expiry[128]; licence number where relevant; and name, address or e-mail if available of person or office to be contacted in case of a complaint.[129] For products containing natural flavouring substances, the common name of the flavours should be mentioned on the label. The label should also indicate the animal origin of gelatine in products that contain it. The Ministry of Health and Family Welfare has recently notified the quantitative ingredient declaration requirement as an additional labelling requirement for food. More specific labelling requirements exist for specified products, such as infant milk substitutes and infant foods, bottled mineral water, and milk products.

114. Labels must be in Hindi (Devnagiri script) and in English. In certain instances, they must be written in the language of the locality where the product is ultimately sold. This increases distribution costs, since India has 16 official languages, and food-processing companies often do not know which pallet of food products will be transported to a specific State. The requirement that packaging must specify the maximum retail price of the product, including taxes, is a further complication, since sales taxes are levied at the state level.

115. Currently there is no mandatory labelling requirement for genetically modified (GM) products. However, legislation is in the pipeline: the Ministry of Health and Family Welfare has proposed comprehensive labelling requirements for GM foods, requiring all packages of food/food ingredients of GM origin, that are subject to the approval of the Genetic Engineering Approval Committee (GEAC), to bear a label indicating that they are of GM origin, and that the product has been cleared for sale in the exporting country.

(x) Sanitary and phytosanitary measures (SPS)

116. SPS matters continue to be governed and enforced through a number of laws and agencies (Table III.13). The main institutions involved in the establishment and implementation of SPS measures for food items are the Ministry of Health and Family Welfare, the Department of Animal Husbandry, Dairying, and Fisheries; the Directorate of Plant Protection, Quarantine and Storage; the Bureau of Indian Standards; and other state government agencies.

117. India has nominated three institutions as national enquiry points under the WTO SPS Agreement: the Department of Animal Husbandry, Dairying, and Fisheries for animal health and related issues; the Department of Health for food-safety related issues and plant protection; and the Department of Agriculture and Cooperation for plant health or phytosanitary issues. Between 1996, when its first SPS notification was submitted, and February 2011, India made 71 notifications to the Committee on SPS Measures, 22 of which during the review period, including measures on: food items including processed food; pet food products of animal origin; plants and plant materials; food packaging materials; horns/hooves of animals; meat and meat products; milk and milk products; food additives; maximum residues limits (MRLs) of different pesticides in carbonated water; MRLs of pesticides on different food commodities; pre-packaged food; and food safety and standards rules.

[128] For products containing aspartame, it should not be more than three years from the date of packing.
[129] Legal Metrology (Packaged Commodities) Rules 2011.

Table III.13
Sanitary and phytosanitary legislation, 2011

Legislation	Description	Implementing institution
Prevention of Food Adulteration Act 1954	Aims to protect consumers against the supply of adulterated food. It specifies minimum quality level standards for various food products. The Act is mandatory; infringement may lead to fines and imprisonment	Central Committee for Food Standards under the Directorate General of Health Services (Ministry of Health and Family Welfare)
Essential Commodities Act 1954	Regulates the manufacture, commerce, and distribution of essential commodities, including food. A number of control orders have been formulated under the provisions of this Act	Central and state government agencies
Fruit Products Order 1955	Regulates the manufacture and distribution of all fruit and vegetable products, sweetened aerated waters, and vinegar and synthetic syrups. The manufacture or re-labelling of products require a licence from the Ministry for Food Processing Industries, which is granted when the quality of products, sanitation, personnel, machinery, and equipment and work area standards are satisfactory	Ministry for Food Processing Industries
Solvent Extracted Oils, De-oiled Meal, and Edible Four Control Order 1967; Vegetable Products Control Order 1976	These orders control the production and distribution of solvent extracted oils, de-oiled meal, edible flours, and hydrogenated vegetable oils (vanaspati). Production and distribution of the above-mentioned products require a licence, which is granted when products conform to the specifications laid down in the schedules. The Directorate also regulates the price of vanaspati	Directorate of Vanaspati, Vegetable Oils, and Fats under the Department of Food and Public Distribution (Ministry of Consumer Affairs, Food, and Public Distribution)
Meat Products Control Order 1973	Regulates the manufacture, quality, and sales of all meat products	Directorate of Marketing and Inspection under the Department of Agriculture and Cooperation (Ministry of Agriculture)
Milk and Milk Product Order 1992	Provides for setting up an advisory board to advise the Government on the production, sale, purchase, and distribution of milk powder. Units with installed capacity for handling milk of over 10,000 litres per day, or milk products containing milk solids in excess of 500 tonnes per year, are required to register with the Department of Animal Husbandry and Dairying	Department of Animal Husbandry Dairying, and Fisheries (Ministry of Agriculture)
Livestock Importation Act 1898 (amended in 2001)	Allows the Central Government to regulate, restricts, or prohibits import of animal and animal products into India	Department of Animal Husbandry, Dairying, and Fisheries (Ministry of Agriculture)
Destructive Insects and Pests Act 1914	Regulates import of plants to prevent introduction into and the transport from one State to another in India of any insects, fungus or other pest that is or may be destructive to crops	Directorate of Plant Protection, Quarantine and Storage (Ministry of Agriculture)
Plant Quarantine (Regulation of Import into India) Order 2003	It regulates the import of plants and plant materials	Plant Quarantine Division in the Ministry of Agriculture
Standards on Weights and Measures (Packaged Commodities) Rules 1977	They lay down certain obligatory conditions for all commodities in packed form, with respect to declarations on quantities contained	Directorate of Weights and Measures under Department of Consumer Affairs (Ministry of Consumer Affairs, Food, and Public Distribution)

Source: Information provided by the Indian authorities.

118. India has not notified the WTO regarding the recognition of equivalence of other countries' SPS measures.

119. In August 2006, the Central Government passed the Food Safety and Standards (FSS) Act of 2006 to consolidate separate laws[130], and to establish the Food Safety and Standards Authority of India (FSSAI). According to the authorities, this law has been notified (Chapter II(2)(i)). However,

[130] These laws include: the Prevention of Food Adulteration Act 1954; the Fruit Products Order 1955; the Meat Food Products Order 1973; the Vegetable Oil Products (Control) Order 1947; the Edible Oils Packaging (Regulation) Order 1988; the Solvent Extracted Oil, De-Oiled Meal and Edible Flour (Control) Order 1967; and the Milk and Milk Products Order 1992.

the rules and regulations to operationalize this Act have not been notified yet. Once the Food Safety and Standards Regulations, 2010 and Rules 2011 are notified, the Food Safety and Standards Act 2006 will be fully implemented and will repeal some of the separate laws.

120. The FSSAI also aims to establish a single reference point for all matters relating to food safety and standards, by moving from a multi-agency to a centralized system. To this end, the Act establishes an independent statutory authority, the Food Safety and Standards Authority of India (FSSAI), which began operating in July 2008. The mandate of the FSSAI is to ensure the availability of safe and wholesome food for human consumption, through establishing and enforcing science-based food-safety standards for domestically produced and imported foods, licensing and registering businesses selling food for human consumption, and regulating food manufacturing practices and labelling. The various agencies implementing food laws will be brought under the FSSAI.

121. Imports of animal products into India require sanitary import permits issued by the Department of Animal Husbandry, Dairy and Fisheries; permits must be obtained prior to shipping from the country of origin. The Department approves or rejects the application after an import risk analysis on a case-by-case basis. Permits are valid for six months and may be used for multiple consignments. A sanitary import permit is not a licence, but a certificate verifying that India's sanitary requirements are fulfilled. Some imports of animal products also require an import licence issued by Director General of Foreign Trade (section (2)(vi)). Imports of animal products are only allowed through designated ports where animal quarantine and certification services are available (Amritsar, Bangalore, Chennai, Delhi, Hyderabad, Kolkata, and Mumbai). Imports of fish products are allowed through the port of Vishakhapatnam (in the State of Andhra Pradesh) and the land custom station at Petrapole (for imports from Bangladesh only).

122. Imports of plants and plant materials are regulated under the Destructive Insects and Pests Act 1914, the Plant Quarantine (PQ) (Regulation of Import into India) Order 2003[131], and international conventions. All plant and plant material consignments must be accompanied by a phytosanitary certificate issued by the national plant protection organization of the exporting country and an import permit issued by the officer in charge of the plant quarantine station. Products listed in Schedule VII of the PQ Order 2003 may be imported without import permit but may be required to fulfil other conditions, such as fumigation.[132] Other phytosanitary requirements covering some 980 products are listed in Schedules V, VI, and VII of PQ Order 2003 (Table III.14). Schedule IV lists all the plant species that are prohibited for import. As in the case of imports of animal products, imports of plant and plant products may only enter the Indian territory through designated ports.[133]

123. Plants and seeds that require post-entry quarantine are listed in Schedules V and VI of the PQ Order 2003. These plants and seeds have to be grown in post-entry quarantine facilities established by and at the cost of the importer, and approved and certified by the inspection authority. The quarantine period is determined based on the type of plant materials and time taken by the plant material to grow to the stage where symptoms of diseases appear.

[131] Plant Quarantine (Regulation of Import into India) Order 2003.

[132] Plant Quarantine (Regulation of Import into India) Order 2003, Chapter II (General conditions for import (Requirement of Import of Wood and Timber).

[133] For the list of seaports, airports, and land frontiers in operation through which imports of plants are allowed, see Plant Quarantine (Regulation of Import into India) Order 2003, Schedule I.

Table III.14
Plant quarantine, 2011

Schedule No.	Description	No. of products covered
IV	List of plants/planting materials and countries from where imports are prohibited along with justifications	14
V	List of plants and plant materials restricted: imports are permissible only with the recommendation of authorized institutions with additional declarations and special conditions	17
VI	List of plants/plant materials permitted to be imported with additional declarations and special conditions	628
VII	List of plants/planting materials where imports are permissible on the basis of phytosanitary certificates issued by the exporting country, the inspection conducted by inspection authority, and fumigation, if required, including all other general conditions	288
VIII	List of quarantine weed species	31
IX	Inspection fees	n.a.
X	List of permit issuing authorities for imports of seeds, plants and plant products, and other articles	n.a.

n.a. Not applicable.

Source: Plant Quarantine (Regulation of Import into India) Order 2003.

124. Sampling and testing of consignments to prevent the risk of exotic pests is undertaken according to the International Standards for Phytosanitary Measures Guidelines No. 23 and 31.[134] If commodities are found free from pests, they are cleared for import. If not, they must undergo fumigation with the accredited fumigation operators according to the Schedules V, VI, and VII of PQ Order 2003.[135] Fumigation is done at the importer's cost.[136]

125. Imports of GM food, feed, and organisms, and living modified organisms for R&D, food, feed, processing in bulk, and environment release is governed by the Environment Protection Act 1986 and Rules 1989. Imports of products containing GM material for industrial production or environmental release are allowed only with the approval of the Genetic Engineering Approval Committee (GEAC). Importers of GM materials for R&D must submit a proposal to the Review Committee for Genetic Modification under the Department of Bio-Technology. If these GM materials are used for commercial purposes, GEAC approval is also required. All consignments containing products subject to genetic modification must carry a declaration stating that the product is genetically modified. If it does not, the importer is liable to penal action under the Foreign Trade (Development and Regulation) Act 1992. The GEAC has accorded one-time approval for imports of GM soybean oil derived from round-up-ready soybean for the purpose of consumption after refining.[137]

(3) MEASURES DIRECTLY AFFECTING EXPORTS

(i) Procedures

126. With a few exceptions (Table AIII.1), exporters must register with the Directorate General of Foreign Trade (DGFT) and obtain an importer-exporter code (IEC) number to be able to export.[138] In addition to the IEC, exporters also need to obtain a business identification number from the DGFT to

[134] Secretariat of the International Plant Protection Convention (2005) and (2008).

[135] There are 357 registered fumigation agencies for methyl bromide fumigation and 157 for aluminium phosphide fumigation.

[136] Fumigation generally takes 24 hours with methyl bromide, and 7 to 10 days with aluminium phosphide.

[137] Department of Commerce (2010a), Schedule 1: Import Policy.

[138] Foreign Trade (Development and Regulation) Act 1992.

be allowed to file the shipping bill. The shipping bill may be processed manually or through the electronic data interchange (EDI) system. For manual submission, supporting documents (e.g. invoice, and packing list) must be filed along with the shipping bill. Under the EDI system, exporters must file only a declaration or shipping bill; no supporting documents are required.[139] However, the supporting documents must be submitted to Customs at the time of grant of the "let export" order.[140] The shipping bill may be filed seven days in advance of the presentation of goods to Customs (15 days for exports by sea). About 96% of export documents are processed electronically.[141]

127. Once the shipping bill has been processed, goods are examined by Customs before they are given a "let export" order.[142] Goods subject to export restrictions and quotas must also be accompanied by licences from the DGFT (section (v)(b) below). If goods are to be exported under an export promotion scheme (section (vii)(b) below), this must be declared on the shipping bill.[143] A risk management system (RMS), already implemented for import procedures (section (2)(i)), and expected to be operational for exports by June 2009[144], had not been implemented as at February 2011. It will be implemented in a phased manner.

128. The average time for the completion of export procedures is 17 days (down from 27 days in 2007), which includes 8 days for documents preparation and 2 days for customs clearance and technical inspections. According to World Bank information, export procedures cost on average US$945 per container, including documents preparation (US$350) and customs clearance (US$120).[145]

(ii) Quality control and preshipment inspection

129. Since 2007, India's quality control and preshipment inspection measures for exports have remained broadly unchanged. Under the Export (Quality Control and Inspection) Act 1963, the Export Inspection Council of India (EIC) carries out quality control and preshipment inspection to ensure minimum standards for exports of products notified under the Export (Quality Control and Inspection) Act 1963 and non-notified products.[146] The Act empowers the Central Government to notify commodities and specify the minimum standards for their export. According to the authorities, there are currently over 800 notified products (no products have been notified since 2007).[147] The authorities noted that quality control and preshipment inspection measures were simplified during the review period. They currently apply to basmati rice, black pepper, dairy, eggs, fish and fish products,

[139] Department of Valuation online information, "Procedure for Clearance of Imported and Export Goods". Viewed at: http://www.dov.gov.in/newsite3/clearance_procedure.asp.

[140] Supporting documents include: invoice, packing list, licence or quota certificate as required; no objection certificate as required and certificate of analysis as required.

[141] Chaturvedi (2009).

[142] Department of Valuation online information, "Procedure for Clearance of Imported and Export Goods". Viewed at: http://www.dov.gov.in/newsite3/clearance_procedure.asp.

[143] WTO (2007).

[144] Chaturvedi (2009).

[145] World Bank/IFC Doing Business online information. Viewed at: http://www.doingbusiness.org.

[146] The EIC has five export inspection agencies across India's major cities, supported by 38 sub-offices and laboratories. It has also accredited external inspection agencies and laboratories (Department of Commerce, 2009).

[147] A product is notified under the Export (Quality Control and Inspection) Act 1963, based mainly on the requirements of the importing countries. However, the quantity of the product exported and the number of foreign complaints are also considered while notifying a product for export. The minimum standards for export of a product are developed based on the standard specified by major importing countries, national standards, and scientific data.

honey, meat and meat products, and processed food products containing red chillies.[148] Under the Export Policy Schedule (Foreign Trade Policy 2009-14), it appears that preshipment inspection also applies to exports of canned meat products and marine species (except those contained in the Wild Life (Protection) Act 1972).[149]

130. Export certification is through inspection of consignments or a "systems approach" inspection. The systems approach includes in-process quality control throughout the production process, self-certification, and food safety management systems certification (FSMSC). The FSMSC, which is based on international standards, applies to fish and fishery products, eggs, and dairy products, which accounted for around 81% of India's certified exports[150] (by value) in 2008/09 (latest available data).[151] The EIC charges 0.4% and 0.2% of the f.o.b. value of the exports for consignment and systems approach inspections, respectively. Testing of samples is generally free of charge.[152] Other EIC export certificates include health certificates (for fishery products), authenticity certificates (basmati rice), residue certificates (dairy, poultry, and eggs products), preferential certificates of origin, and non-GMO certificates.[153] EIC certification has been recognized for a range of food and non-food products by Australia, Brazil, China, the EU, Italy[154], Japan, the Kingdom of Saudi Arabia, Korea, Rep. of, Russia, Singapore, Sri Lanka, Turkey, the United States, and Viet Nam.

(iii) Export taxes, charges, and levies

131. Export taxes are used as a policy instrument to, *inter alia*, ensure domestic supply of raw materials for higher-value-added industries, promote further processing of natural resources, ensure an "adequate" domestic price, and preserve natural resources. Export taxes for tanned and untanned hides, skins, and leathers (except manufactures of leather) have remained in place since the last Review of India in 2007. Export taxes for iron ores and concentrates (including iron ore fines)[155], chromium ores and concentrates, and products of iron and steel (including ferrous waste and scrap, flat rolled products, and tubes and pipes) were introduced in 2009 (Table III.15). Export taxes are sometimes used with other measures to attain short-term goals. For instance, in April 2010 India introduced export licensing/EARCs for raw cotton and cotton waste in addition to export taxes for six months to ensure an adequate domestic supply and to contain an increase in the price of cotton in the domestic market (section (v) below) (Table III.15).

132. An export cess is collected for the development of a specific industry; it is consequently levied on certain exports for the development of that industry. As at 2011, a cess applies to exports of shellac and lac-based products, manganese ore, chrome ore, mica products, and iron ore (Table III.16). The Spices Cess Act 1986 and the Tobacco Cess Act 1975 were repealed by the Cess

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[148] EIC online information, "Export Certification System: Pre-shipment Inspection and Certification Schemes". Viewed at: http://www.eicindia.org/eic/index1.htm.

[149] Department of Commerce (2010a), Schedule 2: Export Policy.

[150] Certified exports are exports of notified products that have been certified by the competent authority.

[151] EIC online information, "Food Safety Management System based Certification". Viewed at: http://www.eicindia.org/eic/index1.htm; and Department of Commerce (2009).

[152] Department of Commerce (2009).

[153] EIC online information, "Other Services". Viewed at: http://www.eicindia.org/eic/index1.htm; and Department of Commerce (2009).

[154] Italy signed an MoU with the EIC for exports of fish and fishery products (information provided by the authorities).

[155] Iron ore pellets have been fully exempt from export duty since 1 March 2011.

Laws (Repealing and Amending) Act 2006. The additional export cess, under the Agricultural Produce Cess Act 1940, which applied to both of these products, was also repealed in 2006.[156]

Table III.15
Export taxes, 2011

Product	Rate	Implementation/status
Tanned and untanned hides, skins, and leathers (except manufactures of leather)	10%-25% of the f.o.b. value	2007/in force
Iron ores and concentrates, including iron ore fines	20% of the f.o.b. value for iron ores and concentrates 5% of the f.o.b. value for iron ore fines	2009/in force
Chromium ores and concentrates	Rs 3,000 per tonne	1 March 2007/in force
Ferrous waste and scrap, and remelting scrap ingots of iron or steel	15% of the f.o.b. value	1 March 2007/in force
Raw cotton	Rs 2,500 per tonne	April 2010/removed in October 2010
Cotton waste	3% of the f.o.b. value	April 2010/removed in October 2010

Source: CBEC online information, "Customs Tariff 2009-10: Part III: The Second Schedule: Export Tariff and Corresponding Exemption Notifications". Viewed at: http://www.cbec.gov.in/customs/cst-0910/cst-main.htm; Government of India Press Information Bureau, Press Release, "FM Announces Fresh Additional Relief Package in His Reply to the Debate on Finance Bill 2010", 29 April 2010; and information provided by the Indian authorities.

Table III.16
Export cess, 2011

Product	Cess rate
Shellac and lac based products	Rs 2.30 per quintal
Manganese ore	Rs 4 per tonne
Chrome ore	Rs 6 per tonne
Mica products	3.5% of the f.o.b. value
Iron ore	Rs 1 per tonne

Note: The cess on manganese ore, chrome ore, and iron ore is levied under the Iron Ore Mines, Manganese Ore Mines, and Chrome Ore Mines Labour Welfare Cess Act 1976.

Source: CBEC online information, "Customs Tariff 2009-10: Part III: The Second Schedule: Export Tariff and Corresponding Exemption Notifications". Viewed at: http://www.cbec.gov.in/customs/cst-0910/cst-main.htm.

(iv) Minimum export prices

133. Under the Export Policy Schedule (Foreign Trade Policy 2009-14), India maintains minimum prices on exports of onions and basmati rice. It maintains minimum prices for onions exported by state trading enterprises. At present, MEPs for onions are revised and fixed by an Inter-Ministerial Review Committee at the Department of Commerce (Table II.4). Bangalore rose onions and Krishnapuram onions are subject to export licensing and to a minimum export price of US$600/tonne.[157] The minimum price for exports of basmati rice, which is set by the DGFT, was initially US$1,100/tonne of the f.o.b. value; it was reduced to US$900/tonne in September 2009.[158] The authorities have indicated that Basmati rice is subject to a minimum export price to ensure prices and availability in the domestic market.

