INDIA

TRADE SUMMARY

The U.S. goods trade deficit with India was $21.3 billion in 2018, a 7.1 percent decrease ($1.6 billion) over 2017. U.S. goods exports to India were $33.1 billion, up 28.9 percent ($7.4 billion) from the previous year. Corresponding U.S. imports from India were $54.4 billion, up 11.9 percent. India was the United States' 13th largest goods export market in 2018.

U.S. exports of services to India were an estimated $23.7 billion in 2017 (latest data available) and U.S. imports were $28.1 billion. Sales of services in India by majority U.S.-owned affiliates were $27.0 billion in 2016 (latest data available), while sales of services in the United States by majority India-owned firms were $17.0 billion.

U.S. foreign direct investment (FDI) in India (stock) was $44.5 billion in 2017 (latest data available), a 15.1 percent increase from 2016. U.S. direct investment in India is led by professional, scientific, and technical services, manufacturing, and wholesale trade.

TRADE AGREEMENTS

India reports that it has 18 bilateral or regional trade agreements in force, including the Asia Pacific Free Trade Agreement (APTA); India-Australia Comprehensive Economic Cooperation Agreement; India-Singapore Comprehensive Economic Cooperation Agreement; and, the India-Indonesia Comprehensive Economic Cooperation Agreement. In June, as part of their commitments under APTA, India lowered import duties on over 3,000 products to APTA signatories, including China and Korea, with whom it has large trade deficits.

India is engaged in negotiations or formal discussions on: (1) the proposed Regional Comprehensive Economic Partnership (RCEP) Free Trade Agreement that includes the ten Association of South East Asian Nations (ASEAN) member countries as well as Australia, China, Japan, Korea, and New Zealand; (2) the India-Canada Comprehensive Economic Cooperation Agreement; (3) the India-European Union Broad Based Trade and Investment Agreement; (4) the India-Israel Free Trade Agreement; and, (5) the India-Gulf Cooperation Council (GCC) Free Trade Agreement. The Indian Ministry of Commerce projected that 60 percent of India's future trade would be covered by free trade agreements, including agreements with countries such as Argentina, Brazil, China, Pakistan, and Paraguay.

IMPORT POLICIES

The United States has actively sought bilateral and multilateral opportunities to increase access to India's market, and the government of India has pursued ongoing economic reform efforts. Nevertheless, U.S. exporters continue to encounter significant tariff and nontariff barriers that impede imports of U.S. products into India.

Tariffs and Taxes

Tariffs

India's average Most Favored Nation (MFN) applied tariff rate of 13.8 percent remains the highest of any major world economy. Since 2014, the Modi government 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, the government has raised duties on two broad groups of products to encourage domestic production: (1) an assortment of labor-intensive products; and (2) electronics and communications devices, including mobile phones, televisions, and associated parts and components.

On June 20, 2018, India announced an intention to adopt tariffs ranging from 10 to 50 percent on various products imported from the United States, in retaliation against the President'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 new tariffs would apply to a range of agricultural and manufactured products, including products of steel. On February 26, 2019, India announced that it would further delay the implementation of these tariffs until April 1, 2019. 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 engage in unjustified retaliation designed to punish American workers and companies. The United States will take all necessary action to protect U.S. interests in the face of such retaliation.

India maintains very high tariffs on a number of goods, including flowers (60 percent), natural rubber (70 percent), automobiles (60 percent), motorcycles (50 percent), raisins and coffee (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.

India's tariff regime is also characterized by pronounced disparities between WTO bound rates and the MFN applied rates. India's WTO bound tariff rate averaged 48.5 percent, while its applied MFN tariff for 2017 (latest data available) averaged 13.8 percent. Many of India's bound tariff rates on agricultural products are among the highest in the world, averaging 113.5 percent and ranging as high as 300 percent. Applied agricultural tariff rates are also high and average 32.8 percent. While certain Indian agricultural applied tariff rates are lower, they still present a significant barrier to trade in agricultural goods and processed foods (*e.g.*, potatoes, citrus, almonds, apples, grapes, canned peaches, chocolate, cookies, and 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. For example, from November 2017 through March 2018, India raised import duties from zero percent to 60 percent on chickpeas, 50 percent on peas, 40 percent on large chickpeas, and 30 percent on lentils, severely impacting U.S. pulse exports to India.

The government of India took advantage of this tariff flexibility in the 2018 budget when it increased tariffs on 52 separate line items, including key U.S. exports in the agricultural, information and communications technology, and automobile parts sectors, with no warning or public consultation process. The increased tariffs also included agricultural products such as certain fruit juices (from 30 percent to 35 percent), certain edible vegetable oils (from 20 percent to 35 percent), and several other agricultural and non-agricultural items.

