-India-

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GENERAL FEATURES OF TRADE POLICY

Since 1991, when India put in place a structural adjustment programme, India's external trade has shown the pattern of an emerging economy, with EU-India bilateral trade growing rapidly. The European Union remains India's largest trading partner, accounting for nearly 23 per cent of India's exports and 21 per cent of total Indian imports in the year 2001-2002. Total EU-India trade during the last decade increased significantly registering an impressive growth rate, from € 9 975 million in 1991 to € 25 787 million in 2002. Both, EU exports to and EU imports from India roughly doubled in parallel during the same period.

The economic reform programme embarked upon by India in 1991 resulted in substantial reduction of import tariffs. In addition, imports have been further liberalised by removing the quantitative restrictions. However, while India has removed some trade barriers, it has introduced other measures eliminating the effects of trade liberalisation.

India is a member of all the major multilateral economic fora, including the International Monetary Fund (IMF), the World Bank and the Asian Development Bank (ADB). India was an original contracting party to the GATT and became a founding member of the World Trade Organization (WTO) in 1995.

The South Asian Association for Regional Cooperation (SAARC), has sought to expand trade and economic relations between its members, namely, India, Bangladesh, Bhutan, Maldives, Nepal, Pakistan and Sri Lanka. India is a member of the Bangkok Agreement which also includes Bangladesh, the Republic of Korea, the Lao People's Democratic Republic, Papua New Guinea and Sri Lanka. The Agreement provides for the liberalization of tariff and non-tariff barriers between its members. The Indian Ocean Rim Association for Regional Cooperation was recently formed along with 13 other countries in the region.

The current 1994 Co-operation Agreement between the EU and India is a wide-ranging third generation agreement, well beyond trade and economic co-operation. The Agreement sets up a Joint Commission and three sub-commissions: on trade, economic co-operation and development co-operation. Indian exports receive preferential treatment under the EU's Generalized System of Preferences (GSP) scheme.

The following table is an overview of the tradeflow between the European Union and India

Section	Year	Import(Euro)	Export(Euro)
	1996	181,031,230	4,792,760
	1997	158,533,160	4,724,210
	1998	125,518,490	4,152,330
	1999	176,893,660	34,228,360

Animals & animal products	2000	258,384,750	6,753,620
	2001	287,263,320	6,775,250
	2002	327,413,410	7,814,980
	2003	357,234,020	15,576,200
Vegetable products	1996	612,789,770	9,449,910
	1997	787,179,440	11,502,900
	1998	809,858,730	10,348,560
	1999	804,180,210	65,861,450
	2000	882,033,540	14,791,930
	2001	780,630,460	44,092,220
	2002	679,979,100	86,141,700
	2003	648,186,340	38,684,190
Animal or vegetable fats	1996	74,905,820	3,859,450
	1997	66,696,690	24,179,650
	1998	69,426,780	82,138,900
	1999	75,467,250	79,043,680
	2000	130,066,430	35,988,020
	2001	112,807,830	10,154,120
	2002	88,294,490	4,270,880
	2003	90,509,650	7,202,100
Prepared foodstuffs	1996	235,786,850	13,993,660
	1997	181,206,920	31,941,970
	1998	126,437,770	35,072,340
	1999	94,061,750	31,061,690
	2000	134,962,850	29,448,010
	2001	170,438,860	31,180,200
	2002	162,279,670	33,770,560
	2003	115,721,060	30,564,440
Mineral products	1996	258,062,630	301,449,280
	1997	213,505,140	160,137,820
	1998	206,063,070	63,687,340
	1999	222,602,930	123,915,660
	2000	290,331,620	461,123,780
	2001	388,963,380	95,615,920
	2002	349,373,960	98,051,540
	2003	411,994,520	87,253,170
Chemical products	1996	520,034,140	673,574,860
	1997	654,696,320	771,629,510
	1998	688,032,900	768,468,110
	1999	701,072,190	876,451,690
	2000	932,676,470	1,059,035,350
	2001	950,736,170	1,040,650,630
	2002	1,091,445,790	1,102,670,430
	2003	1,182,647,660	1,080,488,040
Plastics & rubber	1996	91,495,250	202,227,510
	1997	112,281,270	218,746,710
	1998	147,975,330	205,583,970
	1999	151,319,730	245,153,620
	2000	210,999,200	297,270,010
	2001	216,442,230	334,714,020
	2002	226,832,140	330,510,460
	2003	260,143,420	362,826,930
Hides & skins	1996	765,413,910	38,276,210
	1997	813,743,090	45,849,740
	1998	764,617,720	54,038,180
	1999	692,720,070	69,859,740
	2000	896,418,480	96,257,120
	2001	1,015,535,560	93,674,440
	2002	933,489,490	77,010,730
	2003	830,841,260	69,772,760
	1996	30,962,640	7,094,430