[156] Customs Circular No. 05/2008, 12 March 2008; and Taxindia online information, "Customs: Cess Act Notification". Viewed at: http://www.taxindiaonline.com/RC2/subCatDesc.php3?subCatDisp_Id=1&filename=wnew/cus-cess-01.htm.
[157] DGFT Notification No. 36(RE-2010)/2009-2014, 23 March 2011.
[158] DGFT Notification No. 5/2009-2014, 7 September 2009.

134. Although exports of non-basmati rice were prohibited at the time of India's last Review, exports of the PUSA-1211, a variety of non-basmati rice, were allowed, subject to a minimum price of US$1,200/tonne of the f.o.b. value until 1 April 2008.[159] Exports of non-basmati rice are currently prohibited (Table AIII.5), except for certain varieties subject to quotas and MEPs.[160]

(v) Export prohibitions, restrictions, and licensing

(a) Export prohibitions

135. Export prohibitions apply mainly for environmental, food-security, marketing, pricing, and domestic supply reasons; and to comply with international treaties. Since 2007, additional products have been subject to export prohibitions, including non-basmati rice, wheat, pulses, and edible oils (Table AIII.5).

136. Although exports of non-basmati rice and wheat are prohibited, the ban does not apply to exports of organic non-basmati rice and organic wheat certified by the Agricultural and Processed Food Products Export Development Authority (APEDA). These products are subject to an export quota of 10,000 tonnes and 5,000 tonnes per year, respectively.[161]

137. Export prohibitions and export quotas are notified on an annual basis; they are usually in place for a specific period, during which they may be subject to changes. These changes diminish the predictability of the regime. For instance, exports of edible oils were initially prohibited in 2008, and thereafter extended until 30 September 2011, due to a lack of supply to meet domestic demand.[162] However, this prohibition has been relaxed for branded consumer packs of oil of up to 5 kg since 2008, which have since been subject to an export quota of 10,000 tonnes.[163] Customs are in charge of monitoring the quota. Also, the prohibition on exports of shavings of shed antlers of Chital and Sambhar (including manufactured articles) was relaxed from 8 to 30 September 2009[164]; it was a one-time relaxation and exports have been prohibited since October 2009. Exports of pulses have been prohibited since 2006 and will remain prohibited until up to 31 March 2012.[165] According to the authorities, the prohibition is in place to ensure domestic supply. Under the Foreign Trade Policy 2004-09, exports of cement were prohibited as of April 2008, except for exports from the domestic tariff area (DTA) to special economic zones (SEZs) for use in SEZs.[166] However, exports of cement were liberalized by December 2008.

138. In addition, India bans exports of some products to the Democratic People's Republic of Korea, Iran, and Iraq, under UN resolutions; and of rough diamonds to the Bolivarian Republic of Venezuela, under the Kimberly process.[167]

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[159] DGTF Notification No. 37 (RE-2008)/2004-2009, 3 September 2008.

[160] During the 2010-11 monsoon season, an export quota of 125,000 tonnes of non-basmati rice was allowed at an MEP of US$850 per tonne.

[161] Export contracts must be registered with APEDA prior to shipment (DGFT Notifications Nos. 19/2009-2014 and 20/2009-2014, 7 December 2009).

[162] DGTF Notifications Nos. 85(RE-2007)/2009-2014, 17 March 2008; and 07 (RE-2010)/2009-2014, 30 September 2010.

[163] DGTF Notifications Nos. 04/2009-2014, 4 September 2009; and 09(RE-2010)/2009-2014, 1 November 2010.

[164] DGFT Notification No. 06/2009-2014, 8 September 2009.

[165] DGTF Notifications Nos. 35/2009-2014, 30 March 2010; and No. 35(RE 2010)/2009-2014, 23 March 2011.

[166] DGFT Notification No. 5(RE-2008)/2004-2009, 15 April 2008.

[167] Department of Commerce (2010a).

(b) Export licensing and quotas

139. Under the current Export Policy Schedule, some 167 lines (171 lines in 2007) at the HS eight-digit level, excluding products of special chemicals, organisms, materials, equipment, and technologies (SCOMET), are currently subject to restrictions.[168] Products may be exported only if a licence is issued by the DGFT.

140. Export licensing is sometimes used as a policy tool to ensure the domestic supply of certain products. For example, exports of cotton (HS 5201, 5202, and 5203), excluding cotton yarn (HS 5205, 5206, and 5207), were restricted (i.e. subject to an export licence) from 21 May 2010 to 30 September 2010.[169] Cotton yarn was subject to a restriction from December 2010 to March 2011.[170] In addition, exports of cotton and cotton yarn require an export authorization registration certificate (EARCs). EARCs are issued by the Directorate General of Foreign Trade (as of December 2010[171]) only when the domestic supply of cotton is ensured (Table II.4). For instance, no EARCs were granted from 19 April 2010 to 21 May 2010[172]; this decision to suspend exports was aimed at lowering domestic prices and ensuring a stock of 5 million bales of cotton for the domestic garment and handloom sectors up to the start of the next cotton season (in October).[173]

141. Exports of brown seaweeds and sandalwood oil are subject to export quotas set by the DGFT. The quota is determined on the basis of domestic demand and anticipated production. Only exports of wheat products (HS 1001) are subject to a ceiling. Exports of sugar (by state-trading enterprises) are subject to quota under preferential regimes (Table III.17). In addition to this quota, the system of "export release order" for sugar exports was reintroduced in 2009.[174] Under this system, based on domestic demand and supply estimates, the Sugar Directory determines annually the amount of sugar that can be exported subject to a "release order".[175]

(vi) State trading

142. State trading of exports has the stated purpose of ensuring better marketing and prices of agricultural and minor forest products, grown by small-scale farmers, as well as to prevent fluctuations in domestic prices; and to ensure supply of kerosene and liquefied petroleum gas (used as domestic fuels), and conservation and proper use of some metal ores.[176] Since 2007, exports through state-trading have also included all varieties of onions (prohibited for exports from December 2010 to February 2011 (Table II.4)), manganese ores (above 46% manganese (Mn)), and beneficated chrome ore fines/concentrates (Table III.17).

[168] For the list of SCOMET, see Department of Commerce (2010a), Schedule 2: Export Policy: Appendix 3.

[169] DGFT Notifications Nos. 44/2009-14, 21 May 2010; and 58/2009-14, 17 August 2010.

[170] DGFT Notifications Nos. 14(RE-2010)/2009-2014, 22 December 2010; and 40(RE-2010)/2009-14, 31 March 2011.

[171] DGFT Notifications No. 12(RE-2010)/2009-14, 16 December 2010.

[172] *The Economic Times*, "Govt suspends registration of raw cotton exports", 20 April 2010; and *The Wall Street Journal*, "India Allows Cotton Exports Again", 21 May 2010.

[173] Due to a significant drop in cotton production across the world, several country producers have met their shortages by importing raw cotton from India (7% cheaper than the U.S. raw cotton), hence reducing India's stocks sharply until the next cotton season (*The Hindu*, "Curbs on raw cotton exports", 20 April 2010; and Government of India Press Information Bureau, Press Release, "Ceiling for cotton export", 28 April 2010).

[174] DGFT Policy Circular No. 87(RE-09) 2004-2009, 4 May 2009.

[175] Department of Food and Public Distribution, File No. 3-3/2010-ES, 1 January 2011. Viewed at: http://www.mahasugarfed.org/images/pdf/Sugar%20Export%20-2011.pdf.

[176] WTO document G/STR/N/8/IND, G/STR/N/9/IND, G/STR/N/10/IND, and G/STR/N/11/IND, 6 May 2010.

143. As for imports, state-trading enterprises (STEs) are granted special privileges to export but must act in accordance with commercial considerations and in a non-discriminatory manner. The exclusive right to export is granted to an enterprise by the DGFT under the provisions of the Foreign Trade Policy (Paragraph 2.11). However, if STEs are not interested in exporting, other exporters may approach the DGFT for permission to export.[177]

Table III.17
Exports subject to state trading, 2007-11

State-trading enterprises	Product	HS code	Exports (tonnes) 2007/08	2008/09	2009/10	2010/11
National Agricultural Cooperative Marketing Federation of India (NAFED) Ltd.; Maharashtra State Agricultural Marketing Board; Gujarat Agro Industries Corporation Ltd.; Spices Trading Corporation Ltd.; A.P. State Trading Corporation; Karnataka State Cooperative Marketing Federation Ltd.; National Cooperative Consumers Federation of India Ltd.; North Karnataka Onion Growers Co-operative Society; West Bengal Essential Commodities Supply Corporation Ltd.; M.P. State Agro Industries Development Corporation; Karnataka State Produce Processing and Export Corporation; Madhya Pradesh State Co-operative Oil Seeds Growers Federation Ltd.; and Andhra Pradesh Marketing Federation	Onion (all varieties), including Bangalore rose onions and Krishnapuram onions[a]	0703 10 10 0712 20 00	1,067.7	1,697.7	1,705.5	454.0
Tribal Cooperative Marketing Development Federation of India Ltd.	Gum Karaya[b]	1301.90.16	0.9	1.0	1.0	0.3
Indian Sugar Exim Corporation	Sugar[c]	Ex 1701.00.00	..	..	..	..
Kudremukh Iron Ore Company Ltd.	Iron ores concentrate prepared by beneficiation and/or concentration of low-grade iron ore containing 40% or less of iron[d]	Ex 2601.11.50	290.0	40.0	0.1	0
	Iron ore pellets[e]	Ex 2601.12.10	2,358.5	909.1	287.7	0
Minerals and Metals Trading Corporation	Iron ore other than those which are free	Ex 2601.11.00	66,117.5	67,164.7	100,984.5	21,912.7
	Manganese ores other than lumpy/blended manganese ore above 46% Mn	2602.00.00	208.4	205.4	289.5	75.0
	Beneficated chrome ore fines/concentrates (maximum feed grade to be less than 42% Cr_2O_3)	2610.00.30 2610.00.40	..	..	..	..
	Chrome ore lumps with Cr_2O_3 not exceeding 40%	2610.00.30	1.1	103.1	19.8	0
	Low silica, friable ore with Cr_2O_3 not exceeding 52% and silica exceeding 4%	Ex 2610.00.90	45.4	145.5	150.5	3.7
	Low silica friable/fine chromite ore with Cr_2O_3 in the range of 52-54% and silica not exceeding 4%	Ex 2610.00.90	..	..	..	..
Manganese Ore India Ltd.	Manganese ores other than lumpy/blended manganese ore above 46% Mn	2602.00.00	20.5	4.2	3.4	5.5

Table III.17 (cont'd)

[177] Information provided by the authorities.

State-trading enterprises	Product	HS code	Exports (tonnes) 2007/08	2008/09	2009/10	2010/11
Indian Oil Corporation	Crude oil	2709.00.00	29.3	56.9	34.6	0

.. Not available.

a No quantitative ceilings apply. Exports are subject to conditions of quality laid out by the National Agricultural Cooperative Marketing Federation of India from time to time. STEs may issue "no objection certificates" and charge shippers a uniform rate of 1% of the export value; they are not allowed to levy other charges. Exports are subject to minimum prices fixed by NAFED.
b Exports have been free since November 2010.
c Subject to preferential tariff-rate quotas.
d Produced by Kudremukh Iron Ore Company Ltd.
e Manufactured by Kudremukh Iron Ore Company Ltd. out of own production of concentrates.

Note: Exports of onions, except Bangalore rose onions and Krishnapuram onions, which are restricted subject to minimum export prices, were prohibited in December 2010 for two months until 18 February 2011.

Source: WTO document G/STR/N/8/IND, G/STR/N/9/IND, G/STR/N/10/IND, and G/STR/N/11/IND, 6 May 2010; Department of Commerce (2010), "Schedule 2: Export Policy", *Foreign Trade Policy 2009-14*, incorporating Annual Supplement, 23 August. Viewed at: http://dgft.gov.in; DGFT online information, "Notifications". Viewed at: http://dgft.gov.in; and information provided by the Indian authorities.

(vii) Export support

144. During the period under review, India did not make any notifications to the WTO regarding export subsidies on agricultural products.[178]

145. India's latest notification to the WTO Committee on Subsidies and Countervailing Measures dates from 2010.[179] The tax incentives notified were those provided under the Income Tax Act 1961 to free-trade zones (Section 10A), and to export-oriented units (EOUs) (Section 10B). The tax deductions for exporters on their profits under section 80HHC of the Income Tax Act 1961, notified previously by India have been phased out[180]; no deduction under this section has been available since 2005/06.[181]

146. India is an Annex VII (b) Member under the SCM Agreement and as such may maintain these export promotion schemes until its per capita gross national product (GNP) reaches US$1,000 in constant 1990 dollars for three consecutive years.[182] In the last three years for which data are available (2006-08), the country's gross national income (GNI)[183] has remained below US$1,000 in constant 1990 dollars.[184]

[178] India's most recent notification on export subsidy commitments dates from 2002 and covers 1996-97 to 2000-01 (WTO document G/AG/N/IND/3, 1 March 2002).

[179] WTO documents G/SCM/N/186/IND, 18 October 2010; and G/SCM/N/155/IND and G/SCM/N/123/IND, 29 October 2010.

[180] WTO document G/SCM/N/71/IND, 18 October 2001.

[181] Income Tax Act 1961, Section 80HHC (Deduction in respect of profits retained for export business).

[182] WTO documents G/SCM/110, 20 October 2003; and G/SCM/110/Add.1-Add.8, 3 June 2004-16 June 2011.

[183] The World Bank changed its methodology: it has stopped classifying countries according to GNP, and it now classifies them according to GNI. For more information, see World Bank online information, "Methodologies: Change in Terminology". Viewed at: http://web.worldbank.org/WBSITE/EXTERNAL/DATASTATISTICS/0,,contentMDK:20451503~menuPK:64133156~pagePK:64133150~piPK:64133175~theSitePK:239419~isCURL:Y,00.html.

[184] WTO document G/SCM/110/Add.7, 22 June 2010.

(a) Free-trade zones and export-oriented units (EOUs)

147. Exports are encouraged through the establishment of special economic zones (SEZs) and export-oriented units (EOUs).

Special economic zones (SEZs)

148. SEZs may be set up by the central or state governments or by private developers (including foreigners) as joint ventures with the State or fully private.[185] The legal framework regulating SEZs at the central government level is the SEZ Act 2005 and Rules 2006. Also, some states have enacted their own laws and rules to regulate SEZs.[186] State SEZ legislation follows the lines of the SEZ Act 2005.[187] All SEZs are under the administrative control of the SEZ Development Commissioner.

149. Firms established in an SEZ benefit from several incentives subject to generating net foreign exchange earnings within five years of operation (Table III.18). SEZ units are exempt from various taxes, including income tax, central sales tax, minimum alternate tax, dividend distribution tax, service tax, and from a series of state taxes (i.e. sales tax, stamp duty, and electricity duty) (Table III.18).[188] SEZ units may import all types of goods (including new and second-hand capital goods) duty free both from abroad and from the domestic tariff area (DTA).[189] Imports and exports into/from the SEZ are not subject to routine customs examination; for instance, "let export" orders are granted on the basis of self-certification by the SEZ.[190] Also, exports of products manufactured in SEZs are not subject to compulsory preshipment inspection.[191] State trading does not apply to SEZs (except for iron ore).[192] However, other export measures do apply to exports from the SEZs, but with exceptions. For instance, minimum export prices apply to exports from SEZs only when raw materials procured indigenously are exported unprocessed.[193]

150. There is no quantitative limit on the amount of SEZs exports into the DTA. However, sales into the DTA attract all the same duties and charges as any other import.

151. As at end 2010, India had 374 SEZs with 3,245 units producing manufactured goods and providing services and warehousing for a total investment of US$43 billion and 644,073 employees. During the period under review, exports from SEZs increased from some US$15 billion to US$49 billion, in value, accounting for 17% of total exports in 2009/10, compared with 9.08% in 2007/08.[194] Major exports from SEZs include chemicals and pharmaceuticals, computer and electronic software, and gems and jewellery (Table III.19). Taxes forgone as a result of the benefits

[185] SEZ Act 2005, Chapter II; and Dohrmann (2008).

[186] Dohrmann (2008).

[187] The states that have enacted SEZ Acts are Gujarat, Himachal Pradesh, Tamil Nadu, Uttar Pradesh, Haryana, and Punjab.

[188] SEZ Rules 2006, as amended; SEZ Act 2005; and SEZ online information, "About SEZs: facilities and incentives". Viewed at: http://sezindia.nic.in/about-fi.asp.

[189] DTA means an area within India that is outside SEZs, EOUs, electronic hardware technology parks, software technology parks, and bio-technology parks.

[190] Self-certification refers to certification regarding the sealing of containers or packages of goods for export. The certificate stipulates that the containers or packages have been sealed in the presence of a person authorized on behalf of the unit (SEZ Rules 2006, as amended, Chapter IV).

[191] Export Inspection Council of India online information, "Relaxations". Viewed at: http://www.eicindia.org/eic/qc&i/relaxations.htm.

[192] SEZ Rules 2006, as amended, Chapter IV; and Department of Commerce (2010a).

[193] SEZ Rules 2006, as amended, Chapter IV.

[194] Information provided by the authorities.

granted to SEZs have more than doubled between 2007/08 and 2009/10 (from Rs 18 billion to Rs 39.9 billion).[195]

Table III.18
Incentives granted to SEZ units, 2011

Duty-free imports/domestic procurement of goods for development, operation, and maintenance of SEZ units
100% income tax exemption for SEZ units for the first five years, 50% for the next five years, and 50% of the ploughed-back export profit for the next five years
Exemption from minimum alternate tax
Exemption from the central sales tax
Exemption from the service tax
Exemption from the state sales tax and other levies (e.g. stamp duty and electricity duty) as extended by the respective state government
External commercial borrowing by SEZ units up to US$500 million in one year without any maturity restriction through recognized banking channels
100% FDI investment through automatic route
Single-window clearance for central and state level approval procedures

Source: Department of Industrial Policy and Promotion (2010), *National Manufacturing Policy: A Discussion Paper*. Viewed at: http://dipp.nic.in/NMP_DiscussionPaper/NMP_DiscussionPaper_2010.pdf; SEZ Rules 2006, as amended; SEZ Act 2005; and SEZ online information, "About SEZs: facilities and incentives". Viewed at: http://sezindia.nic.in/about-fi.asp.

Table III.19
Exports from SEZs, 2007-10
(US$ billion, unless otherwise specified)

Sector	**2007/08**	**2008/09**	**2009/10**
Biotech	0.04	0.19	0.10
Computer/electronic software	0.89	3.61	10.17
Electronics hardware	2.47	2.90	3.87
Electronics	0.12	0.08	0.21
Engineering	0.37	0.69	0.93
Gems and jewellery	5.11	7.43	9.74
Chemicals and pharmaceuticals	0.32	1.42	16.44
Handicrafts	0.01	0.01	0.01
Plastic and rubber	0.15	0.08	0.15
Leather, footwear, and sports goods	0.05	0.06	0.10
Food and agri-industry	0.14	0.07	0.08
Non-conventional energy	0.03	0.05	0.31
Textiles and garments	0.29	0.66	0.74
Trading and services	4.64	4.18	5.53
Miscellaneous	0.20	0.75	0.66
Total	**14.81**	**22.15**	**49.05**
Percentage share of SEZs exports of India's total exports	9.1	12.0	27.4

Source: Information provided by the Indian authorities.

152. As a result of the development of SEZs, concerns have emerged regarding the acquisition of agricultural land for the establishment of SEZs, taxes forgone, and the conversion of DTA industries into SEZ units.[196] According to the authorities, the acquisition of waste and barren land would be the

[195] Information provided by the authorities.
[196] Department of Commerce (2009).

first priority to establish SEZs; single- or double-crop agricultural land may be acquired only if deemed necessary.[197]

Export-oriented units (EOUs)

153. The Export Oriented Units (EOUs) Scheme, introduced in early 1981, complements the SEZ scheme.[198] EOUs are regulated by the Foreign Trade Policy. As in the case of the EPZs, the main objectives of the EOU Scheme is to increase exports and foreign exchange revenues, promote the transfer of latest technologies, stimulate direct foreign investment, and generate additional employment. EOUs are similar to EPZs but may be located anywhere in the country.[199] Initially, EOUs were concentrated mainly in manufacturing (e.g. textiles, food processing, and electronics) but currently agri-businesses and firms supplying services also operate under the EOU Scheme.

154. The minimum investment in an EOU is Rs 10 million. EOUs are licensed to manufacture or provide services for export for an initial period of five years, which may be extended; they may benefit from tax and other incentives, subject to export performance. Sector-specific requirements are stipulated in the provisions of the EXIM Policy, and vary from sector to sector.[200] EOUs must also generate net foreign exchange earnings within five years of starting operations. If the unit is not NFEE positive, the Development Commissioner is required to inform the Central Excise authorities for recovery of the proportionate duty.[201]

155. As in the case of the SEZs, EOUs are exempt from various taxes, including income tax, until 31 March 2011 (Table III.20).[202] EOUs may import all types of goods (including new and second-hand capital goods) duty free from the DTA and abroad, and are exempt from routine customs procedures both when importing and exporting. Manufacturing EOUs are exempt from the state trading regime with the exception of chrome ore/chrome concentrate.