India also further raised duties on several information and communications technology products, including cell phones, from 15 percent to 20 percent. Prior to the tariff increases, these products were imported duty-free. Duties on automotive components such as engine and transmission parts, brakes, suspensions, gear boxes, and airbags increased to 15 percent from 7.5 percent in the case of some products and from 10 percent in the case of others. In addition, a new 10 percent tariff on imports, labeled the "social welfare surcharge," was instituted without public notice or consultation. The "social welfare surcharge" is applied to the aggregate of duties, taxes and cesses assessed on imports.

In September 2018, India increased import duties again on 19 items in an attempt to narrow a widening current account deficit and relieve downward pressure on the rupee against other world currencies. Tariffs were increased on jet fuel and 18 other items deemed non-essential, including air-conditioners, refrigerators, and small washing machines as well as products such as footwear, tableware, suitcases, gold and silver jewelry, and semi-processed diamonds.

Taxes

Prior to the introduction of the Good 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 and the Central Sales Tax as well as various local taxes and charges. The new GST simplified the regime by unifying India into a single market and improving the ease of doing business. The new GST is made up of three main taxes: Central GST (CGST) is a fee collected by the central government for sales in all states; State GST (SGST) is a fee collected by each state for sales within a state; and Integrated GST (IGST) is a fee collected by the central government for sales between states.

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 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.

Nontariff Barriers

Medical Device Price Controls

Twenty three medical devices have been notified as drugs and are regulated under Drugs and Cosmetics Act. Of these, only four devices – cardiac stents, drug eluting stents, condoms, and intra-uterine devices – are 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. On February 13, 2017, NPPA issued an order to cap prices of coronary stents. In addition, knee implants have been brought under price control under Paragraph 19 of the Drugs (Prices Control) Order 2013. The remaining medical devices are under no price regulation. U.S. companies have raised significant concerns with these actions. Price controls for cardiac stents and knee implants do not differentiate for technological innovation and limit U.S. companies' access to the Indian market.

Ethanol Import Restrictions

India restricts ethanol imports through a tendering process that requires ethanol from indigenous feedstock to be blended with transport fuel. India further limited ethanol imports in August 2018 by prohibiting the import of ethanol for fuel use. On June 4, 2018, the government of India released the National Policy on Biofuels 2018, in which it sets a target of 20 percent blending of ethanol with gasoline and a target of 5 percent blending of ethanol with biodiesel by 2030. Currently, India's ethanol fuel penetration levels are far below those target levels.

Import Bans, Import Restrictions, and Import Licensing

India maintains various forms of nontariff 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) importable only by government trading monopolies and subject to cabinet approval regarding import timing and quantity. India often fails to observe transparency requirements, such as publication of timing and quantity restrictions in its Official Gazette or notification to WTO committees. However, the official website of the Director General of Foreign Trade maintains a list of restricted items.

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. 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. 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. Refurbished computer spare parts can only be imported if an Indian chartered engineer certifies that the equipment retains at least 80 percent of designed operating life, while refurbished computer parts from domestic sources are not subject to this requirement.

India subjects boric acid imports to stringent restrictions, including arbitrary import quantity approval restrictions, other requirements that only apply to imports, and long periods of time sometimes pass without the issuance any import licenses. A certificate from the Central Excise Authority and no objection certificates (NOCs) are required from the relevant government ministry 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, and consequently they cannot obtain an NOC. 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, local refiners continue to be able to produce and 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 justifying the legal rationale with respect to boric acid imports. In addition, in August 2017, the Indian government announced quantitative restrictions on all pesticides and insecticides. While it later rescinded the restrictions because of its inability to deploy the relevant software to support the action, there remains uncertainty regarding the future implementation of these restrictions. The United States has urged India to eliminate its import licensing requirements in meetings of the WTO Import Licensing Committee and through the Trade Policy Forum (TPF).

In order to manage domestic oversupply of pulses, the Indian government began imposing restrictions on imports of various pulses in 2017. In August 2017, India imposed an Indian fiscal year annual import quota of 200,000 metric tons (MT) on imports of Pigeon peas; an annual import quota of 300,000 MT on black matpe beans (Urd or Vigna radiate) and mung beans (Moong or Vigna mungo); and an annual quota of 300,000 MT on moong and urad lentils. In April 2018, the Indian government revised the import policy for peas, restricting imports to 100,000 MT for a period of three months. India has continued to extend the import restrictions on peas, issuing extensions every three months, despite significant objection by the United States and other trading partners. As a result of the continuing quotas and tariff increases on pulses since November 2017 (discussed above), U.S. pulse exports to India totaled only $6 million during the first seven months in 2018, compared to $31 million during the same period in 2017.