Wood & wood products	1997	33,467,900	10,766,960
	1998	35,289,390	12,741,450
	1999	37,320,210	14,128,240
	2000	40,291,400	20,987,590
	2001	43,818,500	25,246,670
	2002	47,751,490	25,615,820
	2003	51,952,450	23,523,780
Wood pulp products	1996	15,978,960	191,754,750
	1997	20,572,550	212,779,090
	1998	19,757,520	189,156,020
	1999	24,497,010	239,694,880
	2000	33,081,240	281,551,350
	2001	35,563,070	278,313,630
	2002	42,100,390	299,246,890
	2003	54,341,150	351,846,230
Textiles & textile articles	1996	3,000,523,280	90,316,050
	1997	3,213,379,660	104,457,250
	1998	3,210,451,410	98,121,540
	1999	3,268,525,990	120,255,870
	2000	3,877,032,770	161,708,460
	2001	4,075,403,860	183,789,610
	2002	3,940,039,840	183,558,360
	2003	3,926,685,750	210,485,970
Footwear, headgear	1996	319,853,180	16,167,870
	1997	365,661,500	15,773,560
	1998	349,443,990	14,836,000
	1999	416,641,430	21,631,620
	2000	472,890,830	18,423,840
	2001	566,942,390	16,410,140
	2002	578,614,610	15,547,470
	2003	561,821,900	16,102,960
Articles of stone, plaster, cement, asbestos	1996	77,668,630	56,334,580
	1997	95,716,200	75,660,170
	1998	107,619,710	72,960,810
	1999	136,355,090	82,395,410
	2000	172,712,510	100,715,430
	2001	196,379,450	117,385,320
	2002	218,933,750	105,668,470
	2003	233,311,850	106,971,260
Pearls, (semi-)precious stones, metals	1996	850,953,460	2,281,674,210
	1997	943,016,760	2,871,137,520
	1998	1,133,648,500	2,839,439,890
	1999	1,166,883,550	3,666,575,350
	2000	1,510,532,520	5,095,915,500
	2001	1,418,775,060	4,350,353,830
	2002	1,556,596,030	4,313,739,760
	2003	1,452,909,260	5,212,920,620
Base metals & articles thereof	1996	369,687,760	833,427,280
	1997	440,818,780	871,224,930
	1998	611,119,930	666,121,500
	1999	532,622,010	582,755,760
	2000	690,536,440	731,394,690
	2001	652,268,170	780,703,790
	2002	702,291,940	781,154,340
	2003	827,315,310	903,927,180
Machinery & mechanical applicances	1996	289,881,180	3,538,308,720
	1997	335,742,650	3,120,296,370
	1998	418,154,310	2,871,621,050
	1999	472,558,710	2,490,975,280
	2000	643,751,360	3,073,911,530
	2001	801,219,100	3,203,201,290

	2002	933,777,780	3,614,555,030
	2003	1,079,134,070	3,800,565,570
Transportation equipment	1996	161,350,600	188,517,300
	1997	245,247,560	265,974,210
	1998	202,337,740	223,888,700
	1999	231,024,940	255,197,040
	2000	262,097,950	356,749,120
	2001	213,288,400	300,041,700
	2002	246,478,760	460,987,580
	2003	333,719,400	308,867,810
Instruments - measuring, musical	1996	35,159,270	298,337,440
	1997	38,213,880	311,827,310
	1998	43,932,810	334,595,540
	1999	55,916,590	383,522,470
	2000	76,542,040	459,000,100
	2001	93,391,610	508,052,070
	2002	93,973,500	547,227,170
	2003	95,530,820	551,328,240
Arms & ammunition	1996	684,740	1,186,260
	1997	712,250	5,108,090
	1998	595,700	1,194,770
	1999	647,330	843,380
	2000	797,870	14,274,700
	2001	974,610	12,938,370
	2002	965,780	4,770,290
	2003	2,215,620	7,823,390
Miscellaneous	1996	121,790,210	33,942,840
	1997	153,245,510	40,709,160
	1998	182,785,970	31,605,270
	1999	204,267,120	39,479,750
	2000	255,492,130	43,786,990
	2001	289,418,630	45,986,000
	2002	310,865,830	53,556,800
	2003	322,408,250	60,831,230
Works of art	1996	3,216,390	407,620
	1997	6,375,820	5,090,830
	1998	2,772,560	546,580
	1999	3,642,480	141,620
	2000	2,508,900	1,333,340
	2001	2,185,120	2,402,040
	2002	1,342,110	663,400
	2003	1,485,320	1,171,580
Other	1996	22,032,440	41,381,620
	1997	22,060,000	24,079,890
	1998	18,409,220	23,273,530
	1999	16,087,230	27,069,740
	2000	38,565,860	22,456,030
	2001	50,423,910	24,706,420
	2002	39,112,420	33,894,980
	2003	35,405,530	32,158,440

Automotive
last updated on 2002-04-19

After the liberalisation of foreign investment regulations in the automobile sector major car manufacturers have entered the Indian market and established joint ventures with the Indian industry. However, the import regime with high tariffs and certification requirements remains restrictive. Following the lifting of quantitative restrictions in 2001 Indian Government announced new import rules for new and used vehicles.

