INDIA

TRADE SUMMARY

The U.S. goods trade deficit with India was $23.8 billion in 2020, a 1.7 percent increase ($389 million) over 2019. U.S. goods exports to India were $27.4 billion, down 20.1 percent ($6.9 billion) from the previous year. Corresponding U.S. imports from India were $51.2 billion, down 11.3 percent. India was the United States' 12th largest goods export market in 2020.

U.S. exports of services to India were an estimated $24.3 billion in 2019 and U.S. imports were $29.7 billion. Sales of services in India by majority U.S.-owned affiliates were $33.1 billion in 2018 (latest data available), while sales of services in the United States by majority India-owned firms were $18.3 billion.

U.S. foreign direct investment in India (stock) was $45.9 billion in 2019, a 8.1 percent increase from 2018. U.S. direct investment in India is led by professional, scientific, and technical services, manufacturing, and wholesale trade.

TRADE AGREEMENTS

The United States–India Trade Policy Forum

The United States and India launched the Trade Policy Forum (TPF) in July 2005, and signed an agreement in March 2010 that formally established the TPF as the primary mechanism for discussions of trade and investment issues between the United States and India.

IMPORT POLICIES

The United States has actively sought bilateral and multilateral opportunities to increase access to India's market. Nevertheless, U.S. exporters continue to encounter significant tariff and non-tariff barriers that impede imports of U.S. products into India. While the Indian Government has pursued ongoing economic reform efforts, it also continues to promote programs such as "Make in India" that favor domestic production over importation. Additionally, in May 2020, Prime Minister Narendra Modi announced the "Self-Reliant India" (*Atmanirbhar Bharat*) initiative to increase self-sufficiency by promoting domestic industry and reducing reliance on foreign suppliers.

Tariffs and Taxes

Tariffs

India's average Most-Favored-Nation (MFN) applied tariff rate was 17.6 percent in 2019 (latest data available). India's average MFN applied tariff rate was 38.8 percent for agricultural products and 14.1 percent for non-agricultural products in 2019 (latest data available). India has bound 74.3 percent of its tariff lines in the World Trade Organization (WTO), with an average WTO bound tariff rate of 50.8 percent.

In addition to tariffs, India, in 2018, implemented a 10 percent social welfare surcharge on imports, except certain products exempted pursuant to an official customs notification. India assesses the surcharge on the value of other duties (not on the customs value of the imported product), which reduces the levied value. A landing fee of one percent is included in the valuation of all imported products unless exempted through separate notification.

India's average MFN applied tariff rate of 17.6 percent remains the highest of any major world economy. Since 2014, the Indian Government led by Prime Minister Narendra Modi has promoted the "Make in India" campaign, a drive to build the country's manufacturing capacity in part by cutting barriers to foreign investment and introducing regulatory reforms. As part of the campaign, India has raised duties on two broad groups of products to encourage domestic production: (1) an assortment of labor-intensive products; and, (2) electronics and communication devices, including mobile phones, televisions, and associated parts and components.

India's tariff regime is also characterized by large disparities between WTO bound rates and MFN applied rates. India's WTO bound tariff rate averaged 50.8 percent, while its applied MFN tariff for 2019 averaged 17.6 percent. India's bound tariff rates on agricultural products are among the highest in the world, averaging 113.1 percent and ranging as high as 300 percent. Applied agricultural tariff rates are also high, averaging 38.8 percent. While India's applied tariff rates for certain agricultural products are lower, the rates still present a significant barrier to trade in agricultural goods and processed foods (*e.g.*, poultry, potatoes, citrus, almonds, apples, grapes, canned peaches, chocolate, cookies, frozen French fries and other prepared foods used in quick-service restaurants). In addition, while India has bound all agricultural tariff lines in the WTO, nearly 30 percent of India's non-agricultural tariffs remain unbound.

Given this large disparity between WTO bound and applied rates, India has considerable flexibility to change tariff rates at any time, creating tremendous uncertainty for U.S. exporters. The Indian Government took advantage of this tariff flexibility in both the 2019/2020 and 2020/2021 budgets, when it increased tariffs in each budget on approximately 70 product categories, including key U.S. exports in the agricultural, information and communications technology, medical device, paper products, chemicals, and automotive parts sectors, with no warning or public consultation process. Prior to tariff increases beginning in 2014, certain information and communication technologies were imported duty-free, including telecommunications equipment such as smartphones and related parts as well as network switches.

In June 2019, following the U.S. withdrawal of India's preferential tariff benefits under the Generalized System of Preferences (GSP) program, India implemented retaliatory tariffs, ranging from 1.7 percent to 20 percent on 28 different products imported from the United States, including: almonds, apples, walnuts, chickpeas, lentils, phosphoric acid, boric acid, diagnostic regents, binders for foundry molds, select steel and aluminum items, and threaded nuts. While the decision to implement these tariffs followed the U.S. action related to GSP, India had originally announced the intention to adopt the tariffs in June 2018 in retaliation against the U.S. decision to adjust U.S. imports of steel and aluminum articles under Section 232 of the Trade Expansion Act of 1962, as amended. The United States has urged India to work to address the common problem of excess capacity in the global steel and aluminum sectors, rather than engaging in unjustified retaliation designed to punish American workers and companies. On July 3, 2019, the United States launched a WTO dispute settlement proceeding against India, challenging India's retaliatory tariffs. A WTO panel was established in October 2019, and the panel proceeding is ongoing.

India maintains high applied tariffs on a wide range of goods, including: vegetable oils (as high as 45 percent); apples, corn, and motorcycles (50 percent); automobiles and flowers (60 percent); natural rubber (70 percent); coffee, raisins, and walnuts (100 percent); and, alcoholic beverages (150 percent). India also operates a number of complicated duty drawback, duty exemption, and duty remission schemes for imports. In addition, India maintains very high basic customs duties, in some cases exceeding 20 percent, on drug formulations, including life-saving drugs and finished medicines listed on the World Health Organization's list of essential medicines.

Taxes

Prior to the introduction of the Goods and Services Tax (GST) system in July 2017, India maintained a complex and opaque system of taxes, excise duties, and other charges. Imports were subject to state-level value-added or sales taxes, the Central Sales Tax, and various local taxes and charges. The GST simplified the tax regime by unifying India into a single market and improving the ease of doing business. The GST is made up of three main taxes: the Central GST is a fee collected by the central government for sales in all states; the State GST is a fee collected by each state for sales within a state; and the Integrated GST (IGST) is a fee collected by the central government for sales between states and on imported goods. IGST on imports is assessed on the sum of the customs value of the goods and the customs duties assessed on those goods, thereby amplifying the effect of customs tariff rate increases.

Under the new system, goods and services are taxed under four basic rates: 5 percent, 12 percent, 18 percent, and 28 percent. Some items such as bread, fresh fruits and vegetables, and certain dairy products have been exempted from the GST, but are subject to certain preexisting taxes. While implementation challenges remain, India's GST council meets regularly to adjust GST rates and provide clarifications and revisions to GST policy.

Non-Tariff Barriers

India maintains various forms of non-tariff regulations on three categories of products: banned or prohibited items, which are denied entry into India (*e.g*., tallow, fat, and oils of animal origin); restricted items that require an import license (*e.g*., livestock products and certain chemicals); and, "canalized" items (*e.g.,* some pharmaceuticals and corn under a tariff-rate quota) importable only by government trading monopolies and subject to cabinet approval regarding import timing and quantity.

While the official website of the Directorate General of Foreign Trade (DGFT) under the Ministry of Commerce and Industry (MOCI) maintains a list of restricted items, India often fails to observe other transparency requirements, such as publication of timing and quantity restrictions in the *Gazette of India* and notification to relevant WTO committees.

Import Restrictions

India subjects boric acid imports to stringent restrictions, including arbitrary import quantity approval restrictions and other requirements that only apply to imports, and long periods of time sometimes pass without the issuance of any import licenses. A certificate from the Central Excise Authority and No Objection Certificates (NOCs) from the relevant government ministry are required before an application for an import permit can be submitted to the Ministry of Agriculture and Farmers Welfare's (MAFW) Central Insecticides Board and Registration Committee (CIBRC). In order to receive a certificate from the Central Excise Authority, importers of boric acid for non-insecticidal use must identify end-users of the product, which is often not possible in advance of a shipment. The import permit application requires the applicant to verify that the imported non-insecticidal boric acid is not for resale, which prevents independent traders from importing boric acid and limits imports to those directly by a manufacturer. In addition, importers must provide confirmation of the last three years of the company's purchases of boric acid, separated out by the quantity imported and procured locally in India, as well as data on the total output of the finished product that utilized the boric acid for the previous three to five years. Once a Central Excise Authority certificate is received, the relevant government ministry must provide a NOC for a recommended quantity to the CIBRC. Meanwhile, domestic producers continue to be able to sell boric acid for non-insecticidal use, subject only to a requirement to maintain records showing they are not selling to end users who will use the product as an insecticide. India has cited state-level court cases in Kerala and Gujarat endorsing the legal rationale for applying the restriction to boric acid imports.