156. In principle, EOUs are established to export their entire production; however, subject to certain conditions, a specific percentage may be sold in the DTA upon payment of duties (including anti-dumping duties) and taxes, with some exceptions.[203] In general, EOUs may sell in the DTA goods and services for up to 50% of the f.o.b. value of exports, with the exception of producers of gems and jewellery who may sell up to 10% of the f.o.b. value of exports. Sales into the DTA are allowed only with the approval from the Development Commissioner; if similar goods are exported; and if the NFEE conditions have been fulfilled. Sales into the DTA are subject to the payment of a 25% basic customs duty and a 100% additional customs duty, with the exception of pepper and marble, which may not be exported to the DTA even upon payment of full duty.[204] Goods made of indigenous raw materials are subject to the payment of excise duties.

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[197] If double-cropped agricultural land has to be acquired, it should not represent more than 10% of the total land required for SEZs (Department of Commerce, 2009).

[198] The Electronics Hardware Technology Parks (EHTPs), Software Technology Parks (STPs), and Bio-Technology Parks (BTPs) Schemes are similar to the EOUs Scheme in terms of requirements and benefits (Department of Commerce, 2010a).

[199] Prior to August 2008, locational restrictions applied (Chapter II(4)(ii)(b)).

[200] Department of Commerce (2010a).

[201] Central Board of Excise and Customs (2011).

[202] Export Promotion Council for EOUs and SEZs, Circular No. 77, 6 July 2009.

[203] DTA means an area within India that is outside SEZs, EOUs, electronic hardware technology parks, software technology parks, and bio-technology parks.

[204] Department of Commerce (2010a), Paragraph 6.8(h); and Central Board of Excise and Customs (2011).

Table III.20
Incentives granted to EOUs, 2011

Inputs are exempt from customs duty
Exemption from customs and central excise duties on import/local procurement of capital goods, raw materials, consumables, spares, packing material, etc.
Reimbursement of central sales tax
Corporate/income tax holiday until 31 March 2011
Reimbursement of duty paid on fuels procured from domestic oil companies as per the rate of drawback
No import licences are required
Import of second-hand capital goods are allowed
Supplies from the DTA to EOUs are deemed exports and are exempt from payment of the excise duty
50% of production may be sold in the domestic market on payment of duty, generally 25%, plus a 100% additional customs duty
100% FDI investment through automatic route

Source: Department of Industrial Policy and Promotion (2010), *National Manufacturing Policy: A Discussion Paper*. Viewed at: http://dipp.nic.in/NMP_DiscussionPaper/NMP_DiscussionPaper_2010.pdf; and Export Promotion Council for EOUs and SEZs, Circular No. 77, 6 July 2009.

157. A special licence granted by the Board of Approvals is necessary to set up an EOU to manufacture arms and ammunition, explosives and defence equipment, atomic substances, narcotics and psychotropic substances and hazardous chemicals, distillation and brewing of alcoholic drinks, cigarettes/cigars and manufactured tobacco substitutes. Up to 100% of FDI is allowed in EOUs under the automatic route (Chapter II(4)(ii)) in areas where no FDI prohibition applies.[205]

158. In 2009/10, India had 2,553 EOUs, manufacturing goods and providing services, excluding trading, which is not allowed.[206] During the period under review, exports from EOUs decreased in value from some US$42 billion to US$18 billion, accounting for 10% of total exports in 2009/10, compared with 26% in 2007/08 (Table III.21).[207] This decline was due to some enterprises leaving the EOUs regime. Exports of chemicals and pharmaceuticals, the most important products exported by EOUs, declined from US$24 billion in 2007/08 to US$4.7 billion in 2009/10. Taxes forgone as a result of the EOU scheme decreased from Rs 105 billion in 2007/08 to Rs 70 billion in 2009/10.

Table III.21
Exports from EOUs, 2007-10
(US$ billion, unless otherwise specified)

Sectors	2007/08	2008/09	2009/10
Textiles and garments, yarn	1.73	1.20	0.79
Computer software	1.20	0.75	0.89
Electronics hardware	1.15	1.19	0.98
Engineering goods	4.74	4.14	3.18
Chemicals and pharmaceuticals	24.02	23.69	4.52
Leather and sports goods	0.18	0.18	0.17
Gems and jewellery	2.33	0.93	1.04
Plastic, rubber, and synthetic	0.38	0.37	0.32
Foods and agri and forest products	0.93	1.02	0.90

Table III.21 (cont'd)

[205] FDI is prohibited in manufacture of arms and ammunition, explosives, atomic substances, narcotics and hazardous chemicals, distillation and brewing of alcoholic drinks, and cigarettes, cigars, and manufactured tobacco substitutes.

[206] Export Promotion Council for EOUs and SEZs online information, "How to set-up an Export Oriented Unit". Viewed at: http://www.eouindia.gov.in/eou_settingup.htm.

[207] Information provided by the authorities.

Sectors	2007/08	2008/09	2009/10
Miscellaneous	5.30	5.01	4.86
Total	**41.96**	**38.47**	**17.64**
Percentage share of EOUs exports of India's total exports	25.7	20.8	9.9

Note: The figures do not include the export performance of Software Technology Park of India (STPI) units.

Source: Information provided by the authorities.

(b) "Drawback"

159. The Customs Act 1962 (Sections 74-76), and the Customs and Central Excise Duties and Service Tax Drawback Rules 1995 continue to regulate the drawback system in India. Under the drawback system, exporters are entitled to a refund of: the customs duties (including additional duties) on imported goods that are exported without transformation (Section 74); or customs duties, central excise duties, and the service tax levied on materials imported or procured locally to manufacture export products (Section 75). There are two types of drawback: the "all industry rate" and the "brand rate" for which the refund may be negotiated.

"All industry" drawback

160. Under the "all industry" drawback rate, the amount refunded (i.e. "drawback rate") is usually a percentage of the f.o.b. value of exports or a specific per-unit value. For certain products, there is a cap or maximum amount that may be refunded. Drawback rates are based on different parameters including the prevailing price of inputs, standard input-output norms published by the DGFT, share of imports in total inputs, and the applied rates of duty.[208] The "drawback rates" and caps are listed in the drawback schedule, which is reviewed and revised every year taking into account changes in the tariff duty rates.[209] Customs Notification No. 84/2010 (17 September 2010) introduced the All Industry Rates of Duty Drawback Schedule for 2010-11. It includes two rates per item depending on whether the exporter has already received a refund of the central excise duty and the service tax under the Central Value Added Tax (CENVAT) Credit Rules 2004.[210]

161. Under the All Industry Rates of Duty Drawback Schedule 2010-11, drawback rates on, *inter alia*, leather and leather articles (HS chapters 41, 42, and 64), textiles and textile articles (HS chapters 50-63), base metals and article of base metals (HS chapters 72-83), bicycles and bicycle parts (HS chapter 87), sports goods (HS chapter 95), and writing instruments (HS chapter 96), have decreased compared with those in force in 2009-10.[211] To discourage exports, and in line with measures taken by the authorities to contain increases in the domestic price of cotton, exports of cotton yarn (HS 5205, 5206, and 5207) have not been covered by the drawback schedule since April 2010.[212] Drawback on gold jewellery and parts thereof (HS 7113.01 and HS 7113.02) may only be granted to exports by airfreight, post parcel or authorized courier going through 13 designated

[208] Customs Circular No. 35/2010, 17 September 2010.

[209] Customs Notification No. 103/2008, 29 August 2008, introduced the Drawback Schedule for 2008-09. The authorities noted that the 2008-09 Drawback Schedule also covered 2009-10.

[210] According to Customs Notification No. 84/2010 (17 September 2010), the Drawback Schedule (items and descriptions) is aligned with rates in the Customs Tariff Act 1975 (First Schedule) at the four-digit level. However, it is not aligned at the six- or eight-digit levels.

[211] Customs Circular No. 35/2010, 17 September 2010.

[212] Customs (non-tariff) Notification No. 34/2010, 29 April 2010.

customs stations, and after examination. In addition, consignments exported through authorized courier are subject to a maximum f.o.b. value of Rs 2 million.[213]

"Brand rate" drawback

162. For all products on which the All Industry Rates of Duty Drawback Schedule indicates a drawback rate of "nil", the exporter may claim a "brand rate" drawback. The exporter must apply in writing to the Commissioner of Central Excise or to the Commissioner of Customs and Central Excise, for the determination of the amount or rate of drawback, stating the proportion in which materials/components/inputs were used in the production or manufacture of goods, and the duties paid on such materials/components, or the tax paid on input services, in accordance with the Customs, Central Excise Duties and Service Tax Drawback Rules 1995 (Rule 6).[214] If the exporter deems that the drawback level is too low, e.g. if the amount refunded is less than four fifths of the duties and taxes paid on the imported materials used for the manufacture of export products, the drawback rate may be adjusted upon request (Customs, Central Excise, and Service Tax Drawback Rules 1995 (Rule 7)). According to the authorities, the "brand rate" drawback is determined on the basis of the actual duty incidence on the inputs used to manufacture the goods exported.

163. Drawback is not allowed for some specific products: at present these are casein, cement, cotton yarn, milk and milk products, and rice; or if the market price is less than the amount of the drawback; if the drawback due is less than Rs 50; or if the exported products have benefited from other incentives (Box III.2).[215] The authorities noted that the drawback is not provided for specific export products as a matter of overall policy.

Box III.2: Drawback

Instances in which drawback may not be applied:

- products have been manufactured partly or wholly in a warehouse as defined under the Customs Act 1962 (Section 65);
- products are manufactured or exported in discharge of export obligations against Advance or Duty-free Import Authorizations issued under the Duty Exemption Scheme (Table AIII.6);
- products are manufactured or exported by 100% export-oriented units (EOUs);
- products are manufactured or exported by units in free-trade zones or export processing zones or special economic zones;
- products are manufactured or exported availing the benefit of Customs Notification No. 32/1997, 1 April 1997, which provides exemption from customs duty for materials when imported into India to produce exports; and
- products are exported under the Duty Entitlement Pass Book Scheme (Table AIII.6).

In addition, exports of gold jewellery and parts thereof (HS 7113.01) and articles of gold jewellery and parts thereof (HS 7113.02) subject to other export incentives schemes (Table AIII.6), are not entitled to drawback.

Source: Customs Notification No. 84/2010, 17 September 2010.

164. If the drawback is not paid within three months from the date of filing a claim, the exporter receives interest in addition to the drawback (Customs Act 1962, Section 75A).

[213] Customs Notification No. 84/2010, 17 September 2010; and Department of Commerce (2010b).
[214] Customs Notifications Nos. 13/2008, 29 August 2008, and 84/2010, 17 September 2010.
[215] Customs Act 1962 (Section 76).

(c) Other duty and tax concessions

165. In addition to the SEZs and EOUs regimes and the duty drawback system, India has a number of export incentive schemes, some of which are contingent on value addition and export obligations. India's exports concession schemes include: (i) duty exemption schemes, which allow exporters to import inputs (including fuel and oil) duty free; (ii) duty remission schemes, entitling exporters to a refund of customs duty on the inputs used to produce exports (post export replenishment/remission of duty paid on inputs); (iii) reward schemes granting exporters duty credits; and (iv) the Export Promotion Capital Goods Scheme, which allows exporters to import capital goods, at concessional or zero duty rates, subject to an export obligation. Special schemes are also in place for gems and jewellery, and for export and trading houses (Table AIII.6). Income forgone as a result of these schemes totalled Rs 312,922 million in FY 2009/10 (Table AIII.7).

166. The product coverage and the level of concession under these schemes changed during the period under review and new schemes were implemented. Amendments included: (i) introduction of a zero duty rate under the Export Promotion Capital Goods Scheme; (ii) increase of the duty credit to from 1.25% to 2% of the f.o.b. value of exports under the Focus Product Scheme, and from 2.5% to 3% of the f.o.b. value of exports under the Focus Market Scheme; (iii) reduction of the minimum value added required to receive benefits for gems and jewellery from 2%-6.5% to 1.5%-5%; and (iv) the introduction of a 15% minimum value added requirement under the Advance Authorization Scheme. Since 2007 two new export incentive schemes have been introduced, the Status Holder Incentive Scheme and the Agri Infrastructure Incentive Scheme (Table AIII.6).

167. Incentives granted under three schemes that were phased out in 2006 (i.e. the Duty Free Credit Entitlement Scheme for Status Holder, the Duty Free Replenishment Certificate Scheme, and the Target Plus Scheme) have been grandfathered (Table AIII.6).

168. As is the case with other measures, duty concessions are also used to attain short term objectives. For instance, as of April 2010, duty concessions granted under the Duty Entitlement Passbook Scheme to exporters of cotton yarn were suspended, for six months, to reduce exports in an attempt to control the domestic price of cotton.

(viii) Export promotion and marketing assistance

169. In addition to tariff concessions and export programmes, the Department of Commerce encourages exports indirectly, through a number of schemes. The Assistance to States for Development of Export Infrastructure and Allied Activities Scheme provides assistance for, *inter alia*, setting up new export promotion industrial parks/zones (including SEZs), and supporting infrastructure (e.g. road links to ports, inland container depots, container freight stations, and power supply). The Marketing Development Assistance Scheme supports export promotion activities through export promotion councils (EPCs); the Market Access Initiative Scheme supports EPCs and trade bodies (i.e. chambers of commerce and industries) that participate in export promotion activities. The Department of Commerce also provides support for trade facilitation (e.g. implementation of a single window for clearance of goods and e-trading facilities).[216] India's 20 EPCs and the five Commodity Boards continue to promote exports of specific products.[217] Other bodies affiliated to the Ministry of Commerce and Industry are also actively involved in promoting exports through training,

[216] Department of Commerce (2009).

[217] EPCs promote exports of textiles; pharmaceuticals, chemicals, and cosmetics; leather; gems and jewellery; engineering goods and civil construction projects; plastics; cashews; shellac; and sports goods. Commodity boards promote exports of tea, coffee, rubber, spices, and tobacco.

organizing trade fairs/exhibitions in India and abroad, and acting as arbitrators in commercial disputes.[218]

(ix) Export finance and insurance

170. Export finance is provided primarily by the Export-Import Bank of India (Exim Bank)[219], and through mandatory annual lending targets for foreign banks (see below). In order to promote trade and investment, the Exim Bank provides Indian exporters with export credits on a cost-plus basis at market-related interest rates. The Exim Bank also provides finance and export support for export-oriented units (EOUs)[220], and value-added services (e.g. advice and marketing support aimed at evaluating international risks and export opportunities). The Bank coordinates the work of other institutions financing trade (exports and imports). The Exim Bank may also provide lines of credit to governments and to overseas financial institutions to enable buyers in those countries to purchase goods and services from India; the terms of these credits are negotiated between the Exim Bank and the overseas agency, based on market interest rates usually linked to the LIBOR.[221]

171. The Exim Bank also provides various export guarantee schemes and fee-based services to support international trade and investment, and conducts related research.[222]

172. During 2009/10, the Exim Bank approved loans amounting to Rs 388.43 billion, up from Rs 267.62 billion in 2006/07.[223] The main industrial sectors to which the bank has exposure remain textiles and clothing, metals and metal processing, and chemicals and petroleum (Chart III.5).

173. Under the current guidelines on lending to priority sectors, foreign banks operating in India must reserve 32% of their adjusted net bank credit (ANBC) or credit equivalent amount of off-balance-sheet exposure (OBSE) (whichever is higher) for priority sectors, of which 12% of ANBC/credit equivalent of OBSE must be loaned to the export sector. No target is fixed on lending to exporters for domestic (private and state-owned) banks.[224] The loans may be provided in domestic or foreign currency and are at concessional rates of interest. As at March 2010, 20.64% of net bank credit by foreign banks went to the export sector: out of 28 foreign banks 24 have achieved the 12% target.[225]

[218] These institutions are: the India Trade Promotion Organization; the export and development authorities for marine products, and for agricultural and processed food; the institutes for foreign trade, packaging, and diamonds; the Federation of Indian Export Organizations; the India Brand Equity Foundation; and the Indian Council of Arbitration (Department of Commerce online information, "About us: Autonomous Bodies". Viewed at: http://commerce.nic.in/aboutus/aboutus_epc.asp; and Department of Commerce, 2009).

[219] Established in 1982 under the Export-Import Bank of India Act 1981, the Exim Bank is wholly owned by the Government of India.

[220] The Bank provides loans, working capital, marketing support, export product development, export facilitation, import finance, and export guarantees to EOUs.

[221] Export-Import Bank of India online information, "About us: Organization". Viewed at: http://www.eximbankindia.com/organisation.asp.

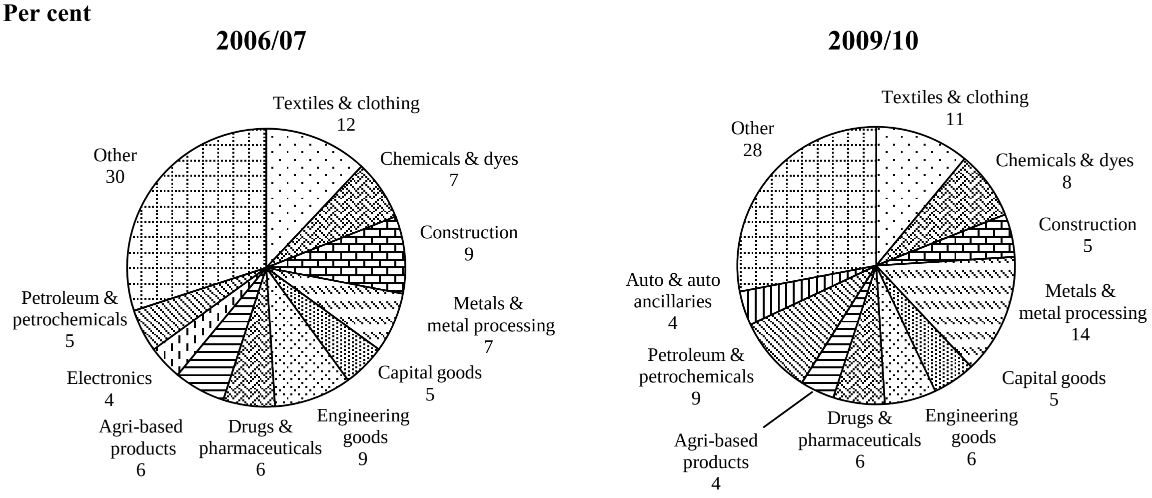
[222] The guarantees include: bid bond guarantees; advance payment guarantees; performance guarantees; guarantees for release of retention money; and guarantee for raising borrowings overseas for execution of project export contracts (information provided by the authorities).

[223] Export-Import Bank of India (2010).

[224] Reserve Bank of India, Master Circular No. RBI/2010-11/80, 1 July 2010.

[225] Reserve Bank of India (2010a).

Chart III.5
Loans by the Export-Import Bank of India, by sector, 2006/07 and 2009/10



***Source*: Data provided by the Indian authorities.**

174. Insurance against export credit risk is provided by the Export Credit Guarantee Corporation of India Ltd. (ECGC). ECGC is a state-owned company, under the administrative control of the Ministry of Commerce and Industry, registered as a non-life insurance company under the Insurance Regulatory and Development Authority Act. It provides exporters insurance against commercial or country risks; it also grants guarantees to banks/financial institutions, which allows them to offer export credit facilities to exporters, on a more liberal basis.[226] The ECGC also provides overseas investment insurance to Indian companies investing in joint ventures abroad through equity or loans.[227] The ECGC holds 60% of India's total export credit risk market and covers exports to 193 countries.[228] The authorities noted that the ECGC does not receive a subsidy from the Government.[229] The ECGC also operates the National Export Insurance Account (NEIA), which covers export credit risk for large long- and medium-term overseas projects that are commercially viable and of national interest (i.e. strategically important from an economic and political point of view) but fall beyond ECGC's underwriting capacity.[230]

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[226] According to the authorities, "liberal basis" implies that the ECGC cover is expected to provide increased comfort to exporters to export and to the banks to finance the exporters, but does not imply concessional rates of premium or terms (WTO, 2007).

[227] ECGC online information. Viewed at: www.ecgc.in/.

[228] Private insurance companies that have entered the export credit market include New India Assurance Company Ltd., Tata AIG General Assurance Company Ltd., ICICI Lombard General Insurance Company Ltd., and Bajaj Allianz General Insurance Company Ltd (Domain-B online information, "ECGC takes on competitors on their own turf", 10 April 2007. Viewed at: http://www.domain-b.com/companies/companies_e/export_credit_guarantee_corporation/20070410_competitors.html).

[229] Information provided by the authorities.