Textiles and Leather
last updated on

Trade in textile and clothing products between India and the EU is regulated by two types of agreements. Firstly, the administrative arrangement between India and the Community on trade in textile products notified under the ATC regulates the quantitative aspects of exports to the Community of goods originating in India. Under this agreement, exports of several textile and apparel products from India are limited to the quantities provided in the Agreement.

Secondly, on the market access level, the 1994 Memorandum of Understanding (hereinafter referred as MOU) and the 1997 BOP Agreement both between India and the EU include market access improvements for textiles and clothing products. Under these texts, India agreed to remove quantitative restrictions over a transition period, to lower and bind tariffs and to remove all import restrictions.

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TARIFFS AND DUTIES

As a result of the 1991 economic reform programme, Indian import tariffs have substantially come down. However, these tariffs are still high by international standards. In its budget for the year 2003-2004, India reduced its peak rate of Basic Customs Duty (BCD) to 25%. Very high tariffs, above the peak rate, remain in place for products like spirits and wines, crude oil, vegetable fats and oils. Therefore, the term "peak duty" can be considered as a misnomer, and the right term for it would be "the most common rate".

In addition to the Basic Customs Duty, various additional duties and charges apply. The Special Additional Duty (SAD) continues to be a main source of concern, since it results in a discriminatory treatment of imported goods. The major change on the excise front has been the introduction of a single rate of Central Value Added Tax (CENVAT) in replacement of the previously existing ad valorem excise duty rates. India also, in this year's Budget increased the Service Tax from 5 percent to 8 percent.

As a result of the Uruguay Round, India has bound about 72 per cent of its tariff lines, with all agricultural lines bound and some 68 per cent of lines for imports of industrial goods. For non-agricultural goods India undertook, with a few exceptions, ceiling bindings of 40 per cent ad valorem on finished goods and 25 per cent on intermediate goods, machinery and equipment. The phased reduction to these bound levels is carried out over a 10-year transitional period. Some industrial sectors and all consumer products (items of particular export interest for the EC) were excluded from the Indian bindings. In agriculture, India's bound rates range from 100 per cent for most agricultural products up to 300 per cent for edible oils.

India is a signatory to the Information Technology Agreement (ITA) covering computers, telecommunications equipment, semiconductors, semiconductor manufacturing equipment, software and scientific instruments. Its offer included zero rates on 217 items at the HS six-digit level by the year 2005.

Tariff Levels

960028- *High tariffs* [2003-06-16]

India applies still high tariffs despite the fact that the peak tariff rates have fallen from 355 % in 1991 to 25% in 2003. In its budget for the year 2003-2004 India reduced the so-called peak duty from 30% to 25%, excluding certain agricultural products. Very high tariffs remain in place for products like spirits and wines, as well as crude oil and vegetable fats and oils (see a separate barrier fiche no. 980067 on prohibitive tariffs for spirits).

The Finance Minister had committed to bringing the customs tariff rate down to 20 % over a three year period in his budget speech of 2001. This commitment was repeated in 2002.

A so-called Special Additional Duty (SAD) of 4% is applied on a number of imported products. This duty results in a discriminatory treatment of imported goods. Under SAD, goods imported for subsequent trading are not exempt (see also a separate barrier fiche no. 980099 on SAD). Moreover, the so-called Countervailing Duty (CVD, or Additional Duty) is levied if products or like-products manufactured in India are subject to excise duty.

In November 2001 European pulp and paper industry raised the problem of high customs duties in fine papers and packaging board segment. The complaints were renewed in 2002 and 2003. The lowering of the basic duty from 30 to 25% in the Budget for 2003/2004 still results in a total tariff protection (CVD, SAD) of 50,8% against 56,8% in 2002. The total cumulative duty applied by India in the sector is one of the highest in the world, and even well beyond tariff levels in other Asian countries.

Moreover, the European industry in a large number of sectors such as textiles, steel, marble, spirits, processed foods etc. has frequently complained about high tariffs in India.

Overall India's tariff levels remain as a genuine problem for the European industry. Tariff reductions and in particular bindings on a much lower level are an important goal of the multilateral negotiations.