Customs Barriers and Trade Facilitation

In addition to being announced with the annual budget, India's customs rates are modified on an *ad hoc* basis through notifications in the Gazette of India and contain numerous exemptions that vary according to the product, user, 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. India's valuation procedures allow Indian customs officials to reject the declared transaction value of an import when a sale is deemed to involve a lower price than the ordinary competitive price, effectively raising the cost of exporting to India beyond 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 subjected 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 assessable value of the imported product. Prior to this amendment, the cost of loading, unloading and handling charges, and cost of transportation and insurance were included in the assessable value at one percent of the free on board (FOB) value irrespective of the actual cost. With the new amendments, the actual cost is assessable; if the cost of transportation, loading, unloading, and handling charges is not ascertainable, then it is deemed to be 20 percent of the FOB value. If the good is imported by air freight the cost is limited to 20 percent of the FOB value even if the actual cost is higher.

India publishes applied tariffs and other customs duty rates applicable to imports, and in 2018, debuted its India Trade Portal in cooperation with the Federation of Indian Exporters. Among other information, the India Trade Portal seeks to provide updated information on the latest tariff and duty rates, searchable by Harmonized System codes. As part of its computerization and electronic services effort, India also maintains the web-based Indian Customs Electronic Commerce/Electronic Data Interchange Gateway, known as ICEGATE. It provides options for calculating duty rates, electronic filing of certain import declarations and shipping bills (export goods declarations), electronic payment, and online verification of import and export licenses.

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 varying according to product, user, or intended use, also creates uncertainty and contributes to delays in customs approvals. However, while difficulties persist, India has shown improvement in this area through the automation of trade procedures, including through the ICEGATE portal and other initiatives previously referenced. The government of India is increasing the use of electronic forms. India is also building a single window for customs documents. As a result of this process, India now only requires three documents for importers and exporters for approvals from the 13 separate government agencies that are currently incorporated into the single window. This has reduced customs processing times from weeks to days.

After ratifying the WTO Agreement on Trade Facilitation (TFA) in April 2016, India established the National Committee on Trade Facilitation (NTFC) in August 2016. In July 2017, the NTFC debuted a road map for trade facilitation for India, and it will facilitate domestic co-ordination and implementation of TFA provisions. The United States and India held joint workshops covering best practices in trade facilitation in October 2016 and in September 2018. The workshops included both Indian and U.S. industry representatives and focused on implementing the TFA and customs reforms expeditiously to facilitate trade.

TECHNICAL BARRIERS TO TRADE / SANITARY AND PHYTOSANITARY BARRIERS

In addition to discussing technical barriers to trade (TBT) and sanitary and phytosanitary (SPS) matters with Indian officials under the Trade Policy Forum (TPF), the United States discusses these trade issues with India during TBT and SPS Committee meetings at the World Trade Organization (WTO), as well as on the margins of those meetings. The last United States-India Intersessional Trade Policy Forum (ITPF) was held April 9-11, 2018 in New Delhi, India.

Technical Barriers to Trade

Cosmetics – Registration Requirements

On November 29, 2018, India's Ministry of Health and Family Welfare (MOHFW) invited comments on a new draft of the Cosmetics Rules. U.S. stakeholders provided comments to India encouraging a risk-based regulatory framework for cosmetics without unnecessary pre-approvals that aligns with international standards and industry best practices with a reasonable timeframe for implementation.

On December 12, 2018, India increased registration fees for importers of cosmetics. As a result, the registration fee is now $2,000 for each cosmetic brand. India also added a new $50 fee for each product variant. U.S. companies have raised concerns these fees disadvantage imported products by raising costs.

Separately, India banned imports of animal-tested cosmetics on February 15, 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 had previously banned domestic cosmetic testing on animals in May 2014, per the Gazette of India, Ministry of Health and Family Welfare, "Notification" dated May 21, 2014. U.S. exporters have reportedly encountered difficulties proving that cosmetics comply with the animal testing ban and have yet to receive guidelines from the Indian government on how to do so.

Food – Package Size and Labeling Requirements

In 2018, the Food Safety and Standards Authority of India (FSSAI) proposed a set of regulations called the Food Safety and Standards (Labelling and Display) Regulations, which is an amendment to the Food Safety and Standards Act of 2006. The proposed regulations would prescribe the labeling requirements for pre-packaged foods to display essential information on where the food is manufactured, processed, served, and stored. The proposed regulation also allows FSSAI to establish an internal mechanism to address problems arising out of the implementation and/or interpretation of the regulations.

The government of India mandated standard retail package sizes for 19 categories of foods and beverages effective November 1, 2012, via an amendment to the Legal Metrology (Packaged Commodities) Rules, 2011. This rule has not been notified to the WTO, nor was there a specific public comment period for domestic stakeholders prior to implementation. As the United States does not impose specific standards for packaging size, and U.S. package sizes tend to be in English rather than metric units, the list of package sizes prevents many U.S.-origin products from entering India. Attempts to import such U.S.-origin products have resulted in rejection at the port of entry. These standards have a negative effect on trade, with numerous U.S. brands effectively excluded from the Indian market. The United States continues to raise concerns about these standards in various bilateral and multilateral fora in an effort to ensure that U.S. products have access to the Indian market.