In addition, in August 2017, the Indian Government announced quantitative restrictions on all pesticides and insecticides. While India later rescinded the restrictions because of its inability to deploy the relevant software to support the action, uncertainty remains regarding the future implementation of these restrictions. The United States has urged India to eliminate its import licensing requirements in this sector in meetings of the WTO Committee on Import Licensing and through the TPF.

In order to manage domestic oversupply, the Indian Government began imposing restrictions on imports of various pulses in 2017. In August 2017, India imposed import quotas on pigeon peas, black matpe beans (Urd or Vigna radiate), mung beans (Moong or Vigna mungo), and moong and urad lentils. In April 2018, the Indian Government extended these quantitative restrictions to include peas. India's MOCI again notified quantitative restrictions for the Indian fiscal year 2020/2021 of 150,000 metric tons (MT) for peas and mung beans as well as 400,000 MT for black matpe and pigeon peas. Imports of peas are restricted to the port of Kolkata and are subject to a minimum import price.

Import Licensing

India distinguishes between goods that are new, and those that are secondhand, remanufactured, refurbished, or reconditioned, when assessing whether licenses are required. India allows imports of secondhand capital goods by the end users without an import license, provided the goods have a residual life of five years. India requires import licenses for all remanufactured goods because India does not recognize that remanufactured goods have typically been restored to original working condition and meet the technical and safety specifications applied to products made from new materials. Therefore, U.S. stakeholders report that obtaining an import license for remanufactured goods has been onerous. Problems that stakeholders report include excessive details required in the license application, quantity limitations set on specific part numbers, and long delays between application and grant of the license. A Chartered Engineer's Certificate is also required to import both refurbished and used manufactured goods. Used items must be no more than five years old, while refurbished items must be no more than seven years old and have a remaining life span of at least five years.

Customs Barriers and Trade Facilitation

In addition to being announced with the annual budget, India's tariff rates are modified on an *ad hoc* basis through notifications in the *Gazette of India* and are subject to numerous exemptions that vary according to the product, user, intended use, or specific export promotion program, rendering India's customs system complex to decipher and open to administrative discretion.

U.S. exporters have raised concerns regarding India's application of customs valuation criteria to import transactions. Indian customs officials may reject the declared transaction value of an import if it is deemed to be lower than the ordinary competitive price, potentially raising the cost of exporting to India beyond the cost of applied tariff rates. U.S. companies have also faced extensive investigations related to their use of certain valuation methodologies when importing computer equipment. Companies have also reported being subject to excessive searches and seizures of imports.

Through Notification No. 91/2017-Customs (N.T.) dated September 26, 2017, India amended Rule 10(2) of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007, to allow for the actual cost of transportation and insurance to be included when determining the customs value of imported products. However, India continues to allow for the use of costs that appear fictitious in cases where the actual cost of transportation or insurance is not ascertainable. For example, if Indian customs officials determine they cannot ascertain transportation costs, a cost of a 20 percent Free On Board (FOB) value will be used as the cost of transportation in determining the total customs value of the imported product for the purpose of assessing tariffs. The United States continues to raise questions about these practices in the WTO Committee on Customs Valuation.

India's customs authority generally requires extensive clearance documentation, which leads to frequent and lengthy processing delays. India's complex tariff structure—including the provision of multiple exemptions that vary according to product, user, or intended use—also creates uncertainty and contributes to delays in customs approvals.

Medical Device Price Controls

As of April 1, 2020, India requires all medical devices to be registered and regulated as "drugs" under the provisions of the Drugs (Prices Control) Order, 2013. Four devices—cardiac stents, drug eluting stents, condoms, and intra-uterine devices—continue to be included in the National List of Essential Medicines, which provides India's Department of Pharmaceuticals and National Pharmaceutical Pricing Authority (NPPA) the authority to implement price ceilings.

In February 2017, NPPA issued an order to cap prices of coronary stents. Subsequently, knee implants were brought under price control under paragraph 19 of the Drugs (Prices Control) Order 2013 (DPCO) in August 2017. In August 2019, NPPA moved knee implants to price monitoring under paragraph 20 of the DPCO, allowing for a 10 percent price increase. However, NPPA reinstated the ceiling price on knee implants under paragraph 19 of the DPCO on September 15, 2020. The remaining medical devices are under no price regulation. U.S. companies have raised concerns regarding these actions because price controls for cardiac stents and knee implants do not differentiate on the basis of technological innovation and limit U.S. companies' access to the Indian market.

Ethanol Import Restrictions

India prohibits the import of ethanol for fuel use. In August 2018, the DGFT amended the import policy through Notification 27/2015-2020 and restricted biofuel imports (HS 2207.20, HS 2710.20, and HS 3826) for non-fuel use to actual users. In May 2019, MOCI Notification 6/2015-2020 prohibited imports of biofuels (HS 2207.20, HS 2710.20, and HS 3826) without an import license. The new regulation also requires that Indian importers obtain an import license from DGFT to import ethanol for non-fuel purposes.

In June 2018, the Indian Government released the National Policy on Biofuels 2018, in which it set a target of 20 percent blending of ethanol with gasoline and a target of five percent blending with biodiesel by 2030. In 2020, the average ethanol blending rate in gasoline was expected to reach 5.2 percent, up from 4.5 percent in 2019.

TECHNICAL BARRIERS TO TRADE / SANITARY AND PHYTOSANITARY BARRIERS

The United States has discussed technical barriers to trade (TBT) and sanitary and phytosanitary (SPS) issues with India in bilateral meetings and during the WTO Committee on SPS Measures (WTO SPS Committee) and WTO Committee on TBT (WTO TBT Committee) meetings, as well as on the margins of those committee meetings.

Technical Barriers to Trade

Toys – Quality Control Order

On January 30, 2020, India notified the "Toys (Quality Control) Order, 2019" (QCO) to the WTO (IND/131). On February 27, 2020 the Gazette of India published the Ministry of Commerce and Industry's

Order noting a September 1, 2020 implementation date. The six-month transition period did not provide enough time for U.S. manufacturers to meet the QCO requirements given the disruptions in global trade and manufacturing due to the COVID-19 pandemic. The QCO requires toys to conform to Indian Standard (IS) 9873 (based on the ISO toy standard) and IS 15644 and bear the Standard Mark under a license from the Bureau of Indian Standards (BIS), among other requirements including factory audits and numerous new fees. At the February, May, and October 2020 WTO TBT Committee meetings, the U.S. Government raised concerns regarding the QCO. On September 16, India published an Order in the Gazette which postponed the implementation of the Toy QCO from September 1, 2020 to January 1, 2021. In January 2021, U.S. industry reported that foreign manufacturers continue to lack certification because pandemic-related travel restrictions have prevented Indian officials from conducting factory audits. Until India provides a solution to the requirement for foreign manufacturing audits, US toy manufacturers are unable to comply with the QCO and therefore cannot export toys to India.

Cosmetics – Registration Requirements

In November 2018, India's Ministry of Health and Family Welfare invited comments on a new draft of the Cosmetics Rules. U.S. stakeholders provided comments encouraging a risk-based regulatory framework without unnecessary pre-approval requirements, which aligns with international standards and industry best practices, with a reasonable timeframe for implementation.

In December 2018, India increased registration fees for importers of cosmetics. As a result, the registration fee is $2,000 for each cosmetic brand. India also added a new $50 fee for each product variant. U.S. companies have raised concerns that these fees disadvantage imported products by raising costs.

Separately, India banned imports of animal-tested cosmetics in February 2015, as a result of Rule 135-B of the Drug and Cosmetics (Fifth Amendment) Rules, 2014, announced through the Central Drugs Standard Control Organization (Office of Drugs Controller General India) Circular. India, in May 2014, had banned domestic cosmetic testing on animals through a Ministry of Health and Family Welfare notification in the *Gazette of India*, dated May 21, 2014. U.S. exporters have reported difficulties proving that their cosmetics products comply with the animal testing ban and have yet to receive guidelines from the Indian Government on how to do so.