- The issue of high tariffs has repeatedly been raised by the EU with India (most recent interventions on wines and spirits).
- In the budget for the year 2003-2004 the basic customs duties on spirits were lowered from 182% to 166%. Whereas, countervailing duty slabs on wines and spirits were further raised from 2 to 4. However, the total cumulative duties for these products still remain high.

980099- *Special Additional Duty (SAD)* [2004-06-11]

The SAD for all goods was abolished with effect from 8 January 2004.

Reversing a trend in effect throughout the previous decade, customs duties were raised in the 1998-99 Indian Budget. The most far-reaching change was the implementation of a "Special Additional Duty" of 8% on imports, which was halved to 4% after approximately two weeks. It has to be noted that this duty is levied on the aggregate of a value comprising of the assessable value plus basic customs duty, additional customs duty plus anti-dumping and safeguard duty, as applicable. This results in a higher actual duty increase (than 4 %).

In the framework of WTO Trade Policy Review Mechanism in June 2002 India provided the following replies on the issue:
- "The objective behind the imposition of Special additional duty of customs (SAD) @ 4% on imported goods is to neutralise the impact of local levies such as sales tax, turnover tax etc. leviable on domestically produced goods and to provide a level playing field to the domestically produced goods vis-à-vis imported goods. The floor rates of sales tax levied by the States are 4%, 8%, 12% and 20% for various types of goods. The rate of Central Sales Tax applicable to inter-State sales is also 4%. Thus the levy of SAD does not completely neutralise the effect of local sales tax applicable to domestically produced goods but only partially does so. There is no plan at present to phase out or remove SAD."
- "At the time of the imposition of the levy in 1998, traders were kept out of the purview of the levy since goods imported for trading (i.e. subsequent sale) would have been levied sales tax at the time of the sale. However it was noticed that goods were imported for trading, but from areas which had a sales tax exemption, so as to avoid both sales tax and SAD. There were also instances of companies resorting to high seas sales in order to avoid the levy. Further, there were some instances of duty anomalies wherein the final product when imported for sale, was cheaper than the inputs when imported for manufacture of the final product, on account of SAD. Keeping all these factors in mind, the imposition of this levy was made across the board in 2000."

The SAD is still maintained in the Budget for 2003-2004, whilst it has been proposed to reduce the Central Sales Tax from 4% to 2%. As the SAD is an across the board tariff on most goods, it may not always be equivalent to local sales taxes imposed on similar domestic products. Moreover, imported products not consigned directly to the final user are subject to double taxation, because both the SAD of 4 % and local taxes (when resold on the domestic market) are levied on them.

Internal Taxation

990077- *Discriminatory States sales taxes* [2003-05-28]

A few State Governments like West Bengal, Gujarat, Maharashtra, Bombay (Mumbai) and NCT (National Capital Territory) of Delhi started levying since 1 May 1998, 1 August 1998 and 1 April 1999 sales tax on some items of the so-called `Goods of Special Importance´ like sugar, tobacco and fabrics and their imports at different rates. These States sales taxes (rates varying from 3 to 15 %) have been levied on goods of non-Indian origin only.

State Government Notifications etc. on levy of Sales Tax on goods of Special Importance are as follows:

- The Government of National Capital Territory of Delhi, vide their Notification No. F4(1)/99-Fin(G)(I)2593-2601 and F4(1)/99-Fin(G)(ii) 2602-2610, both dated 31.3.1999, notified amendment to Delhi Sales Tax Act 1975 to levy sales tax of 3 % on imported silk fabrics and 4 % on all varieties of imported fabrics and imported sugar in all forms w.e.f. 1.4.1999. In addition, imported toys attract a sales tax of 12 % while for domestically produced toys a sales tax of 4 % is applied.

- The Government of West Bengal vide their Notification No. 946-FT dated 1.4.1999 notified amendment to West Bengal Sales Tax Act, 1994 to levy sales tax of 4 % on imported sugar and pure silk cloth, and 15 % on imported cigars or cigarettes. Since then, sugar has been taken off from such levy.

- Gujarat Government amended the Gujarat Sales Tax Act, 1969 by the Gujarat Sales Tax (Amendment) Act, 1998 to levy 4 % tax on cotton fabrics, imported sugar and tobacco w.e.f. 1.8.1998. Moreover, imported rayon and artificial silk fabrics, as well as imported woollen fabrics, are subject to a sales tax of 4 %.

- Bombay Sales Tax Act, 1959 as amended by Maharashtra Tax Laws (Levy and Amendment) Act 1999 provided for levy of Sales Tax of 4 % on fabrics, sugar and tobacco with effect from 1.5.1998.

Moreover, it is obvious that also other states, which have not been mentioned here, may apply discriminatory states sales taxes against imported products.