Labeling of Genetically Engineered Food and Agricultural Products

India's labeling requirements for packages containing genetically engineered foods remains unclear. Further, there is a lack of clarity regarding jurisdictional authority between the FSSAI and the Ministry of Consumer Affairs that could have negative effects on U.S. crops and products derived from biotechnology entering the Indian market. Also, the MAFW has issued regulations that have significantly limited the incentive for research and development, as well as investment in the agriculture biotechnology sphere. These include the Cotton Seed Price Control Order, 2015, the March 2016 Notification that established the maximum sale price of Bt cottonseed packets (including the royalty fee), and the May 2016 Licensing and Formats for GM Technology Agreement Guidelines.

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 upwards of four months or longer. Importation of animal genetics requires a "no objection certificate" (NOC) from the state government, import permission from the Directorate General of Foreign Trade (DGFT), and an import permit from the DAHDF. However, domestic producers of animal genetics are not required to obtain an NOC.

Dairy Products

India imposes onerous requirements on dairy imports. India continues to insist that dairy products be derived from animals that have never consumed any feeds containing internal organs, blood meal, or tissues of ruminant origin. 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, the United States proposed a labeling solution to allow for consumer choice between dairy products derived from animals that have or have not consumed feeds with ruminant protein. India rejected that proposal. In March 2018, the United States proposed a revised labeling requirement for imported dairy to DAHDF, but it has rejected that proposal as well. The United States continues to press the Indian government to provide access to the Indian dairy market.

Alcoholic Beverage Standards

On April 5, 2018, FSSAI published the final version of its mandatory beverage alcohol standards and labeling requirements, the Food Safety Standards (Alcoholic Beverages) Regulations, 2018. While the final version of the regulation addressed some of the issues that the United States had raised with India in response to its review of previous drafts of the regulation, the United States still has several concerns over content of the final regulation, including: India-specific labelling requirements, certain product definitions, production method specifications, compositional requirements and ingredient limits, alcohol by volume limits, serving size criteria that contradict standard international practice, and maximum residue levels for many chemical contaminants for which standards do not exist in Codex Alimentarius Commission (Codex). This new standard would also build on already onerous labeling and testing requirements. The United States views India as an important export market for alcoholic beverages and continues to press the government of India to improve its restrictive approach to the regulation of alcoholic beverages in India.

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, India proposed the Mandatory Testing and Certification for Telecom Equipment (MTCTE) procedures, which will likely require local security testing for telecommunication products and are slated to go into effect in August of 2019. It is unclear whether lab capacity will increase sufficiently to be able to 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 actively raising the concerns of the U.S. electronics and information and communications technology manufacturers regarding MEITY's 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 (BIS), even if the products have already been certified by accredited international laboratories. The government of India has never articulated how such a domestic certification requirement advances India's legitimate public safety objectives. In 2017, the coverage of the CRO increased to 44 product categories. 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; 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 2018.

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 Codex. 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. As part of the TPF, the United States and India met for a plant health bilateral meeting in April 2018, followed by an animal health bilateral meeting in September 2018 in India. The United States continues to raise SPS-related concerns that inhibit U.S. agriculture exports to India.

Food – Product Testing

Importers have expressed concerns with FSSAI's batch-by-batch inspections at the port because of high cost and the detention of cargoes for indeterminate periods of time, which is particularly costly with respect to perishable products. In June 2015, India announced a plan to transition its imported food inspection protocol from batch-by-batch inspections and sampling to a risk-based approach. During discussions at the 2016 TPF, Indian officials noted that they are actively working to develop and implement a risk-based inspection system and provided a general overview of their approach. The United States continues to collaborate with India on developing more specific guidance and a timeline to transition its inspections protocols.

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 government of India 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 a risk-based random sampling will be followed wherein the samples will be drawn randomly based on the risk factor and compliance history of the importer identified by the newly introduced SWIFT system software. During discussions at the 2016 TPF, Indian officials noted that they are actively working to develop and implement a risk-based inspection system and provided a general overview of their approach. However, market sources report that the risk-based inspection system is not yet fully operational as software linking with SWIFT and mapping by CBIC is still in being developed. CBIC and FSSAI officials are working together in this evolving process and hope to fully implement the system in the coming years.

Food – Product Approval

FSSAI's product approval process has been under intense media and political scrutiny since August 2015 when the Supreme Court of India upheld an earlier decision by the High Court of Bombay that FSSAI did not have the legal authority to maintain its product approval regime. FSSAI stopped issuing product approvals in order to come into compliance with the Supreme Court's decision and is seeking a new approach to regulate new food and beverage products. On October 4, 2016, FSSAI published its new draft regulation called the "Food Safety and Standards (Approval for Non-Specified Food and Food Ingredients) Regulations, 2016." On September 11, 2017, FSSAI, after incorporating the comments received on the draft Regulation, published the final Regulation on product approval called the "Food Safety and Standards (Approval for Non-Specified Food and Food Ingredients) Regulations, 2017." The final regulation lists the categories of food or food ingredients, mainly novel foods, that require approval. These food products have been termed by FSSAI as "non-specified food and food ingredients." With the final regulation in place, the pathway to product approval still appears opaque and remains non-transparent; the new approval process could effectively block market innovations, product launches, and affect U.S. trade.