Verification of U.S. Country of Origin Certificates

On July 1, 2020, the Food and Safety Standards Authority of India (FSSAI) placed temporary holds on consignments of a wide range of U.S. food and agricultural products, including almonds and apples, questioning the validity of the Country of Origin (COO) certificates accompanying those products. If FSSAI formally implements a policy that does not accept COO certificates from U.S. chambers of commerce or does not recognize documents issued by freight forwarders and shippers, a significant portion of U.S. agricultural exports could be prevented from entering the Indian market.

Labeling Requirements

On October 2, 2020, FSSAI notified to the WTO an amendment to the Food Safety and Standards (Packaging and Labeling) Regulations, 2011, which modifies labeling requirements for packaged foods containing sweeteners. The amendment requires warning labels for various kinds of sweeteners stating "Not recommended for children, pregnant and lactating mothers," and "Contains non-caloric sweetener and for calorie conscious." The United States submitted comments to India's WTO TBT Enquiry Point on the amendment and continues to monitor India's plans for finalizing changes to the amendment.

In July 2019, the FSSAI notified to the WTO a revised version of its 2018 Labelling and Display Regulation, requiring mandatory front-of-pack nutrition labeling of added sugar and saturated fat, and requiring red colored nutrient labels stating "High in Fat, Sugar and Salt" based on thresholds established by the Indian Government. The 2019 amendment also introduced a warning statement requirement for alcoholic beverages to state that "consumption of alcohol is injurious to health." The United States submitted comments to India's WTO TBT Enquiry Point on the proposed changes in September 2019 and raised concerns at the November 2019 and February 2020 TBT Committee meetings. India is currently considering further revisions to its regulation. The United States will continue monitoring this issue and engage as appropriate.

Food Safety Standards (Alcoholic Beverages) Amendment Regulations, 2019

In July 2019, FSSAI published its Food Safety Standards (Alcoholic Beverages) Amendment Regulations, 2019, and notified to the WTO. The 2019 amendment revised FSSAI's 2018 mandatory alcoholic beverage standards, which entered into force in April 2019. The United States submitted comments to India's WTO TBT Enquiry Point on the proposed changes in September 2019. In June 2020, FSSAI issued a directive to operationalize certain provisions of the standards, including the addition of non-alcoholic beer as a separate product category and permitting the use of new colors and additives in distilled spirituous beverages. FSSAI has not clarified the timeline for enforcement of its amended regulations. While FSSAI addressed several of the issues that the United States had raised with India in response to its review of previous versions of the regulation, several concerns remain, including: (1) the establishment of analytical parameters for a range of naturally occurring components in distilled spirits; (2) minimum and maximum requirements for ethyl alcohol; and, (3) lack of explicit protection for Bourbon and Tennessee Whiskey as distinctive products of the United States.

Rejection of USDA Certified Organic Consignments

Between August and September 2020, FSSAI detained at least two U.S. organic shipments at port, asserting the shipments could not be marketed as organic in India without an equivalency agreement between the Agricultural and Processed Food Products Export Development Authority (APEDA) and the U.S. Department of Agriculture (USDA) National Organic Program (NOP).

Livestock Genetics

The Department of Animal Husbandry, Dairying, and Fisheries (DAHDF) of the MAFW imposes restrictions on imports of livestock genetics and establishes quality standards. The entire procedure for obtaining import permission generally takes four months or longer. Importation of animal genetics requires a NOC from the state government, import permission from the DGFT, and an import permit from the DAHDF. However, domestic producers of animal genetics are not required to obtain a NOC.

Dairy Products

India imposes onerous requirements on dairy imports. India continues to insist that dairy products intended for food be derived from animals that have never consumed any feeds containing internal organs, blood meal, or tissues of ruminant origin, and that exporting countries certify to these conditions. India has explained that its position is based on religious and cultural grounds. This requirement, along with high tariff rates, continues to prevent market access for U.S. milk and dairy product exports to India, one of the largest dairy markets in the world. In order to address India's religious and cultural concerns, in 2015 and again in 2018, the United States proposed labeling solutions to allow for consumer choice between dairy products derived from animals that have consumed feeds with ruminant protein and those derived from animals that have not consumed such feeds. India rejected the proposals. The United States continues to press the Indian Government to provide greater access to the Indian dairy market.

Security and Safety Testing Requirements for Equipment

In September 2017, India's Ministry of Communications, Department of Telecommunications published the Indian Telegraph (Amendment) Rules, 2017, which require all telegraph equipment to undergo mandatory testing and certification. Under these rules, in 2019 India implemented the Mandatory Testing and Certification for Telecom Equipment procedures, which require local security testing for telecommunication products. It is still unclear whether India has sufficient lab capacity to fully implement the testing criteria. U.S. industry remains concerned with the in-country testing requirements and lack of clarity over the measure's scope. U.S. officials, bilaterally under the TPF and in the WTO TBT Committee, continue to urge India to reconsider the domestic testing policy and to adopt the use of the Common Criteria Recognition Arrangement, to which India is a signatory.

Since 2012, the United States has been raising the concerns of U.S. electronics and information and communications technology manufacturers regarding the Ministry of Electronics and Information Technology's (MEITY) Compulsory Registration Order (CRO). The CRO prescribes safety standards and in-country testing requirements for electronic and information and communications technology goods. The policy, which entered into force in January 2014, mandates that manufacturers register their products and have them certified by laboratories accredited by the Bureau of Indian Standards, even if the products have already been certified by accredited international laboratories. In 2017, the coverage of the CRO increased to 44 product categories. In 2020, the coverage of the CRO was again expanded to include 12 additional product categories, though India has delayed implementation of this expansion till April 2021. U.S. industry reports that MEITY plans to continue to expand the CRO coverage. U.S. stakeholders have raised concerns regarding delays in product registration due to the lack of government testing capacity, a cumbersome registration process, canceled registrations for administrative reasons unrelated to safety, and additional compliance costs that can exceed tens of millions of dollars, including costs associated with factory-level and component-level testing.

The domestic testing requirement is particularly burdensome for Highly Specialized Equipment (HSE), including servers, storage, printing machines, and information and communications technology (ICT) products that are installed, operated, and maintained by professionals who are trained to manage the product's inherent safety risks. These products pose little risk to the general public or consumers. U.S. companies have incurred significant expenses providing testing samples within limited time frames. The samples are also often destroyed during the safety testing process in Indian laboratories. Indian laboratories have also indicated that they do not have the capacity to test some products that require industrial power supply, exceed household or office voltage, or are very large in size and weight. Moreover, U.S. exporters are forced to leave their products in these laboratories for extended and undefined periods of time. To avoid unnecessary and overly burdensome requirements, the United States has recommended to the Government of India that it should exclude HSE from the scope of the requirements, recognize internationally accredited labs, harmonize labeling requirements with global practices, harmonize the validity period of test reports and certification, and eliminate re-testing requirements. The United States raised this issue bilaterally, including during technical exchanges under the TPF, and multilaterally in the WTO TBT Committee in 2019 and 2020.

Sanitary and Phytosanitary Barriers

The United States has raised concerns about India's SPS-related trade restrictions in bilateral and multilateral fora, including the TPF, the WTO SPS Committee, and the Codex Alimentarius Commission. The United States will continue to make use of all available fora with a view to securing the entry of U.S.

pork and other agricultural products, including alfalfa hay, cherries, strawberries, shrimp feed, and pet food, among others, into the Indian market.

Food – Product Testing

On April 1, 2016, the Indian Central Board of Indirect Taxes and Customs (CBIC) launched its Single Window Interface for Facilitating Trade (SWIFT) system. This is an initiative by the Indian Government to streamline clearances for inbound consignments and to improve the ease of doing business. Along with SWIFT, the CBIC also introduced an Integrated Risk Management facility for partner government agencies. The facility is designed to ensure that consignments are selected for testing based on the principle of risk management – ensuring that that foods that present actual food safety risks are tested while goods that pose little to no risk can avoid becoming subject to unnecessary procedures by inspection agencies. In the modified Food Import Regulations, published September 2, 2016, FSSAI stated that samples would be drawn randomly based on the risk factor and compliance history of the importer identified by the newly introduced SWIFT system software. Indian officials have noted that they are actively working to develop and implement a risk-based inspection system.

FSSAI Order on Non-Genetically Modified (Non-GM) and GM-Free Certificates

On August 21, 2020, the FSSAI released an order requiring a non-GM origin and "GM free" certificate from the competent authority in the exporting country to be included with imported food shipments that contain any of 24 listed products, effective March 1, 2021. India has not provided any scientific or risk-based justification for the requirement. According to FSSAI, the order is to ensure that only non-GM products are imported, pending new testing protocols and forthcoming regulations in genetically engineered (GE) food products. U.S. apples—exports of which to India were valued at $57 million in 2019—will be the primary export that is immediately affected by the restriction, facing a de facto ban. On September 2, 2020, India notified the order to the WTO TBT Committee. The United States and several other countries have pressed India to rescind the requirement in comments submitted through India's TBT Enquiry Point and on the floor of the October 2020 WTO TBT Committee meeting and the November 2020 WTO SPS Committee meeting. The United States will continue to engage the Government of India, including FSSAI, on the order.