If the sales taxes are levied on imported products only, the measure appears to violate Article III of GATT. In addition, there have also been doubts about the measures' conformity with the Indian Constitution (Article 286), as well as with the 1957 Additional Duties of Excise Act.

- The Finance Minister stated in February 2003 in his Budget speech that while continuing to give States the additional 1.5% of all shareable taxes and duties, the Additional Duties of Excise (Goods of Special Importance) Act, 1957 is being amended, from a date to be notified. Thereafter the States are allowed to levy sales tax on textiles, sugar and tobacco products at a rate not exceeding 4%. He explained that this change would enable the States to integrate these three products in the VAT chain.
- The system of internal taxation in India is likely to undergo considerable changes with the introduction of VAT. However, there is no single VAT legislation and different states have different legislations, though the Ministry of Finance is trying to harmonise them. Despite the introduction of VAT, a plethora of existing local levies, such as luxury tax, entertainment tax, entry tax will continue to exist. VAT will, therefore, essentially replace the sales tax, additional sales tax and surcharges, though it is likely the 'Goods of Special Importance' will be taxed at a higher rate.

  The introduction of the new VAT regime, which was supposed to be implemented on 1 April 2003 at State level, has been postponed to 1 June 2003, and even further for some States. It remains to be seen whether the deadline will be respected.

Agriculture and Fisheries

Tariff Levels

980067- *Prohibitive tariffs for spirits* [2004-01-15]

The new Indian EXIM policy introduced in spring 2001 followed the letter of dismantling engagements. In order to comply the WTO recommendations and rulings resulting from a panel with the U.S. the Indian Government announced the elimination of a number of quantitative restrictions including alcoholic drinks. Simultaneously, new measures were introduced with similar restrictive effects on EC exports.

On 1 April 2001 India introduced an Additional Duty on imported wines and spirits to compensate for excise duties paid or payable at State level on domestically produced products. In its Budget for the year 2002/2003 India modified the Additional Duty from a three-rate structure of 150%, 100% and 75% to a two-rate structure of 50% and 75%. On 1 March 2003 India introduced new Additional Duty rates (Notification 32/2003 under Section 3 of the Customs Tariff Act). The duty ranges from 150% to 25% or USD 52.2 whichever is higher. The rates seem to be in excess of the excise duties imposed on domestic products in a large number of states.

The Special Additional Duty (SAD) of 4 % compensates for the sales tax applied to domestic products. As SAD is paid at customs upon importation, imported products were earlier exempt from the sales tax upon their first resale in India. India, however, changed the law and since 1 March 2001 imported spirits are no more exempt from paying sales tax.

As to spirits India is committed to annual tariff reductions as per its Uruguay Round Schedule. Bound tariffs are still very high at 150 % at the end of the implementation period, i.e. in 2004. According to India's WTO commitments the level of the import duty for 2002 is 182% and for 2003 166% .

The issue of high tariffs has repeatedly been raised by the EU with India.

- In the Budget published on 28 February 2003, India announced some changes in the sector. The basic customs duty on spirits has now been reduced from 182% to 166%, which is in conformity with India's WTO commitments. The rate of additional duty has also been modified. The implementation of new rates, 150%, 100%, 50% and 25%, in no way, eliminate the discrimination against imported products. As for the SAD, the situation remains unchanged. In fact, by introducing 4 slabs of additional duty, the total duty on spirits has gone up from (339.92% - 413.24%) in 2002-03 to (245.8 % - 591.6%) in 2003-04.
- 1). By Notification No. 5/2004-CUSTOMS (Sl. No. 4.), dated 8 January 2004, the import duty on spirits was reduced to 150% from 9 January 2004 in line with India's WTO

committments.

2) By Notification No. 6/2004-CUSTOMS dated 8th January 2004 all wines and spirits (and other goods) are exempted from the levy of Special Additional Duty (SAD) of 4%, from 9 January 2004.

030036-*High customs duties on food preparations* [2003-05-12]

India applies high customs duties to certain food preparations (HS 2106.90). As per its Uruguay Round Schedule India is committed to gradually bring down its customs tariffs on these products from the base rate of 140% to 60 % by the end of the implementation period, i.e. 2004. Thus, the basic customs duty should not exceed 68% in 2003.

In its budget for the year 2003/2004 India reduced its basic customs tariff on these food preparations from 160% to 155% ad valorem which is still substantially above their commitment. However, under a General Exemption, a customs duty of 30 % is applied to nearly all goods falling under HS subheading 2106.90, except for certain compound alcoholic preparations used for the manufacture of beverages.

In accordance with comments from the Commission, India adopted an 8-digit customs classification code based on the 2002 Harmonised System nomenclature in April 2003 and new tariff subheadings were created for products classified under HS 2106.90.