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 genetically engineered (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, and subject to political influences. 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 make a decision on 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 Biotech (Bt) cotton is the only biotechnology crop approved for commercial cultivation in India. In January 2017, GEAC set up a sub-committee for drafting guidelines for imports of Dried Distillers Grain Solubles (DDGS). In May 2017, GEAC discussed the preliminary submission of the subcommittee and advised further consultations with relevant stakeholders before submitting a final report to GEAC. In 2018, the United States continued engagement with the government of India, including with GEAC, to encourage the finalization of an import protocol that would permit the import of U.S. DDGS. This slow and uncertain approval process continues to negatively impact 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.

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. In September 2016, the United States proposed a letterhead certificate to supplement the U.S. standard veterinary health certificate with additional attestations that address India's universal certificate. The United States responded to India's request for more information on October 24, 2017, and India assured expedited examination of the information provided with the goal of finalizing an export certificate as soon as possible. In response to India's request, the United States submitted further information in May and July 2018. 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 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" that the parties agreed to. The United States' request was referred to arbitration. On April 6, 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.

In 2018, the United States and India on several occasions postponed both the release of the Arbitrator's decision on the level of suspension of concessions and the remaining steps in the compliance panel proceeding while the two sides discuss potential resolution of the dispute. 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.

Plant Health

India maintains zero-tolerance standards for certain plant quarantine pests, such as weed seeds and ergot, that are not based on risk assessments and result in blocked U.S. wheat and barley imports. Bilateral discussions to resolve these issues, including at the senior official level, have achieved little success to date. The government of 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. On April 25, 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

The Indian government's Foreign Trade Policy (FTP) 2015-2020 announced on April 1, 2015 is primarily focused on increasing India's exports of goods and services to raise India's share in world exports from 2 percent to 3.5 percent. The FTP consolidated most 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 Handbook of Procedures, are granted freely transferable duty credit scrips on realized FOB value of exports in free foreign exchange at specified rate (2 percent to 5 percent). MEIS provides export subsidies for a wide range of goods, including agricultural products, including certain dairy products, which also receive export subsidy support through state governments. Service providers 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 Duty Exemption & Remission Schemes; Export Promotion Capital Goods (EPCG) Scheme; Export Oriented Unit (EOU) Scheme, Electronics Hardware Technology Park (EHTP) Scheme, Software Technology Park (STP) Scheme or Bio-Technology Park (BTP) Scheme.

India 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, and wood products) receive various forms of subsidies, including exemptions from customs duties and internal taxes, which are tied to export performance. India not only continues to offer subsidies to its textiles and apparel sector in order to promote exports, but it 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. In 2017, India graduated from Annex 7 in the WTO, which mandates elimination of all export subsidies. In March 2018, the United States requested consultations on India's export subsidy schemes in the WTO and a formal panel was established on July 24, 2018.

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 has permitted exports of certain agricultural commodities from government public-stockholding reserves at below the government's costs. For example, the government authorized the exportation of 6.5 million 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 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 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.

In December 2017, India released a mid-term review of its FTP and outlined a renewed focus on promoting Indian exports while highlighting the need to move away from export subsidies consistent with WTO commitments relating to gross national income levels. As a result, India's revised FTP will now focus as well on reducing the cost of trade internal to the country, and has set forth an agenda to address trade facilitation issues impacting Indian exporters.

Agriculture Subsidies

India provides a broad range of assistance to its large agricultural sector, including credit subsidies, debt waiver, 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 minimum prices received by farmers. Rice and wheat account for the largest share of products procured by the government and distributed through India's public distribution system. However, in crop year 2014/2015, the Indian government purchased 1.5 million tons (8.695 million 170 kg bales) of cotton through announced minimum support price operations, at a cost of nearly $3 billion. The government'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" to 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 over production, which restricts demand for imports and distorts international markets. Due to upcoming parliamentary elections in 2019, the Indian government and various state governments are likely to undertake higher levels of MSP procurement for various crops besides rice and wheat.