[230] Press Release, "Speech of the Commerce and Industry Minister on the Announcement of Trade Facilitation Measures", 26 February 2009.

(4) MEASURES AFFECTING PRODUCTION AND TRADE

(i) Incentives

(a) Tax incentives

175. India provides a number of tax incentives aimed at promoting investment. Under the Income Tax Act 1961, tax incentives are provided to several sectors (Section 35AD) and to disadvantaged areas. Section 80IB provides for tax benefits to industrial undertakings in the State of Jammu and Kashmir; these incentives will be provided for industries set up until 31 March 2012. Similar benefits available for industrial undertakings in the states of Himachal Pradesh and Uttarakhand will be phased out in 2012-13 and those provided to industries in the North-Eastern states by 2017-18. The authorities noted that several tax incentive programmes have been phased out since 2007 (Table III.22). During the period under review, revenue forgone due to incentives amounted to some US$27.94 billion (Table AIII.8).

Table III.22
Tax incentives phased out, 2006-10

Tax incentive	Income Tax Act 1961, Section	Date
Tax deductions provided to cooperative banks	80P	2006/07
Profit-linked tax deduction provided to companies carrying on scientific research and development	80IB	2006/07
Profit-linked tax deduction provided to the business of operating and maintaining a hospital in rural areas	80IB	2008/09
Profit-linked tax deduction provided to the business of laying and operating a cross-country natural gas distribution network, including pipelines and storage facilities	80IA	2009/10

Source: Information provided by the Indian authorities.

176. Tax incentives provided under the New Exploration Licensing Policy for the exploration and production of crude oil and natural gas under contracts entered into on or after 1 January 1999 are still in place.

177. The Income Tax Act 1961 provides additional incentives, including for the shipping companies (Section 33AC) and deductions for revenue and capital expenditure (other than for land) on scientific research (under Section 35).[231] In 2009, a new section (35AD) was introduced in the Income Tax Act 1961, which provides investment-linked deduction of 100% of capital expenditure (other than on land, and financial instruments) to sectors such as cold-chain facilities, agricultural warehousing and cross-country natural gas and oil pipeline networks. This incentive was extended to the hotel, hospital, and slum rehabilitation sectors in 2010.[232]

(b) Other support

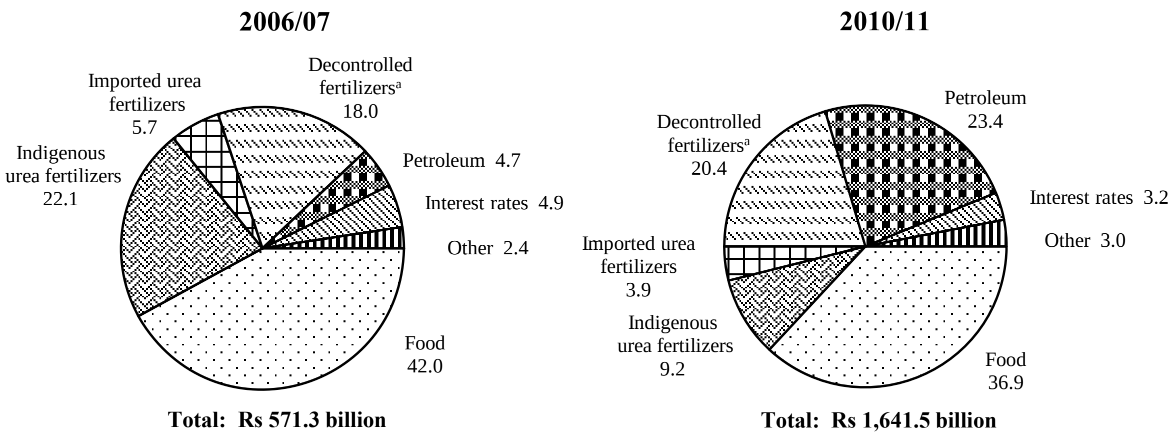
Explicit subsidies[233]

178. Direct or explicit subsidies as reported in the Central Government's annual Budget amounted to Rs 1,641.5 billion (2.1% of GDP) in 2010/11, up from Rs 571.3 billion (1.3% of GDP) in 2006/07.[234]

[231] Income Tax Act 1961, as amended.
[232] Ministry of Finance (2007a).
[233] The term "subsidy" in this section is used as in India's Budget and other official documents, and not in the sense of the WTO Agreement on Subsidies and Countervailing Measures.

179. The bulk of India's explicit subsidies continues to be aimed mainly at supporting the agriculture sector, to promote food security and reduce poverty. As a result, most of the outlays are allocated to food and fertilizers (Chart III.6). Food subsidies are provided by the Department of Food and Public Distribution to meet the difference between actual prices and the central issue prices fixed under the Targeted Public Distribution System (TPDS) and other welfare schemes. The Central Government also provides a subsidy to the Food Corporation of India to keep buffer stocks of wheat and rice as a food security measure. "Other subsidies", which account for 3% of the total explicit subsidies in 2010/11, include market intervention and price support schemes for agricultural products (section (iv) below and Chapter IV(2)). India continues to subsidize indigenous and imported (urea) fertilizers. The scheme was introduced after the prices of phosphatic and potassic fertilizers were decontrolled, with a view to enable farmers to maintain a proper ratio of nitrogen, phosphorus, and potassium, to keep the price of fertilizers under control, and to give producers a "reasonable" return on investment. India's farmers also benefit from input support for irrigation water, electricity, diesel, and seeds.

Chart III.6
Explicit subsidies, 2006/07 and 2010/11
Per cent



a Sale of decontrolled fertilizers with concessions to farmers.

Source: Ministry of Finance (2010), Expenditure Budget: Volume I: Non-Plan Expenditure, *Union Budget 2010-2011*. Viewed at: http://indiabudget.nic.in [23 May 2011].

180. Subsidies for domestic liquefied petroleum gas and kerosene under the Public Distribution System (PDS), and for freight[235], were put in place in 2002 after the dismantling of the administered pricing mechanism (APM), with the aim of protecting the poor.

Credit policies

181. The Central Government allocates funds to subsidize interest rates, including to exporters (Table III.23). Under these schemes, which are managed by different ministries (e.g. Ministry of Finance, and of Heavy Industries and Public Enterprises) central public sector enterprises (CPSEs) also have access to credit at preferential rates. Information is neither available regarding the amount

[234] Ministry of Finance (2011b).
[235] Freight Subsidy (For Far-flung Areas) Scheme 2002.

of credit provided at preferential rates or subsidized rates for each sector nor on the CPSEs which benefit from preferential interest rates.

Table III.23
Preferential interest rates to exporters, 2007-11

Period	Sector	Interest rate	
		Subsidy	Floor rate
01.04.2007 to 30.09.2008	Textiles (including handlooms, jute, and carpets), readymade garments, leather products, handicrafts, engineering products, processed agricultural products (including cashew, coffee, and tea), marine products, sports goods, toys, solvent extracted de-oiled cake, plastics and linoleum, man-made fibre, and exporting small and medium enterprises (SMEs)	2 percentage points	7%
	Leather and leather manufactures, marine products, and textiles (including readymade garments and carpets but excluding man-made fibre and handicrafts)	4 percentage points	7%
01.12.2008 to 31.03.2010	Textiles (including handloom), handicrafts, carpets, including readymade garments and carpets but excluding man-made fibre and leather, gem and jewellery, marine products, and exporting SMEs	2 percentage points	7%
01.04.2010 to 31.03.2011	Handicrafts, carpets, handlooms, textiles, engineering goods, leather and leather manufactures, jute and floor covering, and exporting SMEs	2 percentage points	7%

Source: Information provided by the Indian authorities.

182. India sets targets for priority-sector lending to ensure that banks provide credit to specific sectors.[236] Domestic and foreign commercial banks are required to reserve a percentage of their adjusted net bank credit (ANBC) or credit equivalent amount of off-balance-sheet exposure (OBSE), whichever is higher, for priority sectors. Domestic banks must reserve 40% of their ANBC/OBSE to lend to priority sectors and foreign banks 32% of their ANBC/credit equivalent of OBSE to priority sectors, out of which 12% must be channelled to exports (Table III.24). In 2009/10 public, private domestic, and foreign banks exceeded these targets, reaching 41.7%, 46%, and 35.1%, respectively; 24 out of 27 public banks, 20 out of 22 private domestic banks, and 24 out of 28 foreign banks met the target (Chapter IV(3)(ii)(a)).[237]

183. Subsidies are also provided to regional rural banks, cooperative banks, and public sector banks to provide short-term credit to farmers at preferential rates (Chapter IV(2) and (3)(ii)). For example, in 2009/10, the Central Government provided a subsidy of 2 percentage points on its own loans to public sector banks, to provide short-term production credit to farmers, of up to Rs 300,000 per farmer, at an interest rate of 7%.[238] If farmers reimbursed their loans within one year, an "additional subsidy" was granted to public banks so that they would reduce the interest rate by a further 1 percentage point, bringing the interest rate down to 6%. In 2010/11, the interest rate subsidy is at 1.5% and the "additional subsidy" was increased to 2 percentage points, lowering the effectively paid interest rate by farmer to 5%.[239] The funds allocated to this scheme amounted to Rs 70.5 billion during 2006/07-2009/10. Apart from this subsidy granted by the Central Government, farmers may benefit from other subsidized interest rate at the state level.

[236] The general categories of priority sectors are: agriculture (direct and indirect finance), micro and small enterprises (direct and indirect finance), micro credit, and education and housing loans (Reserve Bank of India, Master Circular No. RBI/2010-11/80, 1 July 2010).

[237] Reserve Bank of India (2010a), pp. 89-90.

[238] The nominal prime lending rate was 11%-12% for 2009/10 (Chapter I) (Reserve Bank of India, 2010c).

[239] Ministry of Finance (2009) and (2010c).

Table III.24
Targets for lending to priority sectors, 2011

Priority sectors	Domestic commercial banks	Foreign banks
Total advances to priority sectors	40% of the adjusted net bank credit (ANBC) or credit equivalent amount of off-balance-sheet exposure, whichever is higher	32% of ANBC or credit equivalent amount of off-balance-sheet exposure, whichever is higher
Agriculture	18% of ANBC or credit equivalent amount of off-balance-sheet exposure, whichever is higher	No target
Micro and small enterprises (MSEs)	12% of ANBC or credit equivalent amount of off-balance-sheet exposure, whichever is higher	10% of ANBC or credit equivalent amount of off-balance-sheet exposure, whichever is higher
Micro enterprises within MSEs	60% of advances to MSEs should go to micro enterprises[a]	Same as for domestic banks
Export credit	No target	12% of ANBC or credit equivalent amount of off-balance-sheet exposure, whichever is higher
Weaker sections[b]	10% of ANBC or credit equivalent amount of off-balance sheet exposure, whichever is higher	No target
Differential Rate of Interest (DRI) Scheme[c]	1% of total advances outstanding as at the end of the previous year. At least 40% of the total advances should go to scheduled caste/scheduled tribes. At least two third of advances should be granted through rural and semi-urban branches	No target

a Advances to micro enterprises amount to 50% of the total advances to MSEs in 2010-11. They will be increased to 55% in 2011-12 and 60% in 2012-13.
b Weaker sections include, *inter alia*, small and marginal farmers; artisans, and village and cottage industries; scheduled castes/scheduled tribes; and beneficiaries of the Differential Rate of Interest (DRI) Scheme.
c The DRI Scheme applies to borrowers with annual family income of Rs 18,000 in rural areas and Rs 24,000 in urban areas.

Source: Reserve Bank of India, Master Circular No. RBI/2010-11/80, 1 July 2010; and Reserve Bank of India, Master Circular No. RBI/2007-2008/279, 10 April 2008.

Micro and small enterprises

184. Support is also provided to micro and small enterprises (MSEs). Historically, in India a number of products have been reserved for exclusive manufacturing by MSEs. Products are eligible for reservation if manufacturing by MSEs is economically viable and technically feasible.[240] MSEs accounted for around 39% of India's manufacturing output and 33% of exports (in value) at end-March 2009.[241] However, the reservation policy, which has limited competition in reserved industries, has reportedly hindered competitiveness among MSEs. A recent study shows that MSEs continue to use obsolete technology, attract unskilled labour, have inefficient management, and face challenges such as marketing bottlenecks and poor infrastructure.[242] This lack of policy success may have been one of the reasons why there has been a progressive de-reservation of products.[243] The reservation/de-reservation of products is reviewed regularly by the Advisory Committee on Reservation, under the Ministry of Micro, Small, and Medium Enterprises (MSMEs). The trend towards de-reservation accelerated substantially during the period under review: at present, 20 products are in the reserved category, down from 236 in May 2006 (Table III.25).

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[240] Department of Industrial Policy and Promotion (2009a); and Development Commissioner online information, "List of items reserved for exclusive manufacture in micro and small enterprises". Viewed at: http://www.dcmsme.gov.in/publications/reserveditems/resvex.htm.

[241] Development Commissioner online information, "Credit Guarantee Fund Scheme for Micro and Small Enterprises". Viewed at: http://www.dcmsme.gov.in/schemes/sccrguarn.htm.

[242] Penumaka (2010).

[243] Planning Commission (2006); and Development Commissioner online information, "List of items reserved for exclusive manufacture in micro and small enterprises". Viewed at: http://www.dcmsme.gov.in/publications/reserveditems/resvex.htm.

Table III.25
Products reserved for MSEs, 2011

Food and allied industries: pickles and chutneys, bread, mustard oil (except solvent extracted), and groundnut oil (except solvent extracted)
Wood and wood products: wooden furniture and fixtures
Paper products: exercise books and registers
Other chemicals and chemical products: wax candles, laundry soap, safety matches, fireworks, and agarbatties
Glass and ceramics: glass bangles
Mechanical engineering, excluding transport equipment: steel almirah, rolling shutters, steel chairs (all types), steel tables (all other types), steel furniture (all other types), padlocks, stainless steel utensils, and domestic utensils (aluminium)

Source: Development Commissioner (Ministry of Micro, Small, and Medium Enterprises) online information, "List of items reserved for exclusive manufacture in micro and small enterprises". Viewed at: http://www.dcmsme.gov.in/publications/reserveditems/resvex.htm.

185. In addition to the set-asides, MSMEs may benefit from a number of other assistance schemes, managed by the Ministry of MSMEs and supporting institutions (e.g. the Office of the Development Commissioner and the National Small Industries Corporation). These schemes aim to assist MSMEs, in particular MSEs, in the promotion and marketing of exports, product certification, technology upgrading, and human resources development (Table AIII.9). MSEs are also granted a 15% price preference for central government purchases (Table AIII.9). The authorities noted that this price preference is advisory in nature.

186. Despite the support they receive, access to credit remains difficult for MSEs, as they are regarded as high risk by banks.[244] According to the Associated Chambers of Commerce and Industry (ASSOCHAM), most MSEs operate at some 70% of their capacity due to lack of financial resources.[245] Therefore, one of the Government's priorities for the development of MSEs is to increase the flow of credit/funds from banks and financial institutions. Hence, within the policy on lending to priority sectors, domestic commercial banks are required to reserve 12% of their adjusted net bank credit (ANBC) or credit equivalent amount of off-balance-sheet (OBSE), whichever is higher, to MSEs, while foreign banks must reserve 10%. Micro enterprises must receive 60% of the percentage of ANBC/credit equivalent amount of OBSE reserved for MSEs (Table III.24).[246] Other schemes for improved access to credit have also been implemented (Table AIII.9). Despite these efforts, a study on 12,000 small and medium enterprises (SMEs) indicated that, on average, 25% of their funding comes from banks and financial institutions, 15% from internal sources, 10% from capital markets, and the remaining 50% from alternative sources (friends and family)[247]; 92% of SMEs remain dependent on personal and family savings.[248]

187. At the state level, other schemes also implemented to support the development of MSMEs include: the development of industrial estates, tax incentives, and subsidies for electricity and capital.[249] Under the General Excise Exemption Scheme, MSMEs with annual turnover of up to

[244] The share of credit to MSEs in the overall ANBC declined from 12.5% in March 2000 to 10.9% in March 2009 (from 7.8% to 4.9% for micro enterprises) (Government of India, 2010).

[245] ASSOCHAM Press Release, "74% of sick SMEs refer their sickness to low fund's availability", 11 April 2010. Viewed at: http://www.assocham.org/prels/shownews.php?id=2387.

[246] Reserve Bank of India, Master Circular No. RBI/2010-11/79, 1 July 2010.

[247] De (2010).

[248] ASSOCHAM Press Release, "74% of sick SMEs refer their sickness to low fund's availability", 11 April 2010.

[249] Development Commissioner online information, "SSI Registration". Viewed at: http://www.dcmsme.gov.in/howtosetup/grgxx01x.htm.

US$1 million are granted full excise exemption up to US$375,000[250]; MSEs may also benefit from excise duty exemptions.[251]

188. Despite efforts to assist MSMEs, "sickness" or "incipient sickness" remain a concern.[252] According to the 4th All India Census of MSMEs (2006-07), sickness or incipient sickness among registered MSMEs has been due mainly to a lack of demand, shortage of working capital, marketing problems, and non-availability of raw materials[253]; about 6.49% of registered MSMEs were identified as sick or incipient sick.[254] According to ASSOCHAM, 74% of sick MSEs attributed their sickness to a lack of capital.[255] The Reserve Bank of India has issued guidelines for the rehabilitation of potentially viable or viable sick MSEs, mainly through the provision of concessionary credit by banks and financial institutions. The concessionary elements of the credits provided include: subsidized interest rates for working capital loans (and for working capital term loans), of 1.5% below the prevailing fixed/prime lending rate; interest-free credits for loans under the "funded interest term loan" modality; term loans (other than for working capital) are granted at a concessional rate of maximum 2% below the document rate (3% for tiny/decentralized small and medium enterprises); and contingency/loan assistance is granted at concessional rates of 1.5% below the prevailing fixed/prime lending rate.[256]

189. The Government-appointed Task Force on MSMEs has recommended a gradual agenda of actions in order to provide relief and stability to MSMEs. Recommendations cover credit, marketing, infrastructure, technology, skill developments, and taxation.[257] The agenda has not yet been implemented.

(ii) Role of state-owned enterprises (other than state-trading companies), and disinvestment

190. At end-March 2010, 217 of India's 249 central public sector enterprises (CPSEs) were in operation (Table AIII.10), 32 were in the process of being established, and 59 were sick or loss making.[258] CPSEs continue to play an active role in the economy, holding significant market-share in several sectors/subsectors, e.g. petroleum and mining, power transmission and generation, nuclear energy, heavy engineering, aviation industry, storage and public distribution system, shipping, insurance, and telecommunications.[259]

191. Since India's last TPR, disinvestment of CPSEs has continued; a few CPSEs were recently approved for disinvestment (Table III.26). India's disinvestment policy is aimed at encouraging

[250] Development Commissioner (2009).

[251] Development Commissioner online information, "Excise and SSI". Viewed at: http://dcmsme.gov.in/policies/central/t-ed.htm.

[252] A unit is "sick" when: (i) any of its borrowal account remains substandard for more than six months; or (ii) there is erosion in the net worth due to accumulated cash losses to the extent of 50% of its net worth during the previous accounting year; and (iii) it has been in commercial production for at least two years (Reserve Bank of India, Master Circular RBI/2010-11/79, 1 July 2010). To measure incipient sickness, the criterion used is the continuous decline in output for three consecutive years, while to measure sickness, the criteria utilized are a delay in the prepayment of a loan of over one year, and a decline in net worth of 50% (Ministry of Micro, Small, and Medium Enterprises, 2009).

[253] Ministry of Micro, Small, and Medium Enterprises (2009).

[254] Information provided by the authorities.

[255] ASSOCHAM Press Release, "74% of sick SMEs refer their sickness to low fund's availability", 11 April 2010.

[256] Reserve Bank of India, Master Circular RBI/2010-11/79, 1 July 2010.

[257] Government of India (2010).

[258] This excludes seven insurance companies.