Iron, Steel and Non-Ferrous Metals

Tariff Levels

020089-*Distortions on the copper scrap market* [2002-10-28]

The European industry has complained about the structure of customs tariff on copper and copper alloy scrap in India. The tariff structure has a distortive effect on the world market for copper raw materials and in particular on EC supplies of copper and copper-alloy scrap, because it confers to the Indian industry a purchasing edge on the raw materials market. Very small refining margins in the sector and the inelastic nature of the market worsen the problem.

The EU industry claims that Indian industry, whilst having a closed domestic market, is increasingly active on the international market for raw material supplies and is eventually developing exportable production surpluses under unfair competitive conditions. The EU industry feels that the problems in India are of structural nature for the whole non-ferrous-metal sector.

Services - Construction & Engineering

Tariff Levels

010060-*Temporary import of dredging vessels* [2003-03-25]

Prior to 1 March 2001, dredging vessels (HS heading 8905.10) entered India duty free. Thereafter India has levied a 5% import duty and as from 1 March 2002 a Special Additional Duty of 4% resulting in an effective duty of 9,2% on the value of a dredging vessel (on the transaction value of a vessel calculated by international shipping agents). These duties are applied also on vessels imported on a temporary basis for the execution of contracts.

Dredging contractors have currently two options: either pay a partial Customs Duty and provide a Bank Guarantee for the differential amount or claim for a percentage Drawback of the duty once the vessel has been re-exported. The former option is not available beyond one year. To EU industry's experience, claiming for a Drawback once the vessel has been re-exported is only a theoretical option. Firstly, the process requires considerable resources. Secondly, the slow payment of the Drawback ties up the cash flows of the companies.

See also a separate barrier fiche no. 020003 on tender contracts.

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TRADE DEFENCE INSTRUMENTS

India has, in recent years, become a fairly active user of trade defence instruments. A number of anti-dumping duties are imposed and several products originating in the EU are subject to Indian measures. However, the justification for some of those cases must be in some doubt given the very high import protection that already exists in that country. Some of these measures also raise questions on their compatibility with international rules both on the procedural and technical level.

Indian anti-dumping duties affect the imports of the following EU products:

Acrylic fibre	Italy, Spain and Portugal
Acrylic fibre, below 1.5 denier	Italy
Acrylic fibre	United Kingdom and Germany
Acrylonitrile butadiene rubber (NBR)	Germany
Aniline	EU
Black and white photographic paper	United Kingdom and France
Caustic soda	France
Choline chloride	EU
Cold rolled flat products of stainless steel	EU
Flexible slabstock polyol	EU
Graphite electrodes	Spain, Italy, Germany, Austria, France and Belgium
High styrene butadiene copolymer	EU
Hydroxyl amine sulphate	EU
Oxo-alcohols	EU
P-tert butyl catechol (PTBC)	France
Phenol	EU
Purified therephthalic acid (PTA)	Spain
Seamless tubes	Austria
Sodium cyanide	EU
Sodium ferrocyanide	EU
Sodium nitrite	EU
Theophylline and caffeine	EU
Thermosensitive paper	EU
Vitamin A palmitate	EU
Vitamin AB2D3K	EU
Vitamin AD3 500/100	EU
Vitamin C	EU

As regards poly-iso butylene and D para hydroxy phenyl glycine base, the definitive anti-dumping duties recommended have not yet been imposed (April 2003).

In addition to the definitive measures mentioned above, provisional anti-dumping duties are in force for EU imports of methylene chloride and sodium hydrosulphite, as well as for imports of caustic soda (excluding France). Provisional anti-dumping duty on EU imports of X-ray baggage inspection multi-energy system has been recommended, but has not yet been imposed (April 2003).

Furthermore, India has initiated anti-dumping investigations against certain products originating in the EU (hot rolled coils, sheets, plates and strips; potassium carbonate).

India has enforced safeguard measures to target imports of phenol, acetone, gamma ferric oxid, methylene chloride and epichlorohydrin (ECH). However, on methylene chloride and epichlorohydrin duties are not yet in place. Duties have not been recommended for vegetable oil (edible grade) case. Meanwhile, safeguard investigation has been initiated against imports of bisphenol A (BPA).

Anti-Dumping Measure

020092-*Handling of anti-dumping investigations* [2004-07-08]

Since 2000 EU exporters have made a number of complaints about their treatment in Indian anti-dumping investigations. Indian authorities systematically carry out their investigations in apparent breach of some of the most basic WTO rules, most notably regarding a proper injury investigation and disclosure of the findings and conclusions.

- In December 2003, the EC decided to request consultations with India under the Dispute Settlement Understanding (DSU) of the WTO to clarify the methodology applied by India in its anti-dumping practice. Consultations are still ongoing. The Indian authorities have shown themselves open to discussing their anti-dumping practice and ways to improve this.