Foods Derived from Biotechnology Crops

Biotechnology products must be approved by the Genetic Engineering Appraisal Committee (GEAC) before importation or domestic cultivation. The Food Safety and Standards Act of 2006 includes specific provisions for regulating food products derived from GE products. However, the FSSAI began drafting the regulations in 2018, and it may take several years to implement the regulations on GE foods. India's biotechnology approval processes are also slow, opaque, subject to political influences, and for the last several years, essentially non-functional. For example, GEAC's recent progress toward approving a public sector, domestically developed GE mustard plant variety for commercial cultivation, was further delayed pending additional government review. The Indian Government has yet to decide whether to allow its sale. Consequently, soybean oil and canola oil derived from GE soybeans and canola remain the only biotechnology food or agricultural products currently approved for import into the Indian market, and biotechnology cotton is the only biotechnology crop approved for commercial cultivation in India. The slow and uncertain approval process continues to hamper product registrations needed to facilitate trade in biotechnology products. Without enhanced capacity for science-based decision making, India's acceptance and approval of additional agricultural biotechnology products will remain limited. In addition, India's labeling requirements for packages containing GE foods remains unclear.

Pork

In November 2015, India released a revised universal veterinary health certificate for import of pork and pork products detailing requirements for processing facilities, veterinary drug residues, and animal disease restrictions. Access to the Indian market for U.S. pork and pork products is currently restricted because India's DAHDF and the USDA do not have a bilaterally agreed upon export certificate or protocol for importing U.S. pork and pork products into India. The United States continues to work with the Indian Government to resolve the issue.

Poultry

In 2012, the United States commenced WTO dispute settlement proceedings against India due to India maintaining import prohibitions on various agricultural products, including poultry and poultry products, from the United States, ostensibly due to concerns regarding avian influenza. In 2014, the WTO panel issued its report finding in favor of the United States. The Appellate Body affirmed these findings, concluding that India's restrictions: (1) are not based on international standards or a risk assessment that takes into account available scientific evidence; (2) arbitrarily discriminate against U.S. products; (3) are more trade restrictive than necessary; and, (4) fail to recognize the concept of disease-free areas and are not adapted to the characteristics of the areas from which products originate and to which they are destined. In 2016, the United States requested authorization from the WTO Dispute Settlement Body (DSB) to suspend concessions or other obligations on the grounds that India had failed to comply with the DSB recommendations within the "reasonable period of time" to which the parties agreed. The U.S. request was referred to arbitration. In April 2017, India requested the establishment of a compliance panel, asserting that it had enacted a revised avian influenza measure that complied with India's WTO obligations. The proceedings are ongoing.

In March 2018, the United States and India agreed to veterinary export certificates for the shipment to India of U.S. poultry and poultry products. In 2019 and 2020, the United States and India on several occasions postponed both the issuance of the arbitrator's decision on the level of suspension of concessions and the remaining steps in the compliance panel proceeding, while the parties discussed potential resolution of the dispute. The United States continues to monitor market access issues related to poultry, such as unnecessary testing requirements.

Distillers' Dried Grains with Solubles

India's regulatory requirements on distiller's dried grains with solubles (DDGS) remain unclear. During the past few years, GEAC has received 11 applications from Indian importers to import U.S. DDGS. Local feed companies, along with the U.S. Government, continue to advocate that DDGS be exempted from further regulatory requirements, noting that DDGS are a processed product that are not living, and therefore pose no risk to the environment. In July 2018, the GEAC formed the Sub Committee on Guidelines for Imports of Animal Feed (SCGIAF) to establish procedures for applications related to the imports of animal feeds, including DDGS and soybean meal. The Sub Committee submitted recommendations for comment and approval to the GEAC in November 2019. To date, GEAC has not officially confirmed that it will not regulate DDGS as living modified organisms.

In addition, unclear jurisdiction for the approval process for DDGS continues to complicate the process. For example, in December 2019, FSSAI published Direction 1-95, announcing new requirements for commercial animal feeds and feed materials that are manufactured, imported, or distributed in India. Prior to the publication of Direction 1-95, however, FSSAI had not regulated the manufacture, import, or distribution of either commercial animal feeds or feed ingredients in India.

Plant Health Issues

India maintains zero-tolerance standards for certain plant quarantine pests, such as weed seeds and ergot, that do not appear to be based on risk assessments and result in blocked U.S. grain and pulse imports. Bilateral discussions to resolve these issues, including at the senior official level, have achieved little success to date.

India, without prior notification, changed its inspection policy and practices for weed seeds, resulting in a rejection of a U.S. lentil shipment on October 18, 2019, for the presence of two weed seeds that were not previously on India's published quarantine pest list of 31 weed seeds. On October 25, 2019, India published in the *Gazette of India* an updated quarantine pest list that included an additional 26 quarantine weed seeds, bringing the total number of quarantined pests to 57. Although the shipments were eventually released, this change held up over 200 U.S. containers of lentils at the ports of Chennai and Tuticorn.

India's requirement of methyl bromide (MB) fumigation at the port of origin as a condition for the import of pulses is not feasible in the United States. In August 2004, the United States requested India to permit entry of U.S. peas and pulses subject to inspection and fumigation at the port of arrival. India has granted a series of extensions allowing MB fumigation on arrival, but has offered no permanent solution. In April 2018, India's MAFW confirmed the extension of the fumigation-upon-arrival waiver for U.S. peas and pulses, including chickpeas indefinitely until both parties come to an agreement on the U.S. systems-based approach.

SUBSIDIES

Export Subsidies

India's Foreign Trade Policy (FTP) 2015-2020, announced in April 2015, is primarily focused on increasing India's exports of goods and services to raise India's share of world exports from 2 percent to 3.5 percent. The FTP consolidated many of India's existing export subsidies and other incentives into two main export incentive schemes: the Merchandise Exports from India Scheme (MEIS), and the Service Exports Incentive Scheme (SEIS). Under MEIS, exports of notified goods and products to notified markets as listed in Appendix 3B of the Handbook of Procedures, are granted freely transferable duty credit scrips on realized FOB value of exports in free foreign exchange at specified rates. These range from 2 percent to 5 percent, with temporary increases as high as 20 percent. MEIS provides export subsidies for a wide range of agriculture and other goods, including certain dairy products which also receive export subsidy support through state governments. Service suppliers of notified services as per Appendix 3E are eligible for freely transferable duty credit scrip at five percent of net foreign exchange earned. In addition, there are various other duty exemption and remission schemes, such as the Advanced Authorization Scheme, the Duty Free Import Authorization Scheme, the Deemed Exports Scheme, the Export Promotion Capital Goods (EPCG) Scheme, and the Export Oriented Unit (EOU) Scheme (which includes the Electronics Hardware Technology Park Scheme, Software Technology Park Scheme, and Bio-Technology Park Scheme).

India also maintains several export subsidy programs, including exemptions from taxes, for certain export-oriented enterprises and for exporters in special economic zones. Numerous sectors (*e.g.*, textiles and apparel, steel, paper, rubber, toys, leather goods, wood products) receive various forms of subsidies, including exemptions from customs duties and internal taxes. India not only continues to offer subsidies to its textiles and apparel sector in order to promote exports, but has also extended or expanded such programs and even implemented new export subsidy programs. As a result, the Indian textiles sector remains a beneficiary of many export promotion measures. In July 2016, India announced subsidies intended to encourage employment generation in the garment sector, in addition to providing refunds for state levies.

Upon graduation from Annex VII(b) of the WTO Agreement on Subsidies and Countervailing Measures (SCM Agreement) in 2017, India was required to eliminate all export subsidies. In 2018, the United States commenced WTO dispute settlement proceedings against India concerning India's continued export subsidy schemes. On October 31, 2019, the panel found that five Indian export subsidy programs provide prohibited subsidies that are inconsistent with India's WTO obligations. The Indian programs found to be inconsistent are the MEIS, the EOU scheme, the Special Economic Zones scheme, the EPCG scheme, and a duty-free imports for exporters program. India appealed the panel report in November 2019.