[259] Department of Public Enterprises (2010).

people-ownership of CPSEs while ensuring that the Government's equity does not fall below 51%, hence maintaining control of the enterprise. The Government approved an action plan for disinvestment in profit-making CPSEs in November 2009, which outlines two approaches to disinvestment.[260] First, profit-making CPSEs listed on stock exchanges with less than 10% mandatory public shareholding will be divested through a public offering. Second, unlisted profit-making CPSEs will be listed on stock exchanges or will issue fresh equity or a combination of both.[261] Listed profit-making CPSEs may use capital markets to finance their capital expenditure and the Government may consider disinvesting part of its shareholding.[262]

Table III.26
Overview of disinvestment, 2007-11

CPSEs	Scenario	Year	Government's share (%)
CPSEs disinvested			
Maruti Udyog Ltd.[a]	Sale of the Government's residual 10.27% shareholding	2007	0.00
Power Grid Corporation of India Ltd. (PGCIL)	Offer for sale of 5% Government's paid-up capital and issue of 10% fresh equity by PGCIL	2007	86.36
Rural Electrification Corporation Ltd. (REC)	Offer for sale of 10% Government's paid-up capital and issue of 10% fresh equity by REC	2008	81.82
	Offer for sale of 5% Government's paid-up capital and issue of 15% fresh equity by REC	2010	66.80
National Hydro-electric Power Corporation Ltd. (NHPC)	Offer for sale of 5% Government's paid-up capital and issue of 15% fresh equity by NHPC	2009	86.36
Oil India Ltd.	Issue of 11% fresh paid up capital by Oil India Ltd. through public offering; Offer for sale of 10% Government's equity to Indian Oil Corporation Ltd., Hindustan Petroleum Corporation Ltd., and Bharat Petroleum Corporation Ltd.	2009	78.43
NTPC Ltd.[b]	Offer for sale of 5% Government's paid-up capital	2010	84.50
NMDC Ltd.[c]	Offer for sale of 8.38% Government's paid-up capital	2010	90.00
Satluj Jal Vidyut Nigam Ltd.[d]	Offer for sale of 10.03% Government's shareholding	2010	64.47
Engineers India Ltd.	Offer for sale of 10% Government's paid-up capital	2010	80.40
Coal India Ltd.	Offer for sale of 10% Government's paid-up capital	2010	90.00
Power Grid Corporation of India Ltd. (PGCIL)	Offer for sale of 10% of Government's paid-up capital and issue of 10% fresh equity by PGCIL	2010	69.42
Shipping Corporation of India Ltd. (SCI)	Offer for sale of 10% of Government's paid-up capital and issue of 10% fresh equity by SCI	2010	63.75
Manganese Ore India Ltd.	Offer for sale of 10% of Government's paid-up capital; offer for sale of 5% of Maharashtra Government's paid-up capital; and 5% of Madhya Pradesh Government's paid-up capital	2010	71.57
CPSEs to be disinvested			
Steel Authority of India Ltd. (SAIL)	Offer for sale of 5% of the Government's paid-up capital	2011	76.97
Hindustan Copper Ltd. (HCL)	Offer for sale of 10% Government's paid-up capital and issue of 10% fresh equity by HCL	2011	81.45
Oil and Natural Gas Corporation Ltd.	Offer for sale of 5% Government's paid-up capital	2011	69.14

Table III.26 (cont'd)

[260] Profit-making CPSEs are enterprises with positive net worth, no accumulated losses, and earned net profit during the three preceding years; 70% of CPSEs are reported to be profitable (KPMG, 2010a).
[261] Department of Public Enterprises (2010).
[262] Information provided by the Indian authorities.

CPSEs	Scenario	Year	Government's share (%)
Power Finance Corporation Ltd.	Offer for sale of 5% of Government's paid up capital and issue of 15% fresh equity by the Power Finance Corporation Ltd.	2011	73.72

a Car manufacturing.
b Power generation
c Mining exploitation
d Hydro-power generation.

Source: Ministry of Finance (2010), *Annual Report 2009-10*. Viewed at: http://finmin.nic.in/reports/AnnualReport2009-10.pdf; Department of Disinvestment online information, "Road ahead". Viewed at: http://www.divest.nic.in/road.htm; and information provided by the Indian authorities.

192. Proceeds from disinvestment are placed in the National Investment Fund created in 2007; 75% of the proceeds are allocated to the funding of selected social programmes and the remainder is invested in the modernization or expansion of profitable or revivable CPSEs. However, due to the economic slowdown (over 2008-09) and a recent drought, the Government decided that, over April 2009-March 2012, proceeds would be fully used to finance social sector programmes.[263]

(iii) Competition policy

193. Since its last Trade Policy Review, India has made several amendments to its main competition policy legislation embodied in the Competition Act 2002. At present, legislation dealing with competition issues in India are the Competition Act 2002, the Competition (Amendment) Act 2007, the Competition (Amendment) Act 2009, and various regulations issued by the Competition Commission of India (CCI).[264] Though the Act was passed in 2002, substantive provisions, in particular those relating to anti-competitive agreements and abuse of dominant position, were brought into force only in May 2009[265], and more recently (2011) those relating to mergers and acquisitions. In 2009, the Monopolies and Restrictive Trade Practices Act 1969 (MRTP Act), which had entered into force in 1970, was repealed. The MRTP Commission established under the MRTP Act was to continue dealing with the cases filed prior to 1 September 2009 until 2011 (i.e. two years from the date of repeal of the MRTP Act)[266]; thereafter, the Competition Commission of India (CCI) created under the 2002 Act would take on the MRTP Commission's tasks.

194. The MRTP Act did not meet the needs of India's new economic environment, with a steadily growing private sector and the dismantling of state-owned monopolies. The MRTP Act covered restrictive practices but did not cover abuse of dominance. In addition, the MRTP Commission was restricted to dealing with cases referred to it, it did not have the power of inquiry and there was no provision for the Commission to play an active role in promoting competition.[267]

195. The Competition Commission of India (CCI) was established on 14 October 2003[268], but started operating only in May 2009, when the provisions of the Competition Act relating to

[263] Ministry of Finance (2010a) and (2007b).
[264] Competition Commission online information, "Rules and Regulations". Viewed at: http://www.cci.gov.in/index.php?option=com_content&task=view&id=19.
[265] Section 1(3) of the Competition Act 2002 empowers the Central Government to bring the various provisions of the Act into force on different dates by issuing a notification in *Official Gazette*.
[266] OECD (2009b).
[267] OECD (2009b).
[268] Department of Company Affairs, Notification S.O.1198(E), 14 October 2003. Viewed at: hpp://www.mca.gov.in/Ministry/notifications_2003.html.

anti-competitive agreements and abuse of dominant position were notified and entered into force.[269] All cases pending under the MRTP Commission were moved to the CCI in 2009. As at December 2010, the CCI had received 130 requests for investigations, many inherited from the MRTPC, and issued 30 orders.[270] The requests covered insurance, travel, automobile manufacturing, real estate, pharmaceuticals, the financial sector, and entertainment.

196. Unlike the MRTPC, the CCI has powers of inquiry and enforcement, and may impose penalties for non-compliance with its procedures.[271] The Commission may also take remedial actions to deal with anti-competitive agreements and abuse of dominant position, and impose penalties of up to 10% of the average turnover of an enterprise for the three preceding financial years. In the case of a cartel, the Commission may impose on each member a penalty of up to three times the profit or up to 10% of turnover, whichever is higher, for each year of the continuation of the agreement.[272] After the inquiry, the CCI may issue a cease-and-desist order directing a delinquent enterprise to discontinue and not to re-enter an anti-competitive agreement or abuse its dominant position.[273] The CCI may self-initiate investigations.

197. The orders, directions or decisions made by the CCI may be appealed before the Competition Appellate Tribunal (CAT), established in October 2009.[274] Appeals must be filed within 60 days from the date on which a copy of the direction or decision or order made by the CCI is received, unless the CAT is satisfied that there was sufficient cause for not filing the appeal within that period. Orders issued by the CAT are enforced in the same manner as a decree made by a court; contravention (without any reasonable ground) of any order of the Appellate Tribunal, may be subject to a fine not exceeding Rs 10 million or imprisonment for a term up to three years, or both, as the Chief Metropolitan Magistrate (Delhi) may deem fit.[275] During 2010, some 25 appeals were filed before the CAT and 14 appeals have been disposed of. A number of appeals filed under the MRTPA were also being dealt with by the CAT.[276]

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[269] Various sections of the Competition Act were notified and entered into force between 2003 and 2009, through S.O.340(E), 31 March 2003; S.O.715(E), 19 June 2003; S.O.1747(E), 12 October 2007; S.O.2167(E), 20 December 2007; and S.O.1242(E) and S.O.1241(E), 20 May 2009. As at February 2011, the notification of some sections of the Act were pending. For example, section 5 dealing with the regulation of combinations (mergers and acquisitions), had not been notified, although section 6 dealing with the same issue, was notified in 2007. Sections dealing with mergers and acquisitions were notified in March 2011.

[270] CCI online information, "Orders of the Commission". Viewed at: http://www.cci.gov.in/index.php?option=com_content&task=view&id=150

[271] These include: (i) the power to order compensation for loss or damage incurred by contravention of its orders; (ii) a fine of Rs 100,000 per day for failure to comply with its directions; (iii) a penalty of up to 1% of total turnover or assets, whichever is higher, for failing to furnish information on a combination; and (iv) a fine of Rs 500,000 to Rs 10 million for knowingly making a false statement or omitting any material particular.

[272] Section 46 of the Act empowers the Commission to grant leniency by levying a lesser penalty on a member of the cartel who provides full, true, and vital information regarding the cartel. For details of the conditions for lesser penalty, see CCI Regulation No. 4 of 2009, 13 August 2009.

[273] Section 33(2) of the Act, introduced in the 2007 amendment, states that where during an inquiry it is proved to the satisfaction of the Commission that importation of any goods is likely to contravene specified sections of the Act, it may, by order, grant a temporary injunction restraining any party from importing such goods until the conclusion of such inquiry or until further orders, without giving notice to the opposite party.

[274] Ministry of Corporate Affairs, Notification S.O.1240(E), 15 May 2009.

[275] Competition Appellate Tribunal online information, "Introduction". Viewed at: http://compat.nic.in/Introduction.html.

[276] Competition Appellate Tribunal online information, "Cause List". Viewed at: http://compat.nic.in/CauseList%20of.html.

198. The CCI has a role in competition advocacy, which the MRTPC did not have. The Commission must take the necessary measures for promoting competition, creating awareness, and imparting training on competition issues.[277] As part of its advocacy role, the Commission has designed the Suggested Framework for Compliance of the Competition Act 2002 by Enterprises.[278]

199. The Commission also has powers to inquire into an anti-competitive agreement or abuse of dominant position taking place outside India, if it has, or is likely to have, an appreciable adverse effect on competition in India. No such cases have been taken to the Commission.[279]

200. The CCI must issue an annual report[280]; its 2009-10 report was sent to Parliament as required.

201. Sector-specific regulators exist in many sectors, such as capital markets, insurance, telecommunications, electricity, petroleum and natural gas, and civil aviation. According to the Competition (Amendment) Act 2007, when any competition issue is raised before a sector-specific regulator, the CCI should give its opinion. When giving their views, both the CCI, and the sector-specific regulators, should aim to ensure efficiency and consumer welfare. Their roles are intended to be complementary; however, there appear to be conflicts because of the differences in interpretation of laws.[281]

202. The Competition Act 2002 contains provisions dealing with anti-competitive agreements, abuse of dominant position, and "combinations" (mergers and acquisitions). The Act prohibits anti-competitive agreements related to production, storage, purchase or control of goods, and provision of services. These agreements include cartels, price fixing, limiting production, and sharing markets or agreements between manufacturers and distributors.[282] However, an exception to this prohibition applies when these agreements increase efficiency. There have been no such cases during the period under Review.[283] The law also recognizes intellectual property rights and in order to facilitate their protection, allows reasonable restrictions imposed by their owners. While agreements related to production, supply, distribution, and control of goods and services for export may have appreciable adverse effects on competition, they are exempt from prohibition.[284]

203. Abuse of dominant position has been prohibited under the 2002 Act, since the notification of the relevant section in May 2009. Enterprises are prohibited from imposing unfair or discriminatory conditions when purchasing or selling goods or services; or when pricing goods and services. The Act also prohibits other practices including: restricting the production of goods and the provision of services; denying market access; concluding contracts subject to the acceptance of conditions not related to the contract; and using dominant position to enter a market or protect other markets.[285] These practices are not prohibited *per se* but are dealt with by "rule of reason" when they cause adverse effects.

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[277] Competition Commission online information. Viewed at: www.cci.gov.in.

[278] Competition Commission of India (undated b).

[279] Information provided by the Indian authorities.

[280] Ministry of Corporate Affairs, Notification GSR 808(E), 21 November 2008. Viewed at: http://www.mca.gov.in/Ministry/actsbills/rules/CCI-004_2jan2009.pdf.

[281] Competition Commission online information, "Competition, Public Policy, and Common Man". Viewed at: http://www.cci.gov.in/images/sunday1.pdf.

[282] Competition Act 2002, Chapter II, Section 3.3.

[283] Information provided by the authorities.

[284] Competition Commission online information, "Enforcement Activities Prohibition of Anticompetitive Agreements". Viewed at: http://www.cci.gov.in/index.php?option=com_content&task=view&id=35.

[285] Competition Act 2002, Chapter II, Section 4.

204. The Act also regulates combinations of large enterprises. Combinations covered by the Competition Act 2002 include mergers and acquisitions involving large enterprises, defined in the Act as those above certain thresholds.[286] If any enterprises involved in the combination belong to a group, the threshold is four times higher.[287] Also covered is the category of combinations involving the acquisition of control over an enterprise by a person who already has direct or indirect control over another enterprise producing, distributing or trading similar or substitutable goods or services, also subject to similar thresholds. These thresholds are to be revised every two years to reflect movement in the wholesale price index (WPI) or exchange rate fluctuations. In general, mergers or acquisitions that are likely to have an adverse effect on competition are illegal in India. The CCI has not dealt with any cases of mergers and acquisitions because the Central Government had not notified Section 5 of the 2002 Act dealing with mergers and acquisitions until March 2011, and hence the provisions related to them were not in force until 1 June 2011. In addition, the Central Government has made some exemptions to the application of Section 5 of the Competition Act 2002 on grounds of public interest. Exemptions apply when the enterprises to be acquired have assets of less than Rs 2.5 billion or its turnover is below Rs 7.5 billion or when a "group" exercises less than 50% of voting rights in the other enterprise.

205. According to the law, any person/enterprise, who/which proposes to enter into a combination, as defined in Section 5 of the Act, must give notice to the Commission.[288] However, according to a CCI booklet, only combinations that exceed the prescribed threshold must be pre-notified.[289] If the combination is not notified, the Commission may inquire into it within one year of merger taking effect. If the inquiry finds appreciable adverse effects on competition, the CCI may order the dissolution of the merger. The beneficial and adverse effects of the proposed combination on competition in the relevant market in India must be evaluated by the CCI with reference to specific factors as stated in the law (Box III.3). The Commission is also authorized to impose a fine of up to 1% of the total turnover or the assets of the combination, whichever is higher, for failure to notify the merger.

206. The share subscription or financing facility or any acquisition, *inter alia*, by a public financial institution, foreign institutional investor, bank or venture capital fund, pursuant to any covenant of a loan agreement or investment agreement, is exempt from the notification requirement. However, the institution concerned is required to file details of such transactions to the Commission within seven days.[290]

[286] Acquisitions involving large enterprises are those where joint assets amount to over Rs 10 billion or turnover amounts to over Rs 30 billion in India; or, in India and abroad, joint assets amount to over US$500 million, including at least Rs 5 billion in India, or turnover of over US$1.5 billion, including at least Rs 15 billion in India (Competition Act 2002, Section 5(a)).

[287] The term "group" is defined in the Act. Two enterprises belong to a group if one is in position to exercise at least 26% of voting rights or appoint at least 50% of the directors or controls the management or affairs in the other; and if the enterprise resulting from the amalgamation has, in India, a value of more than Rs 10 billion or a turnover of more than Rs 30 billion, or aggregate assets in India and abroad valued at more than US$500 million or a turnover of more than US$1.5 billion. That is, a combination is regulated by the law if the combined assets of the group to which the amalgamated enterprise belongs to exceed Rs 40 billion or the group has a joint turnover of more than Rs 120 billion after acquisition or merger. Similarly, the law applies to combinations of enterprises belonging to a group with combined assets outside India of more than US$2 billion, including at least Rs 5 billion in India, or a turnover of more than US$6 billion including at least Rs 15 billion in India (Competition Act 2002, Section 5(b)).

[288] Competition Act 2002, Section 6(1).

[289] Competition Commission of India (undated a).

[290] Competition Commission of India (undated a).

Box III.3: Factors to be considered by the Commission while evaluating appreciable adverse effect of combinations on competition in the relevant market

Actual and potential level of competition through imports in the market;

Extent of barriers to entry into the market;

Level of concentration in the market;

Degree of countervailing power in the market;

Likelihood that the combination would result in the parties to the combination being able to significantly and sustainably increase prices or profit margins;

Extent of effective competition likely to sustain in a market;

Extent to which substitutes are available or are likely to be available in the market;

Market share, in the relevant market, or the persons or enterprise in a combination, individually or as a combination;

Likelihood that the combination would result in the removal of a vigorous and effective competitor(s) in the market;

Nature and extent of vertical integration in the market;

Possibility of a failing business;

Nature and extent of innovation;

Relative advantage, by way of the contribution to the economic development, by any combination having or likely to have appreciable adverse effect on competition;

Whether the benefits of the combination outweigh the adverse impact of the combination, if any.

Source: Competition Act 2002, Section 20, Subsection (4).

207. The Competition Act 2002 covers all commercial activities of government-related bodies. However, specific exemptions may be granted on grounds of security or public interest; international treaty, agreement or convention obligations; or if an enterprise is performing a sovereign function on behalf of the Central Government or a state government.[291] No antitrust exemptions are applicable to central public sector undertakings including price or purchase preferences.[292] The absence of explicit antitrust exemptions is a positive element of the Competition Act, as are the references to the Commission's role to foster competition. However, the OECD notes that the Act does not impose any obligation on any government body to make reference to the Commission (for competition fostering issues), and the Commission's opinions are non-binding.[293]

(iv) Price controls

208. The Government maintains minimum support prices (MSPs) for major agricultural commodities.[294] The MSPs and products subject to MSPs are reviewed annually. MSPs are announced prior to each planting season. India maintains MSPs for 25 major agricultural commodities: paddy, jowar, bajra, maize, ragi, arhar (tur), moong, urad, cotton, groundnut in shell, sunflower seed, soybean, sesamum, niger seed, wheat, barley, gram, masur (lentils), rapeseed/mustard, safflower, toria, copra, de-husked coconut, jute, and tobacco.[295] MSPs are fixed by

[291] Competition Act 2002, Chapter IX.
[292] Gouri (undated).
[293] OECD (2009b), Chapter 5: Competition Policy.
[294] A MSP is the price at which the Government guarantees to purchase from the farmer.
[295] Products subject to MSPs in 2007 were: paddy, maize, coarse cereals, pulses, cotton, groundnuts, sesame, niger seed, wheat, barley, rapeseed/mustard, safflower, sunflower seed, soy bean, toria, copra, jute, sugarcane, and tobacco (WTO, 2007).

the Government following the recommendations of the Commission for Agricultural Costs and Prices (CACP), which takes into account several factors.[296] MSPs are the same throughout the country even though the cost of production varies according to region.

209. The Price Support Scheme (PSS) is a procurement system to ensure that farmers of specific commodities (e.g. cereals, pulses and oilseeds, cotton and jute) can sell their produce at the MSP; designated agencies purchase the produce from farmers at the MSP.[297]

210. The Market Intervention Scheme (MIS), in place since 2001, covers agricultural commodities that are not covered by MSPs. The Department of Agriculture and Cooperation implements the MIS at the request of state/union territory (UT) governments to protect farmers from a price decline when there are bumper crops. In these instances, a market intervention price (MIP) is fixed. The MIP is set taking into account of the cost of production and a "small" margin to support farmers. The National Agricultural Cooperative Marketing Federation of India Ltd. (NAFED) and other state-designated agencies purchase at this fixed prices and distribute the products. The authorities noted that the MIS is not used frequently.

211. Under the Targeted Public Distribution System (TPDS), a programme that focuses on reducing poverty, the price of some essential commodities, i.e. wheat, rice, coarse grains, sugar and kerosene, are subsidized for a targeted population living below the poverty line. These products are distributed by the state governments/UTs through the fair price shops and kerosene oil depots. According to the authorities, the price for rice and wheat has not been revised since 2002.[298]

212. In 2009, the statutory minimum price (SMP) for sugarcane was replaced by the fair and remunerative price (FRP).[299] The FRP is fixed by the Central Government on the basis of the recommendations of the Commission for Agricultural Costs and Prices (CACP), which consults with the state government and sugar associations. The main difference between the SMP and the FRP is that an additional factor (i.e. a "reasonable" profit margin for sugarcane producers taking into account risk) is taken into account when setting the FRP. The FRP is a minimum price, below which no sugar mill may purchase sugarcane from a farmer.[300] State governments also set a state advisory price (SAP) for sugarcane. If the SAP is higher than the FRP set at the central level, the state governments have to bear the loss.[301]

[296] Factors taken into account include: cost of production, changes in price of inputs, input/output price parity, market prices, inter-crop price parity, effect on industrial costs, effect on cost of living, effect on general price level and international price.

[297] The Food Corporation of India (FCI) is designated under the PSS to purchase cereals; the National Agricultural Cooperative Marketing Federation of India (NAFED), Central Warehousing Corporation (CWC), and National Cooperative Consumer Federation of India Ltd (NCCF) are designated to purchase pulses and oilseeds; the Cotton Corporation of India and NAFED to purchase cotton; and the Jute Corporation of India to purchase jute.