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NON TARIFF BARRIERS

Imports are permitted without a licence with the exception of products listed on the India's negative list for imports. The negative list includes banned or prohibited items, restricted items and items importable only by government trading monopolies. India does not apply quantitative restrictions in the form of fixed quota as a part of its licensing system. However, non-automatic licensing effectively bans or prevents competing imports of certain items from entering domestic market at commercial levels.

The removal of trade barriers has in some instances been followed by an increasing number of new non-tariff barriers affecting the importation of EU products. In particular, India has strengthened the implementation of labelling and certification requirements.

Subsidies

970167- *Indian Export Credits* [2002-07-11]

The Indian "Guidelines on policies and procedures for external commercial borrowings for 1996-1997" contain provisions contradictory to the rules stipulated in the OECD Arrangement on Guidelines for Officially Supported Export Credits. The Indian "Guidelines" require notably a minimum average maturity of seven years for such borrowing exceeding USD 15 million. The corresponding repayment period of the underlying export credit, being thus close to fourteen years, is well beyond the ten year maximum for such credits prescribed by the above OECD Arrangement. Any exporter having to accept this Indian rule in an export transaction with an Indian buyer risks therefore to become ineligible for an officially supported export credit (insurance) concerning his corresponding cross-border claim. This will certainly have a negative impact on exporters trade relations with India.

Registration, Documentation, Customs Procedures

970334- *ATA for Professional Equipment* [2002-10-09]

India has subscribed to the Customs Convention (1961) on the ATA Carnet -a customs document allowing temporary admission of goods- only for goods used for display at exhibitions and fairs, but not for samples or professional equipment. Therefore, the benefits of the ATA Carnet can only be enjoyed in very limited cases.

As the ATA Carnet is not applicable for professional equipment and samples, this kind of goods has to be put into free circulation in India (paying customs duties), which implies an increase of costs and burdensome procedures for the economic operators.

The Federation of Indian Chamber of Commerce and Industry (FICCI) has been appointed as the guaranteeing association for ATA Carnet in India.

010058-*Labelling requirements for packaged products* [2003-06-16]

After the liberalisation of import restrictions in April 2001 Indian authorities have strengthened the implementation of labelling requirements. Under pressure from domestic industry India extended the application of labelling rules contained in the Standard of Weights and Measures Rules of 1977 to all imported products by Notification No. 44 (RE-2000)/1997-2002 dated 24th November 2000.

All packaged products intended for retail sale are subject to the provisions of the Standard of Weights and Measures Rules, when imported into India (Policy Circular No. 38(RE-2000)/1997-2002 dated 22nd January 2001). The compliance of these is ensured before the import consignment of the commodities is cleared by

Customs for home consumption. All imported, prepackaged commodities shall in particular carry the following declarations:

- Name and address of the importer;
- Generic or common name of the commodity packed;
- Net quantity in terms of standard unit of weights and measures. If the net quantity in the imported package is given in any other unit, its equivalent in terms of standard units shall be declared by the importer;
- Month and year of packing in which the commodity is manufactured or packed or imported;
- Maximum retail sale price at which the commodity in packaged form may be sold to the ultimate consumer. This price shall include all taxes local or otherwise, freight transport charges, commission payable to dealers, and all charges towards advertising, delivery, packing, forwarding and the like, as the case may be.

Imported commodities that will be subject to further processing or assembly before they are sold to consumers fall outside the scope of application.

- According to India its domestic manufactures have to comply with the provisions of Weight and Measures Act 1976 regarding packaging of the product. These include also maximum retail price. India maintains that all these packaging requirements including MRP are essential from the point of view of consumer interest and protection.
- The Indian regulation respects the principle of national treatment since it is applied similarly to imported and locally manufactured products. However, the obligation to declare the maximum retail sale price in labels before customs clearance causes additional constraints for EU exporters for the following reasons:
  - It is difficult to calculate the maximum retail sale price before customs clearance since the local taxes vary from state to state and the destination of the goods is not known at the time of importation.
  - It is necessary to define an exact maximum price because the price is used as a basis of taxation.
  - The merchandisers in most cases consider the maximum price as a real selling price preventing them selling the product at a price significantly lower.

  In practice, the customs authorities at some Indian ports accept that the packages are labelled during their passage from the warehouse to the customs. There is, however, no legislative basis for this more flexible practice. It has also been reported that labelling across the board in customs bonded warehouses is not allowed at all Indian ports. It has to be noted that the storage costs in customs bonded warehouses are higher than in private ones, and have been increased in 2001 (24 % annual interest of the value of customs duties after 30 days' storage).
- A study on **labelling and marking requirements** was published in November 2002.
- In the Budget 2003-04, the interest free period for warehoused goods has been increased from 30 to 90 days.