India has begun to phase out the MEIS program, under which reportedly no new benefits could be claimed starting January 1, 2021. The MEIS program is being replaced with the Remission of Duties and Taxes on Export Product (RoDTEP) program, for which India has not published implementing measures as of the date of this report but has stated that benefits would be available for exports made on or after January 1, 2021. RoDTEP is modeled after the Rebate on State and Local Taxes and Levies (RoSCTL) scheme, which is currently operated by the Ministry of Textiles and is limited to apparel sector exports. Like MEIS, RoDTEP benefits are expected to be available for a broad range of products; in fact, press reports suggest that RoDTEP will surpass MEIS in terms of revenue forgone by India.

India also maintains a large and complex series of programs that form the basis of its public food stockholding program. India maintains stocks of food grains not only for distribution to poor and needy consumers, but also to stabilize prices through open market sales. India uses export subsidies to reduce stocks, and it has permitted exports of certain agricultural commodities from government public-stockholding reserves at below the government's costs. For example, India authorized the exportation of 6.5 million metric tons of wheat from government-held stocks during August 2012 to May 2014 at varying minimum export prices significantly below the government's acquisition cost of $306 per ton, plus storage, handling, inland transportation cost, and other charges for exports. In February 2014, the Indian Cabinet Committee on Economic Affairs made four million metric tons (MMT) of raw sugar eligible to receive export subsidies under a new, two-year subsidy program, which lapsed in September 2015. The United States, along with other interested WTO Member countries, has raised this issue in the WTO Committee on Agriculture. Later in September 2015, the Indian Government introduced the Minimum Indicative Export Quota (MIEQ) program to sell four MMT of sugar, which ran through June 2016. In March 2018, the Indian Government re-introduced the MIEQ program to sell two MMT of sugar through September 2018. However, citing poor export sales, the program was extended by three months to December 2018 to meet the two MMT target.

Anticipating rising arrears for cane sugar mills and a large sugar stock, in August 2019, the Indian Cabinet Committee on Economic Affairs approved another sugar export subsidy of 10,448 Indian rupees (approximately $149 per MT) for sugar mills during marketing year 2019/2020. The total expenditure for this program is expected to be approximately $876.7 million. The subsidy is provided to cover marketing expenses and both internal and international freight charges. The Maximum Admissible Export Quantity allocated to sugar mills for this program is six MMT. The subsidy is paid directly to the farmers on behalf of the mills against payments that are due, and any remaining balance would be paid to the mills.

Agriculture Subsidies

India provides a broad range of assistance to its large agricultural sector, including credit subsidies, debt waivers, crop insurance, and subsidies for inputs (such as fertilizer, fuel, electricity, and seeds) at both the central government and state government levels. These subsidies, which are of substantial cost to the government, lower the cost of production for India's producers and have the potential to distort the market in which imported products compete. In addition, producers of 25 agricultural products benefit from the government's Minimum Support Price (MSP) scheme, which helps ensure that farmers receive minimum prices. Rice and wheat account for the largest share of products procured by the Indian Government and distributed through India's public distribution system. However, in crop year 2019/2020, the Indian Government purchased 1.8 million metric tons (10.51 million 170 kg bales) of cotton through announced MSP operations, at a cost of nearly $3.2 billion. India's announcement of these MSPs can have the effect of providing a subsidy to the entire crop and distorting market prices and planting decisions. In addition, in certain years and for specific products, states have provided additional incentives in the form of "bonuses" above the MSPs announced by the central government. Moreover, in certain years, some of the subsidized crop procured under MSP operations has been exported through private sector merchants and traders. Such high guaranteed MSPs and extensive government procurement can distort domestic market prices and incentivize overproduction, which restricts demand for imports and distorts international markets.

In May 2018, the United States submitted the first-ever counter-notification (CN) to the WTO Committee on Agriculture highlighting, based on publicly available information, India's underreporting of its market price support (MPS) for rice and wheat for marketing years 2010/2011 to 2013/2014. The CN estimated MPS well above India's *de minimis* WTO commitment of 10 percent of the total value of production. Subsequently, in November 2018, the United States submitted a CN on India's MPS for cotton covering marketing years 2010/2011 to 2016/2017, estimating MPS for cotton in various years ranging between 53 and 81 percent – well above India's WTO commitment of 10 percent of the total value of production. In addition, later in November 2018, Australia submitted a CN on India's MPS for sugarcane covering marketing years 2011/2012 to 2016/2017. Australia's CN estimates that India's MPS for sugarcane ranged from 78 percent to 100 percent, without taking into account substantial state-level support administered by several states.

GOVERNMENT PROCUREMENT

India lacks an overarching government procurement policy and, as a result, its government procurement practices and procedures vary among the states, between the states and the central government, and among different ministries within the central government. Multiple procurement rules, guidelines, and procedures issued by multiple bodies have resulted in problems with transparency, accountability, competition, and efficiency in public procurement. A recent World Bank report stated that the state-owned Public Sector Undertakings uses over 150 different contract formats, each with different qualification criteria, selection processes, and financial requirements. India also provides preferences to Indian micro, small, and medium enterprises and to state-owned enterprises. Moreover, in defense procurements, India's offset program requires companies to invest 30 percent or more of the acquisition cost of contracts above the threshold value in Indian-produced parts, equipment, or services, a requirement that continues to prove challenging for manufacturers of high-technology equipment.

In September 2020, the Indian Ministry of Defense announced the final Defense Acquisition Procedures (DAP) 2020, which replaces the Defense Procurement Procedure of 2016 and is effective from October 1, 2020 until September 30, 2025. Under the DAP 2020, acquisition categories of "Buy (Indian)," "Buy (Indian – Indigenously Designed Developed and Manufactured)" (also referred to as "Buy (Indian-IDDM)"), and "Buy and Make (Indian)" have an indigenous content requirement.

India's National Manufacturing Policy calls for increased use of local content requirements in government procurement in certain sectors (*e.g.*, information communications technology and clean energy). Consistent with this approach, India issued the Preferential Market Access notification, which requires government entities to meet their needs for electronic products in part by purchasing domestically manufactured goods. Subsequently, in June 2017, the Department of Industry Policy and Promotion issued two notifications under the Public Procurement "Preferential Electronics Order" and "Cyber Notification" to state governments and central agencies mandating preferences for domestically manufactured electronic goods, which include hardware, for the purpose of government procurement as well as, more recently, cyber security software products. The notification indicates that this requirement will apply to procurement by government, government companies, and other procuring entities. This notification is the culmination of similar Indian policy proposals that have outlined discriminatory government procurement policies as a means to stimulate domestic manufacturing of electronics and telecommunications equipment at the expense of foreign companies that have invested heavily in India.

On June 4, 2020, the Department of Promotion of Industry and Internal Trade (DPIIT) issued a revision to its 2017 procurement order, titled Public Procurement (Preference to Make in India) Order 2020. The rule was updated again on September 19, 2020. The Order took immediate effect and instructs each nodal ministry or department to draft a follow-on procurement order that favors domestic suppliers. Though the new Order does not appear to impact tenders or procurements announced prior to June 4, 2020, it will hinder U.S. industry's ability to participate in central government tenders.

Moreover, the August 2020 changes to General Financial Rules section 161 state that global tender enquiries may not be accepted under $31 million. Any reductions of the minimum local content requirement cannot be implemented without permission of an appropriate authority. Furthermore, companies must use a third-party or internal auditor to certify the amount of local content that will be used if the value is equal to or greater than 10 Crore ($1.36 million). In addition, in the September 19, 2020 update, the minimum local content requirement was expanded, permitting Ministries and Departments to mandate higher local content percentages that could be used to benefit Indian suppliers and prevent U.S. companies from participating in government tenders.

On September 23, 2020, the Ministry of New and Renewable Energy released an order reserving a list of 80 products, including solar cells, modules, wind turbines, and electrical equipment for hydro and biogas for bidding only by "Class 1 local suppliers" irrespective of the purchase value. The Ministry of Power also reserved 86 products for local procurement through a similar order published on September 17, 2020.

On April 29, 2020, the MEITY issued a notification that entities must procure cellular mobile phones only from local suppliers meeting the local content requirement of 50 percent, irrespective of purchase value. A September 7, 2020 MEITY notification specifies the mechanism for calculation of local content for: (1) Desktop PCs; (2) Thin clients; (3) Computer monitors; (4) Laptop PCs; (5) Tablets; (6) Dot Matrix Printers; (7) Contact and Contactless Smart Cards; (8) LED Products; (9) Biometric Access Control/Authentication Devices; (10) Biometric Finger Print sensors; (11) Biometric Iris Sensors; (12) Servers; and, (13) Cellular mobile phones.

India is not a party to the WTO Agreement on Government Procurement, but it has been an observer to the WTO Committee on Government Procurement since February 2010.