[298] The price for wheat remains at Rs 4.15/kg for consumers below poverty line (BPL), and Rs 2/kg for Antyodaya Anna Yojana (AAY) (i.e. the poorest of the poor); and for rice, it is Rs 5.65/kg for BPL and Rs 3/kg for AAY (information provided by the authorities).

[299] Sugarcane Control (Amendment) Order 2009.

[300] Other factors taken into account to fix the FRP include: the cost of production of sugarcane; the return that growers would have if planting alternative crops; the general trend of prices of agricultural commodities; supply of sugar to consumers at a "fair" price; price of refined sugar (made with sugarcane) at the mill; earnings made from selling by-products (e.g. molasses, bagasse, and pressed mud); and a "reasonable" profit margin for sugarcane producers to also account for risk.

[301] PRS Legislative Research (2009).

213. Traditionally, India operated an administered pricing mechanism (APM) for petroleum products, based on the "retention price" concept, under which oil refineries, oil marketing companies, and pipelines were compensated for operating costs and assured a 12% post-tax return on net worth.[302] Under the APM system, the fixed level of profitability was ensured subject to oil companies achieving specified capacity utilization targets. Upstream companies, i.e. the Oil and Natural Gas Corporation Ltd. (ONGC), Oil India Ltd., and GAIL (India) Ltd., also operate under the retention price concept and are assured a fixed return.[303] The APM mechanism was, in principle, dismantled in 2002 with the objective of introducing market-determined prices for all petroleum products, except for kerosene under the public distribution system (PDS) and liquefied petroleum gas for domestic use (domestic LPG). Domestic retail prices of petrol and diesel were revised in 2003, but not since then. Although the APM was in principle dismantled in 2002, India did not actually end state control over petrol prices at the refinery and retail level until 26 June 2010, and allow them to vary according to international prices.[304] For kerosene and LPG, the PDS Kerosene and Domestic LPG Subsidy Scheme 2002[305] and the Freight Subsidy (For Far-flung Areas) Scheme 2002 were put in place after the APM was dismantled.[306] These schemes, which were to be phased out by 2008, have been extended until 31 March 2014.[307] The retail price of diesel is still under control and set according to "trade parity".[308]

214. At present, a two-price regime system is in place for natural gas: gas priced under the APM and non-APM gas.[309] The APM applies to gas produced in fields awarded to India's national oil companies (ONGL and OIL) prior to the implementation of the New Exploration Licensing Policy (NELP) in 1999. The non-APM applies to: (i) gas produced in field awarded under the NELP for which the price is determined by the production sharing contract (PSC) between the Government and the private contractor; and (ii) to imports of liquefied natural gas (LNG) for which the price is determined by an agreement between buyer and seller. The price formula used to determine the prices under the PSC must be approved by the Government. APM gas may only be used by priority sectors, i.e. fertilizers (urea), LPG plants (owned by GAIL and ONGC), power, city gas distribution, steel plants, refineries, and petrochemicals. Other consumers are not allowed to use subsidized gas and must buy it from private companies or LNG importers. The price of gas produced by ONGC and OIL under the APM was increased as from June 2010 to US$4.2/mmbtu (less royalty), to bring it on par with non-APM gas (i.e. gas produced by NELP operators).

215. The Government closely monitors the price of certain hydrocarbons. In case of high price volatility in the international market, the Government will intervene to stabilize prices.[310]

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[302] Under this scheme, each unit is awarded an ex-factory price based on prescribed norms with respect to capacity utilization and consumption of inputs. This ex-factory price is referred to as the retention price. The post-tax return of 12% on networth is considered as a reasonable return in this scheme. The difference between the retention price and the APM is paid back to the oil company manufacturer as subsidy.

[303] Ministry of Petroleum and Natural Gas online information, "Pricing". Viewed at: http://www.petroleum.nic.in/apppric.htm.

[304] Information provided by the authorities.

[305] PDS Kerosene and Domestic LPG Subsidy Scheme 2002. Viewed at: http://ppac.org.in/notifications/A11-03.pdf.

[306] Freight Subsidy (For Far-flung Areas) Scheme 2002. Viewed at: http://ppac.org.in/notifications/A10-03.pdf.

[307] Information provided by the authorities.

[308] "Trade parity pricing" is based on the weighted average of import and export prices taking into account the inland freight, the marketing margin, the dealers commission, the excise duty, and the VAT, state entry taxes, and local levies (information provided by the authorities).

[309] Information provided by the authorities.

[310] Information provided by the authorities.

216. The New Pricing Scheme (NPS) for urea, in place since 2003, was initially expected to be phased out by 31 March 2010 but it has been extended indefinitely.[311] Thus, the price of urea for agricultural use continues to be controlled. However, price controls on other fertilizers (e.g. phosphatic and potasiac fertilizers) were eliminated in 2010 and replaced by a "nutrient-based subsidy (NBS) policy", implemented as of 1 April 2010, which applies to phosphatic and potassic fertilizers including imports.[312] At present, manufacturers/importers fix the retail price and the Government provides a fixed annual subsidy based on the nutrient content of the fertilizer produced. The subsidy granted to central public sector enterprises (CPSEs) and to private firms producing fertilizers is equivalent.

217. The Drugs Price Control Order (DPCO) 1995 allows for the price of drugs to be controlled, with the stated purpose of ensuring that quality drugs are available at "reasonable prices". At present, the price of 74 bulk drugs and related formulations are controlled. The Department of Pharmaceuticals (DoP) administers the DPCO. The National Pharmaceutical Pricing Authority (NPPA), an independent office attached to the DoP, fixes and revises the price of controlled bulk drugs and formulations from time to time. It also monitors the price of decontrolled drugs in order to keep them at a reasonable level. If within one year there is an increase in price beyond 10%, the NPPA will ask for the price to be reduced. The price of drugs for "popular use" is controlled when drugs are produced under a "monopolistic" situation (i.e. a single formulator has at least 90% of the market shares) and a turnover of at least Rs 10 million. For other drugs, the price may be controlled if formulators have a turnover of at least Rs 40 million.[313] The price for bulk scheduled formulations is fixed according to the cost of production plus "maximum allowable post-manufacturing expenses" (MAPE).[314] The MAPE must not exceed 100% of the cost of production for national products, and 50% of the landed cost for imports. In respect of imported formulations for which equivalent domestic substitutes are available, a 35% margin is allowed by the NPPA. Ceiling prices are also fixed for commonly marketed formulations. The ceiling price for commonly marketed standard pack size of price controlled formulations is obligatory for all producers, including small-scale units.[315] The price for bulk "non-scheduled" formulations may be fixed on grounds of "public interest" and monitored.[316]

218. A new pharma policy was drafted in 2006 but still under consideration.

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[311] The NPS replaced the retentions price scheme (RPS) in 2003.

[312] The Nutrient Based Subsidy (NBS) Policy is applicable for muriate of potash (MOP), di ammonium phosphate (DAP), mono ammonium phosphate (MAP), triple super phosphate (TSP), single super phosphate (SSP), ammonium sulphate, and 16 grades of NPK fertilizers (complex fertilizers containing nitrogen, phosphorus, and potash elements together) (Information provided by the authorities).

[313] Genetically engineered drugs produced by recombinant DNA Technology and specific cell/tissue targeted drug formulations will not be put under price control for the first five years from the date of manufacture in India.

[314] "Bulk drug" means any pharmaceutical, chemical, biological or plant product, including its salts, esters, stereo-isomers, and derivatives, conforming to pharmacopoeial or other standards specified in the Second Schedule to the Drugs and Cosmetics Act 1940, and which is used as such or as an ingredient in any formulation. Scheduled bulk drug means a bulk drug specified in the First Schedule of the Drugs (Prices Control) Order 1995. "Scheduled formulation" means a formulation containing any bulk drug specified in the First Schedule either individually or in combination with other drugs (Medindia online information, "Drug Price in India". Viewed at: http://www.medindia.net/buy_n_sell/pharm_industry/ph_drugprice.asp#ixzz1DICKGpbB).

[315] National Pharmaceutical Pricing Authority online information, "Modifications in Drug Policy 1986: Investment and Pricing". Viewed at: http://www.nppaindia.nic.in/Dp1986mod.htm#present.

[316] Non-scheduled formulation means a formulation not containing any bulk drug specified in the First Schedule to the Drugs and Cosmetics Act 1940.

(v) Government procurement[317]

(a) Overview

219. India became an observer to the WTO Agreement on Government Procurement in February 2010. According to the authorities, reforms to date have moved India towards a more transparent and competitive procurement framework. India's procurement system continues to be decentralized, comprising an array of entities at various levels of Government (central, state, and local) in addition to numerous central public sector enterprises (CPSEs). There is no central agency responsible for framing policies or regulating public procurement at a national level and no common legislation governing procurement at different levels of government and by CPSEs. Consolidated data are not available on the economic significance of government procurement, including a breakdown of the value of contracts by tendering method.

220. The authorities consider public procurement as an important instrument of government policy used to obtain certain socio-economic objectives such as developing indigenous industries and micro, small, and medium-scale industries, uplifting disadvantaged sections of society, developing rural and under developed regions, and creating jobs. As a result, the Central Government has set reservations and price preferences as part of the procurement system.[318] However, competition from foreign suppliers is ordinarily allowed in tenders advertised in India. If procurement is restricted to domestic manufacturers/suppliers, it is clearly indicated in the tender notification.

221. Certain control and oversight functions are carried out by central authorities, such as the Comptroller and Auditor General and the Central Vigilance Commission. Procurement decisions at the central level are still subject to audit by the Comptroller, and to legislative review and judicial scrutiny. There is a similar system at the state level. The public procurement carried out at state level is also subject to audit and oversight by the respective state vigilance departments, auditors, and judiciary. Some states (Tamil Nadu and Karnataka) have also passed laws to regulate public procurement.

222. Disputes regarding procurement should be resolved in the first instance through consultation. If the parties fail to resolve the dispute within 21 days, either party may give notice to the other of its intention to commence arbitration. For contracts with domestic suppliers, the applicable arbitration procedure is under the Indian Arbitration and Conciliation Act 1996. If the contract is with a foreign supplier, the supplier may chose arbitration either through the Indian Arbitration and Conciliation Act 1996 or the United Nations Commission on International Trade Law (UNCITRAL).[319] Remedies regarding public procurement contracts may also be sought under the provisions of the Indian Contract Act 1872, the Specific Relief Act 1963, and the Sale of Goods Act 1930. A public procurement process may be subject to judicial review before a High Court in India on grounds of, *inter alia*, arbitrariness, fairness in action, bad faith or violation of a fundamental or legal right enshrined in the Constitution of India.[320]

223. Under India's competition law, collusive bidding or bid rigging is one of the horizontal agreements that is considered to have an adverse effect on competition. The Competition Commission of India (CCI) has the competence to determine whether collusive bidding or bid rigging

[317] This section is based on: ADB (2006); Global Legal Group (2010), Chapter 20; Ministry of Finance (2006a); Ministry of Finance (2006b); General Financial Rules 2005; and Indian Government Tenders Information System online information. Viewed at: http://www.tenders.gov.in.

[318] Radhakrishnan (2010).

[319] Global Legal Group (2010).

[320] Global Legal Group (2010).

is anti-competitive. However, the CCI only makes an enquiry if there are complaints of an alleged contravention. After the enquiry the CCI might direct the parties to review the agreement and may impose a penalty if it deems necessary (section (iii) above).

(b) Regulatory framework

224. India does not have a unified piece of legislation regulating government procurement. The regulatory framework for public procurement includes rules, directives, and government orders. At the central procurement level, comprehensive rules and directives have been put in place: (i) the General Financial Rules (GFRs), 2005; (ii) the Delegation of Financial Powers Rules (DFPR); (iii) the *Manual on Policies and Procedures for Purchase of Goods* issued by the Ministry of Finance; (iv) government orders regarding price or purchase preference or other facilities to sellers in the handloom sector, cottage and small scale industries and to CPSEs; and (v) the guidelines issued by the Central Vigilance Commission to increase transparency and objectivity in public procurement. There are also sectoral laws such as the Telecom Regulatory Authority Act 2000, the Electricity Act 2003, and the Petroleum and Natural Gas Board Act 2006, which also regulate public procurement. In addition, various government instruments and agencies including ministries and departments (e.g. the Public Works Department and the National Highways Authority of India) have their own public procurement system.[321]

225. The General Financial Rules (GFRs) 2005, issued by the Ministry of Finance, lay down the principles for financial management, and the broad rules and procedures for the procurement of goods and services and for contract management (Chapters 6 and 8). The GFRs and the *Manual of Purchase Policies and Procedure*, also issued by the Ministry, set the guidelines for procurement of goods and services at the central level.[322] The rules and procedures framed by individual departments are based on their perceptions and interpretations of the GFRs and the manual, both of which provide only broad guidelines. In addition, the GFRs and the manual are guidelines with no legal standing and therefore are not enforceable as law.[323]

226. The various ministries or departments have full powers to make their own arrangements for the procurement of goods. However, if they do not have the required expertise to procure goods, procurement may be done through the Directorate General of Supplies and Disposal (DGS&D), the central purchase organization, with the approval of the competent authority.[324] The DGS&D keeps a registry of manufacturers/suppliers and Indian agents of foreign manufacturers, and arranges the clearance of imported goods purchased by central government departments.

227. The procurement selection and qualification criteria must be stated in the bidding documents. Selection of the winning bidder follows the principle of value for money. Only the winning bidder is informed of the result of the bid evaluation. The reasons for selecting bidders are recorded but not disclosed. Post-tender negotiations are forbidden but the GFRs allow two exceptions: post-tender negotiations may be conducted with the bidder offering the lowest price, and for ad hoc purchases in exceptional circumstances (i.e. there is only one supplier).

228. The applicable procurement method depends on the value of the contract to be awarded and other factors (e.g. emergency situations) as stipulated in the GFRs 2005. The splitting of purchases into contracts of smaller value is explicitly forbidden. The procurement methods are: invitation to tender; limited tender enquiry; single tender enquiry; purchase of goods by purchase committee;

[321] Global Legal Group (2010).
[322] These rules were overhauled extensively in 2005.
[323] Radhakrishnan (2010).
[324] General Financial Rules 2005.

purchase of goods without quotation; and purchase of goods directly under rate contract (Table III.27).

Table III.27
Government procurement methods, 2011

Method	Description
Invitation to tender by advertisement	For procurement of goods of a value of at least Rs 2.5 million, an advertisement must be posted in the *Indian Trade Journal*, in one national daily newspaper of wide circulation, and on the website of the tendering organization. The tendering organization should also post the complete bidding documents online. It may issue a global tender enquiry when goods are not available in India and it is necessary to seek suitable offers from abroad; it sends tender notices to Indian embassies abroad and foreign embassies in India, depending on the availability of the goods in the specific countries. Ordinarily, a minimum of three weeks from publication of the tender notice or availability of the bidding documents is allowed for submitting bids, whichever is later. Late bids are not considered.
Limited tender enquiry	For procurement of goods of less than Rs 2.5 million, bidding documents should be sent by speed post/registered post/courier/e-mail to registered suppliers. A direct request from at least three suppliers is required. Goods of a value of over Rs 2.5 million may be procured through limited tender enquiry when the purchase is urgent and there are adequate reasons (i.e. public interest) and justifications (e.g. the sources of supply are definitely known).[a] These grounds are not defined in the Rules but must be documented in writing by the procuring entity.
Single tender enquiry	Goods may be procured from a single source when: (i) only a particular firm manufactures the goods; (ii) the goods need to be purchased from a particular source in case of emergency; and (iii) for standardization of machinery or spare parts to be compatible with the existing equipment.
Purchase of goods by purchase committee	Goods of a value ranging Rs 15,000-Rs 100,000 may be purchased on the recommendations of a local purchase committee consisting of three members of an appropriate level, as decided by the head of the department. The committee surveys the market to ascertain a reasonable rate, quality and specifications, and identifies the appropriate supplier.[b] It must certify that purchased goods are of the required specification and quality, priced at the prevailing market rate[c], and that the supplier recommended is reliable and competent to supply the goods (General Financial Rules 2005, Rule 146).
Purchase of goods without quotation	Goods up to a value of Rs. 15,000 may be purchased without inviting quotations or bids on the basis of a certificate to be recorded by the competent authority indicating the satisfaction with the good purchased in terms of quality, specification, and price (General Financial Rules 2005, Rule 145). The formal procedure of calling for quotations through a tender enquiry is not used.
Purchase of goods directly under rate contract	Ministries or departments may procure goods through the DGS&D under "rate contract" from suppliers, the prices to be paid for such goods cannot exceed those stipulated in the rate contract, and the other terms and conditions of the purchase should be in line with those specified in the rate contract.

a Information provided by the authorities.
b An appropriate supplier is determined by using the certificates recorded by the members of the purchase committee wherein they must certify that the supplier is reliable and competent.
c The prevailing market is identified by the Committee through a market survey.

Source: General Financial Rules 2005; and information provided by the Indian authorities.

229. The DGS&D concludes "rate contracts" for goods identified as "common use items" and needed on a recurring basis by various central government ministries or departments. The ministries or departments must follow those rate contracts to the maximum extent possible. A rate contract is an agreement between the purchaser and supplier to supply stores (i.e. goods) at specified prices during the period covered by the contract. However, no quantities or minimum purchase requirements are mentioned in the contract. Supply orders may be placed with any of the firms holding a "rate contract" directly by the authorized officers of the central government ministries/departments or by the DGS&D.

230. "Rate contracts" are concluded by inviting bids from suppliers, including foreign suppliers and their Indian agents, registered with the DGS&D, the National Small Industries Corporation (NSIC), and the Ministry of Defence. Eligible bidders are chosen considering: (i) the capacity of the tendering firm; (ii) the quantity that the tendering company commits to supply at the prices stipulated in the "rate contract"; (iii) the estimated amount required; and (iv) a reasonable price range. According to the DGS&D Annual Report, buying through rate contract facilitates procurement of

quality goods from reliable sources at the most reasonable prices without each department having to initiate tenders separately every time a demand arises.[325]

231. The DGS&D prepares lists of eligible and capable suppliers of commonly purchased goods. The NSIC also registers micro and small industries (MSEs), under the single point registration scheme; this is considered equivalent to DGS&D registration. MSEs registered under the scheme are exempt from payment of fees related to the issue of the tender and of earnest money and security deposit; and benefit from the preferences reserved for MSEs (see below). Registration is granted for a fixed period depending on the nature of the goods, and may be renewed upon application.

(c) Preferential policies at the central government level

232. India retains preferential treatment for micro and small enterprises (MSEs). At the time of the last Review of India in 2007, central public sector enterprises (CPSEs) were allowed to submit fresh bids in response to private sector bids. For tenders valued between Rs 50 million and Rs 1 billion, a CPSE whose bid was within 10% of that of a large private unit was allowed to revise its price downward and was eligible for a contract. This system was extended until 31 March 2008 and then discontinued.[326] However, preferences could be granted on a case-by-case basis after an assessment of the ministry concerned; the margins should be CPSE-specific, as required.[327]

233. Reservations still exist for MSEs and for certain products. MSEs receive purchase and price preferences in procurement by central government ministries/departments and CPSEs. Under the purchase-preference system, 358 items have been reserved for exclusive procurement from MSEs (Table AIII.9) and 21 items for exclusive manufacturing in the micro and small sectors (section (4)(i)(b)). The purchase-preference system offers price preferences of up to 15% to MSEs over the quotations provided by large-scale industries. MSEs are also assisted through the: (i) issue of tender sets free of cost; (ii) exemption from payment of "earnest money" (deposits); and (iii) waiver of security deposits up to the monetary limit for which the unit is eligible, based on certain "transparent" criteria (Table AIII.9). The NSIC serves as a single point of negotiation for eligible MSEs for government purchasing preference schemes.

234. The Central Government has reserved all items of handspun and hand-woven textiles (khadi goods) for exclusive purchase from the Khadi and Village Industries Commission (KVIC). The Central Government purchases all items of handloom textiles exclusively from the KVIC and/or the Association of Corporations and Apex Societies of Handloom, and coir products from the Coir Board.

235. In 2007, India issued a five-year policy indicating that the Central Government would exclusively purchase certain medicines manufactured by pharma CPSEs and their subsidiaries. This policy is aimed at increasing the market share of the CPSEs and their subsidiaries.[328] The reservation applies to a maximum of 102 medicines notified by the Department of Chemicals and Petrochemicals from time-to-time.[329] The purchasing departments, CPSEs, and autonomous bodies may invite limited

[325] Directorate-General of Supplies and Disposals (2010).

[326] Department of Public Enterprises, Office Memorandum No. DPE/13(15)/2007-Fin, 21 November 2007. Viewed at: http://dpe.nic.in/newgl/glch0612.htm.

[327] Department of Public Enterprises, Office Memorandum No. DPE/13(15)/2007-Fin, 21 November 2007; and Central Vigilance Commission, Circular No. 31/10/09, 9 November 2009. Viewed at: http://cvc.nic.in/rppp101109.pdf.