On May 4, 2018, the United States submitted the first ever counter notification (CN) to the WTO highlighting India's underreporting of its market price support (MPS) for rice and wheat covering marketing year 2010/11 to 2013/14, based on publicly available information. The CN estimated MPS well above India's *de minimis* WTO commitment of 10 percent below total volume of production. Subsequently, on November 9, 2018, the United States submitted a CN on India's MPS for cotton covering marketing years 2010/11 to 2016/17 estimating MPS for cotton in various years ranging between 53 and 81 percent – well above India's WTO commitment 10 percent *de minimis* of the total value of production. In addition, Australia submitted a CN on India's MPS for sugarcane covering marketing years 2011/12 to 2016/17 on November 16, 2018. Australia's CN estimates India's MPS for sugarcane ranges from 78 percent to 100 percent without taking into account substantial state support also 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 there are over 150 different contract formats used by the state owned Public Sector Undertakings, each with different qualification criteria, selection processes, and financial requirements. The government 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 March 2016, the Indian Ministry of Defence announced a new Defense Procurement Procedure that increased the offset threshold for mandatory local content to 20 billion Indian rupees (approximately $300 million) for defense industry companies contracting with the Indian government, and also increased indigenous content requirements, although flexibility may exist for certain projects. In May 2017, the Indian Cabinet approved a public procurement policy to give preference to domestically manufactured goods with a view to promote the "Make in India" initiative. The move is aimed at facilitating local manufacturing and boosting domestic demand for locally manufactured products. As part of this May 2017 policy, the Ministry of Defence approved a model for Strategic Partnerships in certain acquisition programs, although the strong focus on mandatory technology transfer has given many U.S. companies reason to exercise caution regarding participation. A local content requirement has also been extended to the procurement of medical devices, and several government tenders in the last year have included a 30 percent local content mandate.

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 & Promotion (DIPP) 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 over the past year 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.

India is an observer to the WTO Committee on Government Procurement but is not a signatory to the WTO Government Procurement Agreement.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

India remained on the Priority Watch List in the 2018 Special 301 Report due to concerns over weak protection and enforcement of intellectual property rights (IPR). Through the Working Group on Intellectual Property under the TPF, the United States and India held regular dialogues in 2018 on the range of IPR challenges facing U.S. companies in India with the intention of creating stronger IPR 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.

In the field of copyright, procedural hurdles, problematic policies, and effective enforcement remain concerns. In December 2018, India released for public comment the Cinematograph Act (Amendment) Bill, which contained anti-camcording legislation. The Bill currently awaits parliament approval. In April 2017, India announced that its Copyright Board would merge with the Intellectual Property Appellate Board (IPAB), and that both boards will have one chairman. In January 2018, the new chairman was appointed and trademark-related matters are being heard on a fast track. However, due to the IPAB's lack of technical experts, patent and copyright matters remain stalled. The lack of a functional copyright board has so far created uncertainty regarding how IP royalties are to be collected and distributed. Until a new copyright technical member is appointed, the copyright board will continue to be non-functional. In addition, the expansive granting of licenses under Chapter VI of the Indian Copyright Act and overly-broad exceptions for certain uses continue to raise concerns about the strength of copyright protection and complicate the market for music licensing.

In the area of patents, there are a number of factors that negatively affect stakeholders' perception of India's overall IPR regime, investment climate, and innovation goals. While certain administrative decisions in 2017 upheld patent rights, and certain tools and remedies do exist in India to support rights of patent holder, concerns remain over revocations and other challenges to patents, particularly patents for agriculture technology and pharmaceutical products. The United States also continues to monitor India's application of its compulsory licensing law. Moreover, in 2013, the Indian Supreme Court stated that India's Patent Law created a second tier of requirements for patenting certain technologies, such as pharmaceuticals, an interpretation that may have the effect of limiting the patentability of an array of potentially beneficial innovations. In recent years, India governmental policies and court rulings have raised serious concerns over India's innovative environment for agricultural technologies. In particular, draft guidelines on genetically-modified technologies provide for mandatory licensing with overly prescriptive terms that, if implemented, would undermine market incentives critical to the agricultural biotechnology and other innovative sectors and, certain 2018 court rulings raise questions over the patentability in India on these important technologies. India has been an accessing office for the WIPO Centralized Access to Search and Examination (CASE) system. In 2018, it became WIPO Digital Access Service (DAS) participating office and began providing its own documentation for the CASE system, all of which aid patent examination in India and other participating national and regional offices.

Enforcement of IP rights remains a critical concern in India. While the IP Crime Units in Maharashtra and Telangana continue to conduct meaningful enforcement activities, this stands in stark contrast to activities in other states and India still lacks enforcement at the federal level.

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 IPR disputes.

With respect to trade secrets, 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. India's

2016 National IPR Policy called for trade secrets to serve as an "important area of study for future policy development" but India has not yet prioritized or embarked upon 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, is prohibited entirely.

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) has promulgated guidelines (October 19, 2015) on this "Indian control" requirement. The guidelines 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.

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 (GIC) of India maintained the right of first refusal for all reinsurance contracts.