INTELLECTUAL PROPERTY PROTECTION

India remained on the Priority Watch List in the Special 301 Report due to concerns over weak intellectual property (IP) protection and enforcement. The 2020 Review of Notorious Markets for Counterfeiting and Piracy includes physical and online marketplaces located in or connected to India. The United States and India have continued to engage on a range of IP challenges facing U.S. companies in India with the intention of creating stronger IP protection and enforcement in India.

Developments over the past year include India's continued efforts to reduce delays and backlogs of patent and trademark applications, the Cell for IPR Promotion and Management's (CIPAM) promotion of IP awareness and commercialization throughout India, and ongoing efforts to improve IP enforcement, particularly at the state level. However, state-level IP enforcement remains uneven in India, with some states conducting enforcement activities and others falling short in this regard.

In the field of copyright, procedural hurdles, problematic policies, and effective enforcement remain concerns. In February 2019, the Cinematograph (Amendment) Bill, which would criminalize illicit camcording of films, was tabled in Parliament. The bill still awaits approval by Parliament. The expansive granting of licenses under Chapter VI of the Indian Copyright Act and overly broad exceptions for certain uses have raised concerns regarding the strength of copyright protection and complicated the market for music licensing. In June 2020, the Copyright Board was merged with the Intellectual Property Appellate Board and became fully functional. The lack of a functional copyright board had previously created uncertainty regarding how IP royalties were collected and distributed. The United States is monitoring whether these issues will persist with a functional Copyright Board in place.

In 2019, the DPIIT proposed draft Copyright Amendment Rules that would broaden the scope of statutory licensing to encompass not only radio and television broadcasting but also online broadcasting, despite a high court ruling earlier in 2019 that held that statutory broadcast licensing does not include online broadcasts. If implemented, the Amendment Rules would have severe implications for Internet content-related right holders.

In the area of patents, a number of factors negatively affect stakeholders' perception of India's overall IP regime, investment climate, and innovation goals. Patent applications continue to face expensive and time consuming pre- and post-grant oppositions and excessive reporting requirements. In October 2020, India issued a revised "Statement of Working of Patents" (Form 27). The United States is monitoring whether the revision addresses concerns previously raised by innovators over Form 27's burdensome nature and required disclosure of sensitive business information. While certain administrative decisions in past years have upheld patent rights, and specific tools and remedies do exist in India to support the rights of a patent holder, concerns remain over revocations and other challenges to patents, especially patents for agriculture biotechnology and pharmaceutical products. In particular, the United States continues to monitor India's application of its compulsory licensing law. Moreover, the Indian Supreme Court's 2013 decision that India's Patent Law created a second tier of requirements for patenting certain technologies, such as pharmaceuticals, continues to be of concern as it may limit the patentability in India for an array of potentially beneficial innovations. In terms of progress in patent examination, India issued a revised Manual of Patent Office Practice and Procedure in November 2019 that requires patent examiners to look to the World Intellectual Property Organization's Centralized Access to Search and Examination (CASE) system and Digital Access Service (DAS) to find prior art and other information filed by patent applicants in other jurisdictions.

India currently lacks an effective system for protecting against unfair commercial use, as well as unauthorized disclosure, of undisclosed test or other data generated to obtain marketing approval for pharmaceutical and agricultural products. The U.S. Government and stakeholders have also raised concerns with respect to allegedly infringing pharmaceuticals being marketed without advance notice or opportunity for parties to resolve their IP disputes.

U.S. and Indian companies have expressed interest in eliminating gaps in India's trade secrets regime, such as through the adoption of standalone trade secrets legislation. In 2016, India's National Intellectual Property Rights (IPR) Policy called for trade secrets to serve as an "important area of study for future policy development," but India has not yet prioritized this work.

SERVICES BARRIERS

The Indian Government has a strong ownership presence in major services industries such as banking and insurance. Foreign investment in businesses in certain major services sectors, including financial services and retail, is subject to limitations on foreign equity. Foreign participation in professional services is significantly restricted and, in the case of legal services, prohibited entirely. In addition, barriers to digital trade and electronic commerce, such as those recently imposed on electronic payment providers, have knock-on effects on a wide variety of services.

Audiovisual Services

U.S. companies have reported that India's satellite programming downlinking policy is overly burdensome, including the requirement for foreign programmers to establish a registered office in India or designate a local agent. Programmers must also prove that they have a net worth of 50 million rupees (approximately $700,000) in order to downlink one content channel and an additional 25 million rupees (approximately $350,000) of net worth for each additional channel.

The Telecommunications Regulatory Authority of India's regulations on content aggregation and distribution do not allow bundling of channels and certain types of distribution partnerships. Content aggregation is commonly used internationally, as it allows niche and foreign content to be bundled and sold by domestic partners without a large local presence or sales force. These regulations cause particular difficulties for small and international content providers because these companies must interact with each of the 60,000 local cable operators, radio broadcasters, and television broadcasters that they seek to target.

There are also a number of limits on foreign ownership in the audiovisual and media sectors: cable networks (49 percent); FM radio (26 percent); head end in the sky (74 percent); direct-to-home (DTH) broadcasting (74 percent); teleports (74 percent); news broadcasting (26 percent); and, newspapers (26 percent). In August 2019, the Indian Government allowed foreign direct investment (FDI) of up to 26 percent for digital media firms that upload and stream news and current affairs.

Distribution Services

India imposes certain restrictions on FDI in the retail industry. With respect to single-brand retail, foreign investments exceeding 51 percent are contingent on, among other things, a requirement to source at least 30 percent of the value of products sold from Indian sources, preferably from small and medium-sized enterprises. India has modified the requirements in recent years, including by allowing firms to offset the local sourcing requirement by sourcing products from India for global supply chains. Despite these modifications, the local content requirements remain prohibitive for certain retailers with highly specialized supply chains.

India caps foreign ownership in the multi-brand retail sector at 51 percent, and leaves to each Indian state the final decision on whether to authorize such FDI in its territory. In addition, where FDI is allowed, it is subject to conditions, including: (1) a minimum investment of approximately $100 million, at least 50 percent of which must be in "back-end infrastructure" (*e.g.*, processing, distribution, quality control, packaging, logistics, storage, and warehouses); (2) a requirement to operate only in cities that have been identified by the relevant state government; and (3) a requirement to source at least 30 percent of the value of products sold from "small" Indian enterprises whose total investments in plant and machinery are under $2 million each. The local sourcing requirements and other conditions on foreign investment diminish the commercial incentive for multi-brand retailers seeking to invest in India's retail sector.

India permits 100 percent FDI in business-to-business (or "marketplace-based") electronic commerce, but prohibits foreign investment in business-to-consumer (or "inventory-based") electronic commerce. In February 2019, India implemented new regulations that expressly prohibit subsidiaries of foreign-owned marketplace-based electronic commerce sites from selling products on their parent companies' sites. The new rules also prohibit exclusivity arrangements by which electronic commerce retailers can offer a product on an exclusive basis. The only exceptions for FDI in inventory-based electronic commerce are for food product retailing and single-brand retailers that meet certain conditions, including the operation of physical stores in India. This narrow exception limits the ability of many electronic commerce service suppliers to serve the Indian market.

Indian states have periodically challenged the activity of direct selling (*i.e.*, the marketing and selling of products to consumers away from fixed locations) as violations of the Prize Chits and Money Circulation Schemes (Banning) Act of 1978 (Prize Chits Act), creating uncertainty for companies operating in this sector. This central government legislation contains no clear distinction between fraudulent activities and legitimate direct-selling operations. Enforcement of the Prize Chits Act is reserved to the states, which have adopted varying implementation guidelines and taken unexpected enforcement actions on the basis of the ambiguous provisions of the Act, including the arrest of a chief operating officer of a direct-selling company. In 2016, after extensive advocacy by the U.S. Government and private industry, India approved new guidelines governing direct selling that established clear legal definitions of direct selling, but enforcement and application of the new guidelines is still left to state authorities.

Education Services

Foreign suppliers of higher education services continue to face a number of barriers in India, including: limitations on establishing independent campuses and issuing degrees; a requirement that representatives of Indian states sit on university governing boards; quotas limiting enrollment; caps on tuition and fees; policies that create potential for double taxation; difficulties repatriating salaries and income from research; limitations on employing foreign faculty; and lack of autonomy in designing curriculum.