[328] Ministry of Chemicals and Fertilizers, Office Memorandum No. 50013/1/2006-SO (PI-IV), 7 August 2006. Viewed at: http://haryanahealth.nic.in/userfiles/file/pdf/guidelines_EDL_RC.pdf.

[329] For a the full list of medicines manufactured by CPSEs and proposed for purchase preference, see Ministry of Chemicals and Fertilizers, Office Memorandum No. 50013/1/2006-SO (PI-IV), 7 August 2006.

tenders from pharma CPSEs and their subsidiaries or purchase directly from them at the National Pharmaceutical Pricing Authority certified or notified price with a discount of up to 35%. However, if no pharma CPSEs can supply these medicines, the purchasing departments may purchase from other manufacturers. Pharma CPSEs and their subsidiaries must comply with the good manufacturing practices (GMP) norms stipulated in the Drugs and Cosmetic Rules.[330]

236. In addition, certain items purchased by the Central Government must have the mandatory Bureau of Indian Standards (BIS) ISI Marking, and the mandatory Bureau of Energy Efficiency (BEE) label star rating.[331]

237. Price variation clauses may be included in contracts where: (i) major raw materials (e.g steel or aluminium) constitute the main component of the cost; (ii) the price of the raw material is available from CPSEs such as the Steel Authority of India (SAIL) or the National Aluminium Company Ltd. (NALCO); (iii) there have been "substantial" price fluctuations of basic raw materials; and (iv) a specific time limit applies for manufacturing/processing of the product (e.g. 30 days). In these cases, bids must clearly define a price variation clause with a base price applicable on a specific date. The base price for calculating the variation is the price offered by CPSEs such as SAIL or NALCO.

(d) Procurement of services

238. Ministries or departments may hire external professionals, consultancy firms or consultants for a specific job and time frame or outsource certain services when no one in the ministry/department has the required expertise to undertake the task (Rules 163-164). Approval of the competent authority must be obtained before engaging consultants. Certain services (i.e. any service required for the functioning of a government office) may also be outsourced in the interest of the economy and efficiency (Rule 178).

239. The procuring agency, to outsource services, must prepare a tender enquiry containing, *inter alia*: (i) the details of the work or service to be performed by the contractor; (ii) the facilities and inputs to be provided to the contractor by the ministry or department; (iii) the eligibility and qualification criteria to be met by the contractor; and (iv) the statutory and contractual obligations to be complied with by the contractor (Rule 180).

240. When outsourcing services, a limited tender enquiry is used if the estimated value of the work or service is Rs 1 million or less (Table III.27). Eligible bidders are in the ministry/department's list of potential contractors. This list is prepared through formal or informal enquiries with other ministries and organizations involved in similar activities and research in trade journals. At least three contractors must be identified for issuing a limited tender enquiry. If the estimated value of the work or service is more than Rs 1 million, an advertised tender enquiry must be published in at least one popular largely circulated national newspaper and on the Ministry/department's website (Rule 181).

(e) E-government procurement

241. The DGS&D is mandated to computerize public purchases. A project on e-government procurement under the National e-Governance Plan (NeGP), initiated in 2004, has been in use

[330] News on Projects online information, "Purchase preference policy for pharma CPSEs' products cleared", 5 September 2007. Viewed at: http://newsonprojects.com/story.asp?news_code=2541.
[331] The BIS is India's national standards body.

since 2006.[332] This reflects the Government's determination to implement electronic tools to ensure transparent and competitive procurement processes across all government entities. According to the authorities, e-tendering has facilitated the participation of bidders, increased competition and diminished the incentive to create cartels.

(f) Procurement at the state level

242. Some states (like Tamil Nadu and Karnataka) have enacted a law exclusively governing public procurement of goods. However, in most states the general financial rules (GFRs) govern procurement and are based on the Central Government GFRs, which were updated in 2005.

(g) Procurement in the railway and other specialized sectors

243. Procurement in the railway, postal system, telegraph, and defence industries is subject to specialized procedures developed by the ministries responsible, within the overall framework of the GFRs 2005. In general, competition from foreign suppliers is allowed in respect of high technology or high value items. For procurement in railways, foreign firms are free to participate in tenders advertised in India only, but payment against such contracts must be received in Indian rupees at par with indigenous suppliers. Global tendering is frequently used in procurement of rolling stock, wheels, machinery and plant equipment, including technology transfer. Indian Railways evaluates all offers based on the total destination cost. Domestic goods bids are evaluated based on freight up to destination including all taxes and levies. Offers from abroad are evaluated based on the c.i.f. value of imports and customs duties, but inland freight is not taken into account. According to the authorities, railway procurement has become more transparent and efficient since the implementation of the e-procurement system in 2006.

244. Procurement by the Ministry of Defence is regulated by the *Defence Procurement Procedure* (Capital Procurement) 2011 (DPP-2011) and the *Defence Procurement Manual* (DPM) (Revenue Procurement) 2009, as amended. The DPP-2011 covers all "capital acquisitions" (except medical equipment), purchased by the Ministry of Defence, the Defence Services, and the Indian Coast Guard, both in India and abroad. The procurement of capital goods is subject to minimum investment and domestic-content requirements depending upon the procurement method (Table III.28). India's defence "offsets" programme requires companies to invest at least 30% of the value of contracts above Rs 3 billion in value in Indian-produced parts, equipment, or services. Offset obligations must be discharged according to the methods outlined in the DPP with reference to "eligible" products and/or services provided by Indian industries (i.e. defence public sector enterprises, the Ordnance Factory Board or a private Indian industry).[333] The DPM 2009 contains principles and procedures relating to procurement of goods and services for the defence services, organizations, and establishments.[334] The 2009 manual introduced a system of offsets to require foreigners involved in large projects to invest in Indian companies to attain self-reliance.[335]

[332] For details on e-procurement activities, see DGS&D online information. Viewed at: www.dgsnd.gov.in.

[333] Ministry of Defence (2011).

[334] In the DPM, the term "procurement" means acquiring all types of goods (both scaled and non-scaled), such as equipment, stores, spares, technical literature, as well as all types of services, including packing, unpacking, and preservation.

[335] Ministry of Defence (2009).

Table III.28
Capital defence procurement, 2011

Category	Definition
"Buy"	Purchase of equipment
Buy (Indian)	Must have minimum 30% of indigenous content
Buy (global)	Foreign as well as Indian vendors
"Buy and Make"	Purchase from a foreign vendor followed by licensed production/indigenous manufacture in the country. Offset of 30% of the estimated cost of the acquisition
"Buy and Make (Indian)"	Purchase from an Indian vendor including an Indian company forming joint venture/establishing production arrangement with the original equipment manufacturer, followed by licensed production/indigenous manufacture in the country must have minimum 50% indigenous content on cost basis

Source: Ministry of Defence (2011), *Defence Procurement Manual (Capital Procurement).* Viewed at: http://mod.nic.in/dpm/DPP2011.pdf.

(vi) Intellectual property rights

(a) Overview

245. India is a party to the Convention Establishing the World Intellectual Property Organization (WIPO) (1975) and to other international conventions on intellectual property.[336] India has signed bilateral cooperation MOUs on IPRs with Australia, France, Japan, and Switzerland; and with the European Patent Office, the German Patent Office, the US Patent and Trade marks Office, and WIPO. There is also a joint statement of Intent of Bilateral Cooperation between India and the United Kingdom.[337] These agreements focus on capacity building and the creation of public awareness to facilitate enforcement of IPRs.

246. India's WTO contact point for intellectual property purposes is the Department of Commerce.[338] The institutional and legal framework with respect to the protection of intellectual property rights has not changed substantially since the previous review of India in 2007 (Table III.29). The Department of Industrial Policy and Promotion (DIPP), in the Ministry of Commerce and Industry, covers patents, trade marks, designs, and geographical indications, all of which are administered by the Office of the Controller General of Patents, Designs, and Trade Marks (CGPDTM), except for the provisions related to patent revocations and to infringements regarding patents, trade marks, designs, and geographical indications, which are dealt with by the judicial authorities. The departments of Higher Education, Information Technology, and Agriculture and Cooperation are in charge of copyright protection, protection of layout designs, and the protection of new varieties of plants, respectively.[339]

[336] The Paris Convention (Industrial Property), since December 1998; the Berne Convention (Literary and Artistic Works), April 1928; the Patent Cooperation Treaty (PCT) (Patents), December 1998; the Geneva Convention (Unauthorized Duplication of Phonograms), February 1975; Budapest Treaty (Deposit of Micro-organisms), December 2001; and the Nairobi Treaty (Olympic Symbol), October 1983 (WIPO online information, "Information by country: India". Viewed at: http://www.wipo.int/members/en/details.jsp?country_id=80&country_code=IN).

[337] Department of Industrial Policy and Promotion online information, "Memorandum of Understanding on IPRs". Viewed at: http://dipp.nic.in/index_mou_ipr.htm.

[338] WTO document IP/N/3/Rev.9/Add.3, 16 February 2007.

[339] Department of Industrial Policy and Promotion (2009b).

Table III.29
Intellectual property legislation, 2011

Subject	Legislation
Patents	Patents Act, 1970 Patent Rules 1972 Repealing and Amending Act 1974 Delegated Legislation Provisions (Amendment) Act 1985 Patents (Amendment) Act 1999 Patents (Amendment) Act 2002 Patent (Amendment) Ordinance 2004 Patent (Amendment) Rules 2005
Trade marks	Trade Marks Act 1999 Trade Marks Rules 2002 Trade Marks (Amendment) Rules 2010 Trade Marks (Second Amendment) Rules 2010
Industrial designs	Designs Act 2000, in force since 2001
Copyright and related rights	
Copyright	Copyright Act 1957, as amended in 1983, 1984, 1992, 1994, and 1999 Copyright Rules 1958
Geographical indications	Geographical Indication of Goods (Registration and Protection) Act 1999, in force since September 2003
Unfair competition	Monopolies and Restrictive Trade Practices Act 1969, as amended
Plant variety protection	Protection of Plant Varieties and Farmers' Rights Act 2001, entered into force in June 2002

Source: WTO Secretariat.

247. The Intellectual Property Appellate Board (IPAB) was constituted in 2003 to hear appeals against the decisions of the registrar of trade marks and geographical indications.[340] However, as of 2007 the IPAB has also heard appeals regarding patents.[341] All appeals regarding patents that were pending before the various high courts, were transferred to the IPAB; and all new Rectification Applications under the Patents Act 1970, have since then been filed before the IPAB.[342]

(b) Patents

248. The Patent System in India is governed by the Patents Act 1970 (No. 39 of 1970) as amended by the Patents (Amendment) Act 2005, and by the Patents Rules 2003, as amended by the Patents (Amendment) Rules 2006, effective 5 May 2006. There have been no changes to this legislation since the previous Review of India.

249. Applications for patents may be submitted to the CGPDTM by nationals of any country. The Patent Office, under the Department of Industrial Policy and Promotion (DIPP) at the Ministry of Commerce and Industry, performs the statutory duties in connection with the granting of patents. There are patent offices in Chennai, Delhi, Kolkata, and Mumbai that deal with patent applications originating within their respective territorial jurisdictions. Applicants who are non-resident or have no domicile or no place of business in India, must employ a patent agent to file the patent application.[343] The location of the applicant determines the appropriate patent office where applications for patents should be filed.[344]

[340] *Gazette of India*, 15 September 2003.
[341] Ministry of Commerce and Industry, Notification No. 12/15/2006-IPR-III, 2 April 2007.
[342] Intellectual Property Appellate Board online information. Viewed at: http://www.ipab.tn.nic.in/.
[343] Registered patent agents must be Indian citizens and be at least 21 years old; they must have a degree in science, engineering or technology from any Indian university, and must have passed the qualifying examination prescribed for the purpose, or must have functioned as a patent examiner for at least ten years.
[344] Controller General of Patents, Design, and Trade Marks online information, "Patents Territorial Jurisdiction of Appropriate Office for the Applicants". Viewed at: http://ipindia.nic.in/ipr/patent/patents.htm.

250. Patent protection may be granted to any invention relating to either a product or process that is new, involves an inventive step, and is capable of industrial application (Section 2(1)(j)). The Act also sets out products or processes that are not recognized as inventions and are therefore not patentable.[345] Section 3(d) of the Patent Act refers to the scope of patentability of pharmaceutical and other chemicals and calls for proof of efficacy of the substance. The claimed substances should differ significantly in properties from the known substances with regard to efficacy, which needs to be proved at the time of filing or during the patent application to prove inventive step. Patents of addition for an improvement to a patented product can be granted to the holder of the original patent for the same period as the validity of the original patent.

251. Patent protection is a territorial right. Hence, for protection to be effective outside the Indian territory the applicant must file a corresponding application for the same invention in Convention countries[346], within 12 months from the filing date in India. It is also possible to file an international application (a Patent Convention Treaty (PCT) application) in India, in any of the different patent offices. In general, it is not necessary to obtain prior permission from the Patent Office to file a patent application abroad, unless: the applicant is an Indian resident and the invention originated in India; the applicant does not wish to file a patent application in India prior to filing abroad; the applicant is an Indian resident, an application has been filed in India, and less than six weeks have passed from the date of application; or when the invention relates to atomic energy or defence purposes.

252. Applications for patents should be filed before the publication of the invention and should not be disclosed or published until then. Generally, a patent application cannot be filed for an invention that has been published or publicly displayed. However the Patents Act provides a grace period of 12 months for filing a patent application from the date of publication of an invention in a journal or its public display in an exhibition organized by the Government, or its disclosure before any learned society or published by the applicant.[347]

253. A patent application must be examined before the granting of a patent. Applications are only examined if requested by the applicant or by another interested party within 48 months of the date of application, failing which the application is deemed to have been withdrawn. If all the requirements are met, the patent is granted and notified in the *Patent Office Journal*. If the application is found to be in order for grant, the patent is granted, provided no pre-grant opposition is filed or pending.[348]

254. Patent rights accrue from the date of publication of the patent application, which is within one month after completion of 18 months of its filing or earlier, if requested by the applicant. On average, it takes between 10 and 60 months to grant a patent, depending on the information provided by the applicant and the opposition the application generates. Post-grant opposition may be filed in the Patent Office up to 12 months from publication of the grant of the patent in the *Patent Office Journal*.[349]

[345] Patents Act 1970, Sections 3 and 4.

[346] Any country that the Government of India notifies in the *Official Gazette* for the fulfilment of a treaty, convention or an arrangement, and which affords to citizens of India similar privileges as are granted to its own citizens.

[347] Patents Act 1970, Chapter VI, Sections 29-34.

[348] It is possible to file for pre-grant opposition even before a request for examination has been filed. However, it will be considered only if and when a request for examination is received within the prescribed period.

[349] Pre-grant opposition must be made within four months of publication of the application, while the period for post-grant opposition is up to one year. The grounds for filing post-grant opposition are contained in the Patents Act 1970, Section 25(1).

255. The term of every patent in India is 20 years from the date of filing of the patent application, irrespective of whether it is filed with a provisional or a complete specification. For applications filed under the PCT the term of 20 years begins from the international filing date. Patent renewal fees are payable from the third year onwards.

256. Compulsory licensing is permitted under certain circumstances. Anyone interested in working a patent may, after the expiry of three years from the date of grant of the patent, apply for grant of a compulsory licence if: the reasonable requirements of the public with respect to the patented invention have not been satisfied; the patented invention is not available at a reasonably affordable price; or it is not worked in India.[350] Two years after a compulsory licence has been granted, the Central Government or any interested person may request the revocation of the patent. The Controller (of the Patent Office) must normally make a decision within one year. No compulsory licences have been granted since 2005.[351] The Central Government may, if necessary (as in the case of a national emergency), provide for the issue of a compulsory licence for a patented product through a notification in the *Official Gazette* (Section 92) and may use a patented invention for government purposes (Section 100). Compulsory licences are also permitted for exports of patented pharmaceutical products in certain exceptional circumstances[352], when the Government declares an emergency. The authorities noted that the Department of Industrial Policy and Promotions has issued a discussion paper on compulsory licensing with a view to developing a predictable environment to use such measure.

257. The Act stipulates that parallel imports are allowed when authorized under the law.[353] The authorities noted that: "under the law" should be interpreted as the law of the country where the item is being produced.

258. In 2009/10 India granted 6,168 patents; 37,334 patents were in force, of which 6,781 were granted to Indians and 30,554 to foreigners resident abroad. As a result of modernization, restructuring of offices, and procedural improvements, including a time-limit of three months for examiners to complete examinations once complete documentation is received, the number of patents granted relative to the number of patent applications has increased.[354] Patent applications increased from 4,824 in 1999/00 to 36,877 in 2008/09; the number of applications examined rose from 2,824 to 10,296 and the number granted increased from 1,591 to 16,061.[355]

259. The Indian Patent Office has been recognized as an International Searching Authority (ISA) and International Preliminary Examining Authority (IPEA) under the PCT.

260. Contravention of secrecy provisions relating to certain inventions or falsification of any information relating to the Patents Register is punishable by a fine or imprisonment for up to two years. False representation of any article sold in India as being patented in India or for which an application has been made is punishable by a fine of up to Rs 100,000.[356] Appeals may be made to the Appellate Board. Since 2007, 215 appeals regarding patents have been filed before IPAB.

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[350] Patents Act 1970, Chapter XVI, Section 84.
[351] Information provided by the authorities.
[352] Patent Act 1970, Section 92A.
[353] Patent Act 1970, Section 107A.
[354] As of 20 July 2007, the Indian Patent Office has put in place an online filing system for patent applications. This facility is also available for filing trade mark applications.
[355] Department of Industrial Policy and Promotion (2009b).
[356] Patents Act 1970, Chapter XX (penalties).

(c) Trade marks

261. Trade marks are protected under the Trade Marks Act 1999, and the Trade Marks Rules 2002, both in force since September 2003. In 2009, the Trade Mark (Amendment) Bill 2009 was introduced in *Lok Sabha* (the lower house of Parliament).[357] The Trade Mark (Amendment) Act 2010 was passed by both houses of parliament, but is still not in force. The Act will enter into force once the Trade Marks (Amendment) Rules 2010[358], and its amendment are notified.[359] This amendment will enable India to accede to the Madrid Protocol.[360] Membership of the Protocol will help Indian companies to register their trade marks in the Protocol member countries through a single application.

262. Trade mark law in India is a "first-to-file" system that requires no evidence of prior use of the mark in commerce. Any person claiming to be the proprietor of a trade mark used or proposed to be used in commerce may apply for registration in writing or electronically to one of the offices of the Trade Marks Registry within their territorial limits.[361] A single application may be used for registration of a trade mark for different classes of goods and services. The law protects product, service, certification, and collective trade marks. Protection is also granted to well known marks, as well as service and collective marks. The Office of Trade Marks does not maintain a register of well known marks. The law stipulates the types of trade marks that would be refused for registration.[362]

263. As a signatory to the Paris Convention, India recognizes foreign priority provided that the application in India is filed within six months of filing of the application abroad.

264. The registration of a trade mark in the Office of the Controller General of Patents, Trade Marks, Industrial Designs, and Geographical Indications typically takes about two to three years, subject to the trade mark not being opposed by a third party. A trade mark application may be filed in any of the Registry offices in Ahmedabad, Delhi, Chennai, Kolkata or Mumbai, based on the territorial jurisdiction. The steps involved in the registration process in India have not changed during the review period.[363] Proprietors of trade marks may file a trade mark application only if they have a place of business in India, otherwise the application must be filed through a trade mark agent/attorney.

265. The Trade Marks Office reviews filed applications to ensure that they are complete. When an application for registration of a trade mark has been accepted, it is published. Any person may oppose the registration, within three months from the date of its advertisement. If the trade mark is not opposed, the registration will proceed and the Trade Marks Registry will issue a registration certificate. Where registration of a trade mark is not completed within 12 months from the date of the

[357] Trade Marks (Amendment) Bill 2009.

[358] Trade Marks (Amendment) Rules 2010.

[359] Information provided by the authorities.

[360] Trade Marks (Amendment) Rules 2010. The major change introduced by the Rules 2010 is an amendment to the Fourth Schedule of the Trade Mark Rules to allow for the adoption of all 45 international classes. International classes 43, 44, and 45 were merged into class 42 in India until May 2010; a separate application must now be filed for services under these classes (Aswal, 2010).

[361] Electronically via the online Trade Marks Registry (Comptroller General of Patents Designs and Trade Marks online information, "E-filing of trade mark application". Viewed at: http://ipindia.nic.in/tmr_new/default.htm).

[362] These include trade marks that are devoid of any distinctive character or consist exclusively of marks or indications that may serve in trade to designate the kind, quality, quantity, intended purpose, values, geographical origin or the time of production of the goods or rendering of the service or other characteristics of the goods or service; as well as marks or indications that have become customary. Registration of names of chemical elements or international non-proprietary names is prohibited.