In October 2016, IRDAI circulated a discussion paper that called for the compulsory public listing of life insurers that have been in operation in India for seven years or more. Such a requirement to publicly list is rare, and companies generally decide whether to undertake an initial public offering based on an analysis of company-specific facts. IRDAI finally reversed its stance after strong resistance by insurance companies. In March 2017, the IRDAI Chairman made it clear that for the time being, it will not be compulsory for insurance companies to be publicly listed. However, he did not rule out the introduction of such a provision at some later stage.

Financial 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 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.

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 $800,000) in order to downlink one content channel, and an additional 25 million rupees (approximately $400,000) 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 into and sold by domestic partners without a large local presence or sales force. These regulations cause difficulties particularly 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).

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 law and diverse international legal issues. The United States and India are continuing to discuss liberalization of legal services under the TPF.

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 creates uncertainty for U.S. providers of architectural and related services, causing significant losses for those companies.

Telecommunications Services

Barriers to Entry

In 2013, India eliminated a 74 percent cap on FDI in Indian wireless and fixed telecommunications providers, though government approval is required for FDI above 49 percent. U.S. companies note that 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 government of India continues to hold equity in multiple telecommunications firms. These ownership stakes have caused private carriers to express concern about the fairness of India's general telecommunications policies. For example, valuable wireless spectrum was set aside for Mahanagar Telephone Nigam Limited (MTNL) and Bharat Sanchar Nigam Limited (BSNL), state-owned telecommunications service providers in India, instead of being allocated through competitive bidding. Although it does not appear that MTNL and BSNL paid a preferential price, they did receive their spectrum allocation well ahead of privately owned firms.

Remote Access Policy

Global telecommunications operators have made significant investments in establishing India's network infrastructure. However, policies pertaining to remote access (RA) to their networks for network operators negatively impact network security and compliance and hamper telecommunications services suppliers' ability to efficiently operate networks in India. Telecommunications operators are required under their license to obtain pre-approval to remotely configure and operate their networks. Delayed RA approvals leave networks vulnerable to cyber-attacks. India should utilize international standards for security in lieu of the strict RA policy, and should move to an "information filing" process, replacing the "pre-approval process."

Satellite Services

India's Ministry of Information and Broadcasting (MIB) has issued guidelines that establish a preference for Indian satellites to provide capacity for delivery of Direct-to-Home (DTH) subscription television services. In practice, authorized DTH licensees have not been permitted to contract directly with foreign satellite operators and have encountered procedural and contracting delays when they have sought to do so. Rather, DTH licensees must procure foreign satellite capacity through Antrix, the commercial arm of the Indian Space Research Organization (ISRO), which, in turn, only permits such procurements if it does not have available capacity on its own system. This issue is compounded by a lack of transparency regarding ISRO's plans for future transponder capacity. 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 is a particular concern to the United States, as it puts U.S. satellite operators at a competitive disadvantage, promotes market uncertainty, and prevents DTH licensees from offering a fuller range of services from U.S. satellites. 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.

Distribution Services

India permits 100 percent FDI in 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. In June 2016, the Indian government relaxed these sourcing requirements for companies engaged in the distribution of 'state-of-art' and 'cutting-edge' technology: firms would have three years from the opening of a single-brand retail outlet to meet the 30 percent requirement as long as the initial 5 year average was 30 percent. In January 2018, India further relaxed the requirement, allowing firms to offset the local sourcing requirement by sourcing products from India for global supply chains during the first 5 years the investment. Despite these modifications, the local content requirements remain prohibitive.

India permits up to 51 percent foreign ownership in companies in the multi-brand retail sector, but 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 that have a total investment in plant and machinery not exceeding $2 million. Several foreign companies have reported that the local sourcing requirements and other conditions on foreign investment have diminished the commercial incentive for expanding investment in India's retail sector.

India allows for 100 percent FDI in business-to-business (B2B) electronic commerce, but prohibits foreign investment in business-to-consumer (B2C) electronic commerce. India also does not allow foreign-owned e-commerce firms to take ownership of inventory that requires them to operate, as a marketplace-based electronic retailing model. In December 2018, India announced new regulations that expressly prohibit subsidiaries of foreign-owned marketplace-based e-commerce sites from selling products on their parent companies' sites. The new rules also prohibit exclusivity arrangements by which e-commerce retailers can contract to offer any product on an exclusive basis. The only exception allowing FDI in B2C electronic commerce permits investment in single-brand retailers that meet certain conditions, including the operation of physical stores in India. This narrow exception limits the ability of most potential e-commerce investors to access 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.

Previously, stakeholders asked India to issue guidance establishing a definition of direct selling and clarifying ambiguities, including uncertainty related to commissions earned in connection with the sale of products. 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

Foreign suppliers of higher education services interested in establishing a presence in India face a number of barriers, including: a requirement that representatives of Indian states sit on university governing boards; quotas limiting enrollment; caps on tuition and fees; policies that create the potential for double-taxation; and difficulties repatriating salaries and income from research.