The Union Cabinet of India approved a new National Education Policy (NEP) on July 29, 2020, to replace the three-decades old National Education Policy of 1986. The NEP 2020 is meant to provide an overarching vision and comprehensive framework for both school and higher education across India. The NEP contains a provision stating that institutions from among the top 100 universities in the world will be facilitated to operate in India, and that a separate legislative framework will be put in place to provide these institutions with more autonomy in regulatory and governance matters. Under the NEP, foreign universities would be allowed to set up campuses in India through adoption of a legislative framework. The NEP proposes a new regulator that would replace several existing regulatory bodies and have authority to regulate, set standards for, and accredit higher education institutions, and also proposes to ensure a level playing field for public and private players. The NEP will come into effect once implementing laws and regulations are enacted, but it has not yet been presented in the Indian Parliament as of the date of this report.

Financial Services

Banking Services

Although India allows privately held banks to operate in the country, the banking system is dominated by state-owned banks, which account for approximately 72 percent of total market share and 84 percent of all Indian bank branches. Most privately owned banks are Indian-owned, with foreign banks constituting less than 0.5 percent of the total bank branches in India. Under India's branch authorization policy, foreign banks are required to submit their internal branch expansion plans on an annual basis, and their ability to expand is hindered by non-transparent limitations on branch office expansion.

Foreign banks also face restrictions on direct investment in Indian private banks. Unlike domestic banks, foreign banks are not authorized to own more than five percent of an Indian private bank without approval by the Reserve Bank of India (RBI). Total foreign ownership of any private bank from all sources (foreign direct investment, foreign institutional investors, and non-resident Indians) cannot exceed 74 percent.

In August 2020, the RBI issued a notification that limits the ability of banks to work with current accounts by prohibiting offering such accounts to customers who have availed themselves of overdraft or cash credit and restricting debits to the overdraft or cash credit account of a borrower to whom the bank's exposure is less than 10 percent of the entire banking system's exposure to that borrower. Foreign banks operating in India have expressed concerns that the measure will adversely affect their ability to conduct business not only with current accounts but also in related areas such as trade finance. The RBI's new rule requires customers to maintain their current accounts only at banks from which they have sourced loans, but foreign banks hold a much smaller share of India's loan market. While the RBI's stated goal is to improve financial transparency and reduce the scope for fraud and bad loans, U.S. and other foreign banks are concerned that the new rule will disadvantage them, as it could incentivize customers to migrate their working capital accounts to India's public sector banks.

Insurance Services

Under India's Insurance Laws (Amendment) Act, 2015, foreign investment in Indian insurance companies is capped at 49 percent. The law further requires that all insurance companies be Indian "controlled." The Insurance Regulatory and Development Authority of India (IRDAI) promulgated guidelines on this "Indian control" requirement in October 2015, which include: (1) a mandatory requirement that a majority of directors be nominated by Indian investors; (2) limitations on the rights of foreign-nominated board members; (3) requirements for how "key management persons" are to be appointed; and, (4) requirements on the manner in which control over "significant policies" of the enterprise must be exercised. Foreign investors have expressed concern that the requirements create a rigid structure that ignores operational realities and will dilute the rights of foreign investors in Indian insurance companies, making additional FDI in the sector unattractive. The United States continues to urge India to eliminate the foreign equity cap and remove the management and control requirements for insurance companies.

In December 2015, the IRDAI issued a revision to its regulations governing the provision of reinsurance services in India that affords Indian reinsurers a mandatory first order of preference (or right of first refusal) for reinsurance business in India. Such a requirement severely restricts the business for which foreign reinsurers can compete and decreases the interest of foreign reinsurers in establishing branches in India, resulting in negative impacts to the supply and cost of reinsurance services in the Indian market. In December 2018, IRDAI reaffirmed that the state-owned General Insurance Corporation of India maintained the right of first refusal for all reinsurance contracts.

The United States continues to closely monitor policy developments in India with respect to electronic payments services and continues to emphasize the importance of facilitating an open and competitive environment with a level playing field for foreign and domestic suppliers of electronic payment services. The United States has raised concerns relating to informal and formal policies that appear to favor Indian domestic suppliers over foreign suppliers, including concerns relating to plans for the National Common Mobility Card scheme, for which the Indian Government is considering using a domestic proprietary QR code standard, which could disadvantage foreign suppliers. Most recently, on November 5, 2020, the National Payments Corporation of India (NPCI), a state-owned company, announced a market share limitation of 30 percent for foreign electronic payment service suppliers processing online payments made through India’s United Payment Interface, which is owned and operated by NPCI. The United States understands that this policy, which has been approved by the RBI, was finalized without full consultation with foreign market participants including U.S. suppliers whose business will negatively affected.

Professional Services

Legal Services

Membership in the Bar Council of India (BCI), the governing body for the legal profession, is mandatory “to practice law” in India and is limited to Indian citizens. Foreign law firms are not allowed to open offices in India. The Advocates Act, which is administered by BCI, provides for foreign lawyers or law firms to visit India on a reciprocal basis for temporary periods to advise their clients on foreign and international legal issues.

Accounting Services

Foreign accounting firms face obstacles to entering the Indian accounting services sector. Only accounting firms structured as partnerships under Indian law may supply financial auditing services, and only Indian-licensed accountants may be equity partners in an Indian accounting firm.

Architecture Services

Although Indian companies continue to demand high-quality U.S. design for new buildings and infrastructure development, foreign architecture firms find it difficult to do business in India due to the legal environment. Court cases against foreign design firms seeking to perform work in India and harassment of their potential clients have created uncertainty and business losses for U.S. providers of architectural and related services.

Telecommunications Services

Barriers to Entry

Approval by the Government of India is required for FDI above 49 percent in wireless and fixed telecommunications services, and India’s one-time licensing fee for telecommunications providers (approximately $500,000 for a service-specific license or $2.7 million for an all-India Universal License) serves as a barrier to market entry for smaller companies. The Indian Government continues to hold equity in multiple telecommunications firms, raising concerns about the fairness of India’s telecommunications policies.

Remote Access Policy

Global telecommunications operators have made significant investments in India’s network infrastructure. However, telecommunications operators face significant challenges in their ability to remotely access their networks due to a requirement to obtain pre-approval for each remote access site. Delays of as much as a year in gaining such approval leave operators unable to remotely configure and operate their networks, hampering network security and undermining services suppliers’ ability to operate networks efficiently.

Satellite Services

India’s Ministry of Information and Broadcasting maintains a preference for Indian satellites to provide capacity for delivery of DTH subscription television services. In practice, DTH licensees have not been permitted to contract directly with foreign satellite operators and have encountered procedural delays when they have sought to do so. Rather, DTH licensees must procure satellite capacity through Antrix, the commercial arm of the Indian Space Research Organization (ISRO), which, in turn, only permits foreign procurements if it does not have available capacity on Indian satellites. When ISRO does permit the use of foreign satellite capacity, the foreign satellite operator must sell the capacity to ISRO, which, in turn, resells the capacity to the end-user with a surcharge.

Foreign satellite operators are thus prevented from developing direct relationships with DTH licensees. This puts U.S. satellite operators at a competitive disadvantage and promotes market uncertainty. The United States continues to encourage India to adopt an "open skies" satellite policy to allow consumers the flexibility to select the satellite capacity provider that best suits their business requirements and to promote market access for foreign satellite service providers.

India also imposes onerous licensing requirements on foreign satellite-based personal communications services. Licenses require high application fees and bank guarantees as well as prohibitively expensive capitalization requirements. Further, licensees must construct local ground station facilities before offering service. In addition, the use of any kind of satellite phone in India requires a license, and the use of foreign satellite phones in Indian waters is prohibited entirely. Together, these requirements make it economically unfeasible for many foreign satellite communications providers to offer services in India.

BARRIERS TO DIGITAL TRADE

Data Localization

India has recently proposed and promulgated a number of data localization requirements that would serve as significant barriers to digital trade between the United States and India. These requirements raise costs for service suppliers that store and process personal information outside India by forcing the construction or use of unnecessary, redundant local data centers. For smaller foreign firms that cannot afford redundant computing facilities within India, these requirements could serve as a total market access barrier.

In 2018, the RBI implemented a requirement that all payment service suppliers store all information related to electronic payments by Indian citizens on servers located in India. RBI announced this rule without advance notice and without input from stakeholders. In June 2019, RBI stated that the requirement to store payments data locally also applies to banks operating in India. Requiring local storage of all payment information raises costs for service suppliers, and disadvantages foreign firms, which are more likely to be dependent on globally distributed data storage and information security systems. Furthermore, an only-in-India data storage requirement hampers the ability of service suppliers to detect fraud and ensure the security of their networks.