[363] For all the required forms, see Trade Marks Registry online information, "The First Schedule". Viewed at: http://ipindia.nic.in/tmr_new/first_schedule_forms/the_first_schedule.htm.

application, the Registrar after giving notice to the applicant, treats the application as abandoned. Appeals against a decision by the Registrar are made to the Intellectual Property Appellate Board (IPAB).[364]

266. Registration is not necessary to exercise the right over a trade mark, which is also acquired by use. However, registration of a trade mark gives the owner the exclusive right to the use of the registered trade mark and facilitates the seeking of relief in the appropriate courts in case of infringement of the exclusive right. The exclusive right is subject to any conditions entered on the register, such as limitation of area of use. The Trade Marks Act 1999, preserves common law rights in respect of an unregistered trade mark. Hence, even when a trade mark is unregistered the right holder is entitled to protection and may initiate action against a third party under the law.

267. Trade marks applications increased from 90,236 in 2001/02 to 130,172 in 2008/09; and the number of trade marks registered increased from 8,010 in 1999/00 to 102,257 trade marks in 2008/09.[365] As at November 2010, there were approximately 400,000 applications pending at various stages.

268. The period of trade mark protection is ten years, renewable for further periods of ten years on payment of the prescribed fee. A trade mark can be removed from the Register on grounds of non-use if the registered mark is not used for a continuous period of five years and three months from the date it was registered, or if the renewal fee is not paid. Appeals against a decision by the Registrar are made to the IPAB.[366]

269. The Trade Marks Act 1999 provides for both civil and criminal remedies. Penalties for falsification of trade marks and selling or providing goods that infringe trade marks include a prison term of six months to three years, and a fine of between Rs 50,000 and Rs 200,000. Second or subsequent convictions may lead to imprisonment for one to three years and a fine of between Rs 100,000 and Rs 200,000. Falsely representing a trade mark as registered may lead to imprisonment for up to three years and/or a fine. Other penalties include imprisonment for up to two years and/or a fine for improper description of a place of business as connected with the Trade Marks Office and for falsification of entries in the Register. If the offence is committed by a company, the company as well as every person in charge, and responsible to the company would be deemed guilty of the offence.

270. There are also provisions under the trade mark and customs laws that allow Customs to stop the importation of infringing goods. In 2007, the customs authorities promulgated guidelines, under which right holders may record their registered trade marks with the customs authorities.[367] These guidelines authorize customs officials to seize goods infringing the trade marks of the right holder at the border without a court order.[368] According to the authorities, there have been no such instances. After suspending clearance of suspected goods, the customs authorities inform the right holder, who must join in the proceedings against the importer within the prescribed period, otherwise Customs releases the suspended goods. Customs officers may destroy the suspended goods or dispose of them after it has been determined that the goods have infringed the trade marks of the right holder, and that no legal proceeding is pending in relation to such determination. Goods amounting to Rs 434 million were seized by Customs during May 2007 to March 2010.[369] The re-exportation of goods infringing

[364] Department of Industrial Policy and Promotion (2009b).
[365] Department of Industrial Policy and Promotion (2009b).
[366] Department of Industrial Policy and Promotion (2009b).
[367] Intellectual Property Rights (Imported Goods) Enforcement Rules 2007.
[368] Customs Notification No. 47/2007, 8 May 2007.
[369] Most recent information available provided by the authorities.

trade marks in an unaltered State is also prohibited. Under the trade mark law, the police have the power to *suo moto* conduct raids and seizure operations.

(d) Industrial designs

271. The Designs Act 2000 and the Designs Rules 2001 govern industrial designs in India. The Designs Rules 2001 were amended in 2008 to enable e-filing. India has not yet acceded to the Hague System for the International Registration of Industrial Designs, which gives the owner of an industrial design the possibility of protection in several countries by filing one application in one language with the International Bureau of WIPO.

272. As in the case of patents, India follows the first-to-file system. To be registered, designs must be new or original; they must not have been disclosed to the public in India or another country by publication prior to the filing or priority application date; they must be able to be reproduced by industrial means; they must be significantly distinguishable from known designs or combinations of known designs; they must not comprise or contain scandalous or obscene matter; must be appealing to the eye; and they must not include anything that is in substance a mere mechanical device.

273. Proprietors of designs may file for protection in India only if they have a business address in the country. If that is not the case, they may file an application through an attorney or agent. The application may be filed at the patents offices in Delhi, Chennai, Kolkata, and Mumbai.[370] After registration of the design, which could take 6 to 12 months, the particulars are entered in the Register of Designs and the design is published in the *Official Journal of the Patent Office* and made publicly available in a Register of Designs.

274. Registration of an industrial design in India gives the proprietor an exclusive right to sell, import, and apply it to any article. Once a design has been registered, the article on which the design is being used must be marked with the word "registered" (or any of its abbreviations REGD or RD) along with the design registration number, to inform the public that the right holder has the exclusive proprietary right to use it. If this is not done, the right holder must prove that an infringer was aware that he was violating the right holder's exclusive proprietary rights when using the infringing design.

275. A registered design is protected for ten years from the date of registration or from the priority date, renewable for five years upon application prior to the expiry of the initial period. Registration provides protection only in India. From 1999/00 to 2009/10 applications for protection of designs increased from 2,874 to 6,092, the number of applications examined rose from 2,067 to 6,266, and the number of designs registered increased from 1,382 to 6,025.[371]

276. The sale, import or imitation of any article in which the design is registered without the consent of the registered owner is punishable by a fine of up to Rs 25,000 to be paid to the registered owner together with any other damages incurred of up to Rs 50,000. In addition, since 2007, Customs officials are authorized to seize and eventually destroy goods infringing the designs of the rights holder at the border, without obtaining a court order.[372]

277. A design may be cancelled by the Controller General if it is determined that it does not fulfil the requirements for registration defined in the Act. Since 2007, 16 registered designs have been

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[370] For the application form, see Controller General of Patents, Designs, and Trade Marks online information, "Designs: Forms". Viewed at: http://www.patentoffice.nic.in/.

[371] Department of Industrial Policy and Promotion (2009b).

[372] Intellectual Property Rights (Imported Goods) Enforcement Rules 2007.

cancelled. Appeals against a decision by the Controller General may be made to the High Court within three months of the decision; at present 28 cases are pending in the High Court.

(e) Copyright

278. The Copyright Act 1957, most recently amended in 1999, governs the copyright system in India. There have been no changes to this legislation since the previous Review of India. However the Copyright (Amendment) Bill 2010 proposing amendments to the Copyright Act 1957 is being discussed in Parliament. The Copyright Act 1957 grants protection to: original literary, dramatic, musical and artistic works; cinematographic films; and sound recordings. Registration is not mandatory. There is no difference in the copyright protection granted to a registered or unregistered work. However, as per Section 48 of the Act, registration provides prima facie evidence in case of a dispute. Both published and unpublished works may be registered.

279. Copyright owners may file an application with the Registrar of Copyrights either in person or through a representative; separate applications need to be filed for each piece of work.[373] After the application is filed, and if no objections are raised within 30 days, the Registrar enters the particulars of the application in the Register of Copyrights. In case of a dispute, the Registrar will hold an inquiry. Registration of a copyright takes between 8 to 12 months.

280. Protection is for the lifetime of the author plus 60 years for literary, dramatic, musical, and artistic works; and 60 years after the year of publication for anonymous and pseudonymous works, photographs, cinematographic films, sound recordings, and works owned by the Government or by a public undertaking or an international organization. Broadcast reproduction rights are for 25 years from the year of broadcast, and performers' rights are for 50 years from the date of performance. Through the International Copyright Order, copyright is protected in India for nationals of countries that are members of the Berne Convention, the Universal Copyright Convention, and the TRIPS Agreement.

281. Copyright may be licensed or assigned to another person provided the arrangement has been put in writing. Compulsory licences may be issued for works withheld from the public or for unpublished "Indian works" where the author is dead or unknown.[374] In such cases, applications may be made to the Copyright Board, which, after holding an inquiry, may direct the Registrar of Copyright to issue a licence under specified terms and conditions. Applications for licences to publish a translation of a literary or dramatic work in any language may be made to the Copyright Board seven years after publication of the work (three years if the translation is required for teaching, scholarship or research) (Article 32). Parallel imports of copyrighted works are not permitted by the law.

282. The copyright law in India provides for both civil and criminal remedies by which the holder may enforce their rights. Infringement of copyright could lead to imprisonment for six months to three years and/or a fine of between Rs 50,000 and Rs 200,000 (Section 63). Repeated offences are punishable by imprisonment for one to three years and/or a fine of Rs 100,000 to Rs 200,000. Any person who knowingly makes use of an infringing copy of a computer program is punishable by imprisonment for seven days to three years and/or a fine of Rs 50,000 to Rs 200,000 (Section 63B). The penalty for making or possessing plates for making infringing copies of protected works is imprisonment for up to two years and/or a fine (Section 65). Publication of a sound recording or a

[373] For the forms and other general information, see Copyright Office online information, "Handbook of copyright law". Viewed at: http://copyright.gov.in/Documents/handbook.html.

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

video film in contravention of the Act is punishable by imprisonment for up to three years and a fine (Section 68A). If any of these offences are committed by a company, every person who was in charge of the company at the time the offence was committed, as well as the company, should be deemed to be guilty of the offence and be punished accordingly.

283. Customs officials are authorized to seize at the border, and if necessary destroy, goods infringing copyrights, without obtaining a court order. In addition, upon an application by the right holder, the Registrar of Copyrights conducts an inquiry, and may prohibit the importation of copies made outside of India, which if made inside India would infringe the copyright. In these instances the Registrar of Copyright or any person authorized by him may enter any ship, dock or premises where such infringing copies may be found and examine such copies. From 2007 to February 2011 no such applications were received by the Registrar of Copyrights. Twenty-four states and UTs have set up Copyright Enforcement cells within the crimes section of the police, to enforce the copyright legislation. The authorities have indicated that, in 2008 the police registered 6,036 cases regarding copyright violations; 2,151 persons were convicted.

(f) Geographical indications

284. Geographical indications are protected under the Geographical Indications of Goods (Registration and Protection) Act 1999, and the Geographical Indications of Goods (Registration and Protection) Rules 2002.

285. Applications for registration of a geographical indication must be made in writing to the Registrar of Geographical Indications. The Act stipulates geographical indications that may not be registered.[375] Once an application is accepted, the Registrar advertises the application and if there is no opposition the GI is registered. If the application is not accepted, the grounds for refusal must be given in writing. Decisions by the Registrar may be appealed to the IPAB.

286. Protection for the owner of the GI and any authorized user is for ten years, but may be renewed by the Registrar for further periods of ten years. Additional protection may be provided by the Central Government to certain goods or classes of goods by notification in the *Official Gazette*. At present wines and spirits are the only class of goods that receive higher protection in India. Registration guarantees the exclusive use of the GI by the owner or authorized user and protection in case of infringement. The penalty for falsifying or falsely applying geographical indications or selling goods under false geographical indications is imprisonment for six months to three years, and a fine of Rs 50,000 to Rs 200,000.[376] Repeated offences are subject to a prison term between one and three years and a fine of Rs 100,000 to Rs 200,000.

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

[376] Infringement is defined under the Act as: use of the geographical indication to indicate or suggest that the goods originate in a geographical area other than the true place of origin in a misleading manner; use that constitutes an act of unfair competition, including passing off; and use of a geographical indication to falsely indicate that the goods are those to which the registered GI relates.

287. Though the Goods (Registration and Protection) Act was enacted in 1999, no GIs were registered until 2004 because the Act was not notified until 2003. By the end of 2009/10, 120 GIs of products had been registered representing a wide variety of goods.[377]

(g) Plant varieties

288. Plant varieties are protected in India through the Protection of Plant Varieties and Farmers' Rights Act 2001, and the Rules and Regulations 2006. Registration of a plant variety gives protection only in India and confers upon the right holder, its successor, agent, or licensee the exclusive right to produce, sell, market, distribute, import, or export the variety. New varieties may be registered if they conform to the following criteria: novelty, distinctiveness, uniformity, and stability. A variety that has already been on the market but for less than one year, may be eligible for registration as a new variety. Older varieties may be eligible for registration as extant varieties.

289. Registration of a variety is not allowed when it is necessary to prevent commercial exploitation of such variety to protect public order or public morality or human, animal, and plant life and health or to avoid serious damage to the environment.

290. Application for registration of a variety is made to the Registrar-General of Plant Varieties, who makes the required enquiries; once the Registrar deems the application fit, it is advertised. If there is no opposition, or if the opposition is rejected, the variety is registered in the Plant Varieties Registry, and an official certificate is given to the applicant. Until the Plant Varieties Protection Appellate Tribunal is established, a person aggrieved by a decision of the Protection of Plant Varieties and Farmers' Rights Authority (established in 2005) or the Registrar, may file an appeal before the IPAB or the High Court.

291. A certificate of registration is issued for a term of nine years for trees and vines and six years for other crops, and is renewable for a maximum of 18 years for trees and vines, or a total of 15 years for extant varieties (from the date of notification under the Seeds Act 1966) and other crops (from the date of registration of the variety) (Section 24 (6)). A certificate of registration for a variety confers an exclusive right on the breeder or his successor, his agent or licensee, to produce, sell, market, distribute, import or export the variety. However, farmers are entitled to save, use, sow, resow, exchange, share or sell their farm produce, including seed (except "branded seed")[378], of a variety protected by the Act.[379] Registration may not prevent the use of any variety for conducting experiments or research; or for the purpose of creating other varieties. The authorization of the breeder of a registered variety is required if the repeated use of the variety as a parental line is necessary for commercial production of another newly developed variety.

292. Compulsory licences may be granted after three years from the date of registration. A request may be made to the Authority for a compulsory licence for production, distribution, and sale of the seed or other propagating material on the grounds that the reasonable requirements of the public for seeds or other propagating material of the variety have not been satisfied or that the seed or other propagating material of the variety is not available to the public at a reasonable price. The Authority will determine the duration of the compulsory licence on a case-by-case basis but in no event will the

[377] These include goods such as Darjeeling tea, Pochampally ikat and Chanderi sarees, Mysore agarbathi, Kullu shawls, Coorg oranges, Aranmula mirrors, and Kancheepuram silk (Department of Industrial Policy and Promotion, 2009b).

[378] "Branded Seed" means any seed put in a package or any other container and labelled in a manner indicating that such seed is of a variety protected under this Act.

[379] Farmers' Rights Act, Chapter VI, Section 39.

duration of the licence exceed the total remaining period of protection. No compulsory licences have been granted so far.

293. The law defines infringement as: the sale, export, import or production of a protected variety without the permission of its breeder or within the scope of a registered licence without the permission of the registered licensee or agent; or the use, sale, export, import or production of any other variety that is given an identical or deceptively similar denomination of a variety registered under the Act so as to cause confusion. In case of an infringement of rights, the right holder may file a civil suit in court. The penalty for applying a false denomination is imprisonment for three months to two years and/or a fine of Rs 50,000 to Rs 500,000. The penalty for selling varieties to which a false denomination is applied is imprisonment for six months to two years and/or a fine of Rs 50,000 to Rs 500,000. The penalty for falsely representing a variety as registered is imprisonment for six months to three years and/or a fine of Rs 100,000 to Rs 500,000. Repeated offences are liable to imprisonment for between one and three years and/or a fine of Rs 200,000 to Rs 2 million. No cases of seizure or infringement have been reported.[380]

(h) Semiconductor integrated circuits layout-designs

294. The Semiconductor Integrated Circuits Layout-Design Act 2000 and the Semiconductor Integrated Circuits Layout-Design Rules 2001 is the prevailing law regulating the protection of integrated circuits. However, at present only Sections 3 and 5 of the law are in force.[381]

295. Layout-designs may not be registered if they are not original; they have been commercially exploited anywhere in India or in a Convention country; are not inherently distinctive; or are not inherently capable of being distinguishable from any other registered layout-design. A creator seeking registration of a layout-design must apply in writing to the Registrar. The Registrar may refuse the application or may accept it fully or subject to amendments. The Registrar will register the layout-design if the application is accepted and not opposed, or if opposed and the opposition is decided in favour of the applicant. Registration is valid for ten years from the date of filing or the date of first commercial exploitation anywhere in the world, whichever is earlier. Decisions by the Registrar may be appealed to the Layout-Design Appellate Board.

296. Infringement is defined as the unauthorized reproduction, whether by incorporating in a semiconductor integrated circuit or otherwise, of a registered layout-design or any part of it, or unauthorized import, sale, or distribution for commercial purposes of a registered layout-design or an article incorporating a semiconductor integrated circuit with a registered layout-design. However, reproduction of registered layout-design is permitted for scientific evaluation, analysis, research or teaching. If, by application of independent intellect, a person develops a layout-design that is identical to a registered one, that person may use it as desired without infringing. Infringement of a layout-design is considered to be a criminal offence in India: the penalty is imprisonment for up to three years and/or a fine of Rs 50,000 to Rs 1 million. There have been no cases of infringement of layout designs during the period under review.[382]

(i) Trade secrets

297. India has no specific legislation regulating the protection of trade secrets; hence enforcement measures/penalties for violations of trade secrets are available through common law. Trade secrets are protected either through contract law or through the equitable doctrine of breach of confidentiality.

[380] Information provided by the authorities.
[381] Information provided by the authorities.
[382] Information provided by the authorities.

The Indian Contract Act (Section 27) provides some sort of limited protection as it bars any person from disclosing information acquired as a result of a contract. It is also common to insert a confidentiality clause in a technology transfer or other licence agreement to maintain the confidential nature of the subject matter, not only during the employment period of the employees and contractors but also after its termination, though for a fixed period.[383] Aggrieved parties may seek action through the civil courts by obtaining an injunction preventing a third party from disclosing the trade secrets, return of all confidential information and proprietary information, and compensation for any loss suffered due to disclosure of trade secrets.

(j) Enforcement

298. Since its previous Review, India has taken several initiatives to modernize its IPR administration. The major achievements during the period include an increase in the level of computerization, providing Internet connectivity amongst the various offices, creating an online facility for filing and processing patent and trade mark applications, and computerizing intellectual property records to create databases. The Government has continued its efforts to step up training to increase awareness of IPR enforcement through the National Institute of Intellectual Property Management (NIIPM). Since 2007, the NIIPM has undertaken wide-ranging activities including training, education, and research.[384]

299. Enforcement of intellectual property rights in India (except at the borders) is under the purview of state governments. Enforcement is carried out by the police for domestic cases, and by the police and Customs for imports and exports. Under the Customs Act, Customs may seize and hold goods for a reasonable period (e.g. six months), including for suspected violations of intellectual property rights, following which, the goods must be released or a court injunction obtained to start infringement proceedings. In order to further implement border measures, in 2007 the Customs authorities issued a notification that prohibits imports of goods infringing intellectual property rights, and promulgated the Intellectual Property Rights (Imported Goods) Enforcement Rules 2007.[385] These Rules lay down a detailed procedure for right holders or their authorized representatives and for Customs to seek suspension of release of suspect imported goods. The Rules allow right holders to record their registered intellectual property, including patents, with Customs. After the grant of the registration by the Commissioner on due examination, imports of allegedly infringing goods into India may be prohibited. The Rules also permit *suo moto* action by Customs when infringing goods are found through random checks, and the disposal of the confiscated goods; however, the Rules do not call for any action against goods of non-commercial nature contained in personal baggage, sent in small consignments intended for personal use of the importer, or goods in transit.[386] The authorities noted that, in 2008/09, there were 23 instances of imports confiscated because of IPR infringement. In 2009/10 the number of cases increased to 56.

300. India has made important efforts in the field of enforcement, such as having specially trained IP judges in general courts, training judges on issues specific to IP litigation, and increased efforts by Indian customs officials to stop infringing goods from entering the country. In addition to the Government's efforts to enforce IPR, industries in India have become more proactive. The Ministry of Information and Broadcasting set up a Committee on Piracy, and IPR holders have created

[383] De Ranbaxy (2010).

[384] The NIIPM is a central government organization under the Ministry of Commerce and Industry engaged in conducting training and awareness programmes relating to IPRs (National Institute for Intellectual Property Management online information. Viewed at: http://www.patentoffice.nic.in/niipm/index.htm; and Department of Industrial Policy and Promotion, 2009b).

[385] Customs (non-tariff) Notification No. 47/2007, 8 May 2007.

[386] Intellectual Property Rights (Imported Goods) Enforcement Rules 2007.

associations and IPR committees to generate awareness on issues relating to counterfeit, fake, and spurious products. For example, the music and film industry, through the Film Federation of India, Motion Picture Association, and Indian Music Industry Association, cooperates and collaborates with the police in the design and implementation of anti-piracy programmes. To support the efforts of the industry, the state governments of Andhra Pradesh, Kerala, Maharashtra, and Tamil Nadu, where the film and music industry is prominent, have introduced legislation which stipulating that video piracy is an offence. The aim is that with enhanced coordination of the industry, enforcement will continue to improve.