In June 2016, India's former planning commission, NITI Aayog, submitted its report to the Prime Minister's Office (PMO) and the Human Resource Development (HRD) Ministry calling for the invitation of foreign universities to set up campuses in India. The report suggested that foreign education providers be allowed entry into the country via three possible regimes: (1) operation of foreign universities in the country should be regulated by law; (2) the University Grants Commission (UGC) Act of 1956 should be amended along with the relevant regulations on universities, to allow foreign universities to be deemed universities; and (3) to facilitate joint ventures between Indian and foreign institutions, the UGC and the All India Council for Technical Education (AICTE) regulations should be modified to add viable co-beneficial arrangements and twinning programs. However, no action has been taken to date with respect to the report's recommendations.

BARRIERS TO DIGITAL TRADE AND ELECTRONIC COMMERCE

Data Localization Requirements

India has recently 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 suppliers of data-intensive services by forcing the construction of unnecessary, redundant data centers and prevent local firms from taking advantage of the best global services available.

In October 2018, the Reserve Bank of India (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 in April without advance notice and without input from stakeholders. Requiring local storage of all payment information raises costs for payment 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 will hamper the ability of service suppliers to detect fraud and ensure the security of their networks.

In July 2018, the Indian government published a draft Personal Data Protection Bill. If passed into law, the bill would impose onerous burdens on firms, especially foreign firms, that process personal information. Most concerning is a data localization requirement: firms would be required to store a copy of all personal information related to Indian persons on a server located in India, and an as-yet-undefined category of "critical" personal information could not be transferred out of India under any circumstances. These data localization provisions would damage the digital economy without supporting privacy. Additionally, the bill would authorize immense fines and criminal penalties in response to data breaches. The U.S. Government submitted comments on the draft bill to India in September.

India's 2015 National Telecom M2M (machine to machine) Roadmap (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.

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 intellectual property and proprietary source code, preferential treatment for domestic digital products, and other discriminatory policies. The United States strongly encourages India to reconsider the most discriminatory and trade-distortive aspects of this draft policy and the other measures described above.

Technology

Indian Internet providers must obtain government approval from the Telecom Regulation Authority of India (TRAI) to employ encryption stronger than 40-bit encryption. This requirement continues to create regulatory uncertainty for digital service providers seeking to use strong encryption. Most other countries allow the use of strong encryption standards to ensure the security of sensitive information. India is currently drafting a new encryption policy that should address these issues and avoid creating new and overly prescriptive requirements for how businesses protect data.

Draft regulations announced in late 2018 (the "Information Technology (Intermediary Guidelines) Rules 2018"), would require companies providing encrypted communications services to enable "traceability" of such communications, potentially undermining services that depend on end-to-end encryption to provide privacy and security.

Cloud computing services face a number of barriers when providing services in India. Service suppliers are unable to buy dark fiber needed to build new networks, prohibited from purchasing dual-use equipment needed to run networks, and unable to own and manage a network to cross-connect data centers and connect directly to an Internet Exchange Point. These restrictions impact the ability of cloud services to effectively manage their own networks. In 2018, a cloud policy panel recommended that India mandate that all data generated in India by tech and cloud computing companies would be required to be stored within the country. Such a requirement would raise the same concerns as other data localization requirements described above.

Internet Services

The absence of a safe harbor framework for Internet intermediaries 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 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 will incentivize overly restrictive approaches to policing user-generated content, and will undermine many Internet-based platform services.

In 2017, India began assessing a 6 percent "equalization levy," a withholding tax on foreign online advertising platforms, with the ostensible goal of "equalizing the playing field" between resident service providers and non-resident service providers. However, its provisions do not provide credit for tax paid in other countries for the service provided in India. Further, this levy has resulted in taxes on business income even when a foreign resident does not have a permanent establishment in India or when underlying activities are not carried out in India. The current structure of the equalization levy represents a shift from internationally accepted principles, which provide that digital taxation mechanisms should be developed on a multilateral basis in order 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.

OTHER 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 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 at a special meeting of the DSB 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 United States' 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.

Export Duties

India has steadily increased export duties on iron ore and its derivatives. In February 2011, India increased the export duty on both iron ore fines and lumps from 5 percent and 15 percent, respectively, to 20 percent on both, and further increased the export duty to 30 percent in January 2012. A 5 percent *ad valorem* export duty on iron ore pellets has been in place since January 2014. Iron ore containing less than 58 percent iron has also been subject to a 10 percent export duty since May 2015. In March 2016, the government of India unified the rate of export duty for all types of iron ore (other than pellets) at 20 percent. These various export duties impact international markets for raw materials used in steel production.

In addition to the steel-related export duties, India's March 2017 budget also imposed a 15 percent duty on exports of aluminum ores, including laterite. India has also maintained, since February 2012, a 30 percent *ad valorem* duty on exports of chromium ore.

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 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 consultation or notification at the WTO. This lack of transparency imparts a lack of predictability to the Indian market, negatively affecting 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.