In December 2019, the Indian Government introduced the Personal Data Protection Bill 2019 in the Indian Parliament. The bill would require firms to store a copy of all "sensitive" and "critical" personal information related to Indian persons on a server located in India. Such "mirroring" requirements are ineffective in enhancing the protection of personal data and often weaken data security. The bill would also impose onerous conditions on the cross-border transfer of "sensitive" personal information, including "explicit consent" by the data principal. "Critical" personal information—an undefined category—could not be transferred out of India under any circumstances. Further, in the absence of standalone trade secret legislation, there is little recourse for firms in the instance of misappropriation of their sensitive information. These provisions would undermine the ability of foreign firms to supply many services to Indian consumers on a cross-border basis, and would not support the privacy of personal information.

In September 2019, MEITY constituted the Committee of Experts to develop a governance framework for non-personal data, which if adopted may result in policies requiring localization of non-personal data and mandatory data sharing. MEITY has also established a Working Group on Cloud Computing tasked with formulating a framework for promoting and enabling cloud services in India and examining the cybersecurity and privacy aspects of cloud computing. Recent reports indicate that the Working Group may recommend broad data localization requirements for cloud computing service suppliers.

India is currently developing a new electronic commerce policy, early drafts of which have contemplated broad-based data localization requirements and restrictions on cross-border data flows, expanded grounds for forced transfer of business sensitive information, trade secret information, other intellectual property and proprietary source code, and preferential treatment for domestic digital products. The United States strongly encourages India to reconsider this draft policy and particularly the measures described above.

India's 2015 National Telecom M2M (machine to machine) Roadmap would require all M2M gateways and application servers serving customers in India to be located within India. The Roadmap also recommends that foreign subscriber identification modules (SIMs) be permitted in devices to be used in India only if they fulfill traceability criteria and that machines sold and manufactured in India should only be equipped with SIMs of Indian telecommunications providers. The Roadmap has not been implemented but continues to create uncertainty related to India's policy environment for digital services.

Technology

Cloud computing service suppliers face a number of barriers when providing services in India. Service providers are unable to buy dark fiber needed to build new networks, are prohibited from purchasing dual-use equipment needed to run networks, and are unable to own and manage a network to cross-connect data centers and connect directly to an Internet Exchange Point. These restrictions affect the ability of cloud services to effectively manage their own networks.

Internet Services

India's national, state, and local governments regularly shut down Internet services in response to local unrest or to suppress certain digital content and services. Observers tallied over 75 separate major shutdowns in 2020, following more than 106 in 2019. Jammu and Kashmir experienced a 213-day Internet shutdown starting in August 2019, which was one of the longest Internet shutdowns by a democracy. Such shutdowns—even if temporary—undermine the value of Internet-based services to their customers and impose costs on local firms that depend on these services for their business.

The absence of a safe harbor framework for Internet intermediaries related to non-IP-protected content shared by third parties discourages investment in Internet services that depend on user-generated content. India's 2011 Information Technology Rules have provided an insufficient shield for online intermediaries from liability for non-IP third-party user content: any citizen can complain that certain content is "disparaging" or "harmful," and intermediaries must respond by removing that content within 36 hours. Draft regulations announced in late 2018 (the Information Technology (Intermediary Guidelines) Rules 2018) threaten to further worsen India's intermediary liability protections. These draft rules would require platforms to become proactive arbiters of "unlawful" content, shifting the onus of the state to private parties. If these draft rules come into force, they may incentivize overly restrictive approaches to policing non-IP user-generated content and will undermine many Internet-based platform services.

Furthermore, the Intermediary Guidelines would require intermediaries to "enable tracing out" of "originators" of information. For services that employ encryption, this appears to require them to break that encryption. Encryption is an important tool for protecting the privacy and security of data. Many services employ end-to-end encryption and do not retain the technical means to decrypt communications carried out through their services. If enforced, this requirement could force service suppliers to undermine the privacy and security of their services, and potentially violate contractual terms and conditions related to data privacy and access to enterprise data.

Digital Taxation

In 2017, India began assessing a six percent "equalization levy," a withholding tax on foreign online advertising platforms, with the ostensible goal of "equalizing the playing field" between resident service suppliers and non-resident service suppliers. However, its provisions do not provide credit for tax paid in other countries for the service supplied in India. The current structure of the equalization levy represents a shift from internationally accepted tax principles, which generally provide that mechanisms should be developed to prevent double taxation. This levy may impede foreign trade and increase the risk of retaliation from other countries where Indian companies are doing business.

The Fiscal Year 2020-2021 budget, announced in March 2020, included an expansion of the equalization levy, adding a two percent digital services tax on foreign electronic commerce and digital services providers. Neither the original level nor the 2020 expansion applies to firms that are established in India. The change was enacted without prior notification or opportunity for public comment. Technology firms have raised concerns that the definitions of "e-commerce operator" and "e-commerce supply or services" are broad in scope and are likely to cover many digital transactions, including the sale of data.

The United States opposes proposals by any country that would single out U.S. digital companies. In June 2020, the Office of the U.S. Trade Representative (USTR) initiated a Section 301 investigation into India's two percent digital services tax over concerns that the tax, which primarily applies only to large U.S.-based digital companies, is potentially unreasonable or discriminatory, and burdens or restricts U.S. commerce. The United States and India held bilateral consultations on the investigation in November 2020. In January 6, 2021, USTR issued findings that India's digital services tax, as well as similar taxes adopted by certain other countries, discriminates against U.S. companies, is inconsistent with prevailing principles of international taxation, and burden or restricts U.S. commerce.

INVESTMENT BARRIERS

Local Content Requirements

In 2010, India initiated the Jawaharlal Nehru National Solar Mission (JNNSM), which currently aims to bring 100,000 megawatts of solar-based power generation online by 2022, as well as to promote solar module manufacturing in India. Under the JNNSM, India imposes certain local content requirements (LCRs) for solar cells and modules, and requires participating solar power developers to use solar cells and modules made in India in order to enter into long-term power supply contracts and receive other benefits from the Indian Government.

The United States challenged these LCRs through the WTO dispute settlement system. In February 2016, a WTO panel found India's LCRs inconsistent with multiple WTO requirements. These findings were affirmed by the Appellate Body on September 16, 2016, and the DSB adopted the Appellate Body and panel reports on October 14, 2016. On December 19, 2017, the United States requested authorization from the DSB to suspend concessions or other obligations on the grounds that India had failed to comply with the DSB recommendations within the "reasonable period of time" that the parties agreed to. The U.S. request was referred to arbitration. On January 23, 2018, India requested the establishment of a compliance panel, asserting that it had complied with the DSB recommendations. The arbitration and compliance panel proceedings are ongoing.

OTHER BARRIERS

Export Duties

India applies export duties on numerous raw materials used in the production of metals, in particular steel and aluminum. These include a 30-percent duty on exports of iron ore and concentrate with iron content above 58 percent; a 15-percent duty on exports of aluminum ore; and, a 30-percent duty on exports of chromium ore. These various duties, along with other export measures, provide cost advantages to India's domestic metals producers, while distorting international markets for key raw materials used in steel and aluminum production.

Transparency

Traders continue to be negatively affected by a lack of transparency with respect to new and proposed laws and regulations and the lack of uniform notice and comment procedures and inconsistent notification of these measures to the WTO. This, in turn, inhibits the ability of traders and foreign governments to provide input on new proposals or to adjust to new requirements. In February 2014, India's Ministry of Law and Justice issued a policy on pre-legislative consultation, which was to be applied by all ministries and departments of the central government before any legislative proposal was to be submitted to the Indian Cabinet for its consideration and approval. The policy also required central government entities to publish draft legislation or a summary of information concerning the proposed legislation for a minimum period of 30 days. Issuance through electronic media was also encouraged in the policy, as were public consultations. However, despite U.S. requests, the Indian Government has provided no information on the implementation of the policy, other than to clarify it is only intended to apply to draft legislation, not regulations or tariff-setting.

In addition, in May 2016, the Indian Supreme Court made a judgement concerning the Telecom Regulatory Authority of India in which it recommended that India's Parliament "frame a legislation along the lines of the U.S. Administrative Procedure Act (with certain well-defined exceptions) by which all subordinate legislation is subject to a transparent process by which due consultations with all stakeholders are held, and the rule or regulation making power is exercised after due consideration of all stakeholders' submissions." U.S. stakeholders continue to report new requirements that are issued with inadequate public notice and comment periods and/or inadequate consultation or notification at the WTO. This lack of transparency imparts a lack of predictability to the Indian market, diminishing the ability of U.S. companies to enter or operate in that market and inhibiting India's overall business environment. The United States continues to raise concerns regarding uniform notice and comment procedures with the Government of India, both bilaterally in the TPF and multilaterally in the WTO and other fora.