Standards and Other Technical Requirements

010029-*BIS certification* [2004-02-27]

India has enforced mandatory certification for 135 products by DGFT Notifications No. 44 (RE-2000)/1997-2002 dated 24 November 2000, No. 7 (RE-2001)/1997-2002 dated 31 March 2001 and No. 19/2002-2007 dated 18 November 2002, all of them becoming effective immediately. The mandatory quality certification covers a wide range of products: various food items, food colours, cements, gas cylinders and valves, electrical appliances and accessories, multipurpose dry batteries, X-ray equipment, feeding bottles, miner safety shoes, cap lamp batteries, mineral water, clinical thermometers etc. Imports of these items are allowed only after Bureau of Indian Standards (BIS) certification. Since then, requirements have been removed for the majority of steel products on 28th October 2003 (see Public Notice 1/2003-04 dated 28th October 2003).

According to the Indian legislation the applicants for BIS licences have to pay application fees, processing charges, expenses of the inspection visits from India to the EU, testing costs, annual marking fees for the licences and licence fees. The foreign manufacturer is also required to set up a liaison or branch office located in India with the permission of Reserve Bank of India, which shall meet all liabilities with respect to BIS Act, Rules and Regulations for purpose of BIS licence. A licence is valid for one year and can be renewed. Before the renewal new inspections and testing of samples are required. All the costs, as well as renewal fees must again be borne by the applicant firms.

The Indian requirements restrict effectively the imports to the country by setting additional requirements and causing extra costs for the importers. The measure appears to be inconsistent with Indian obligations under the TBT Agreement. India should accept equivalent foreign standards, and allow imports of products, whose consignments are accompanied by appropriate certificates.

- India justifies its measure by saying that these requirements are equally applicable to domestic goods and thus compliant with WTO’s national treatment requirement. It has stated that the possibility of accepting certification according to equivalent foreign standards in future would depend on any mutual agreement between Governments or national standardising bodies. According to India the BIS is not a profit-making organisation, and the costs for conformity assessment are decided accordingly.
- On 7 April 2003 India decided to increase the number of items under compulsory BIS certification (DGFT

Notification No. 5(RE-2003)/2002-2007) from 135 to 159. The items included in the list are electrical appliances, switches, different types of lamps, circuit breakers, fuses, switchgears, PVC insulated cables and transformers. This move further limits EU exports into the Indian market.

- Keeping in view the operative difficulties complained by various Associations and importers, DGFT decided on 9 May 2003 to postpone the application of Notification No. 5 in respect of certain items (sl. No. 143 to 159). The mandatory standards for these items will come into force after 17.8.2003 (Policy Circular No. 2 (RE-2003)/2002-2007).

Government Procurement

960031- *Procurement discrimination* [2002-04-11]

India's government procurement practices are not transparent and discriminate against foreigners. Policies require discrimination in favour of locals.

The most recent complaint relates to the energy sector where the public sector customer gives purchase preference for Indian public sector manufacturer and supplier. (see also a separate barrier fiche on dredging services no. 020003)

Competition Issues

960030- *Canalised trade* [2002-07-11]

India applies canalised trade through designated government agencies for certain products (agricultural products, petroleum products and urea). Canalisation agencies are mostly state trading enterprises but some minor private trading is allowed with a license from the Director General of Foreign Trade (DGFT). Most of the total canalised trade concerns petroleum products. State trading enterprises retain exclusive rights regarding imports and exports.

According to India's EXIM policy the state trading enterprises are legally obliged to make their purchases and sales involving imports or exports solely in accordance with commercial considerations (including price, quality, availability, marketability, transportation etc.). They should act in a non-discriminatory manner and afford the enterprises of other countries adequate opportunity to compete for participation in such purchases or sales.

The Commission will closely monitor the implementation of the EXIM Policy by state trading enterprises to ensure that it fully observes India's international commitments under WTO and GATT.

Quantitative Restrictions and Related Measures

980017- *Art. XX/XXI restrictions* [2003-04-03]

In relation to WTO consultations on import restrictions for balance of payments purposes, India also notified in April 1997 restrictions maintained by reference to GATT Articles XX and XXI. Some of these restrictions have been in force for decades; others were introduced originally for balance of payments purposes and have been shifted to these more general provisions.

According to Indian legislation the import restrictions are in place in order to protect public morals; human, animal or plant life or health; patents, trade marks and copyrights; to prevent deceptive practices and prison labour; to protect national treasures of artistic, historic or archaeological value; to conserve exhaustible natural resources; to protect trade of fissionable material and to prevent traffic in arms, ammunition and implements of war. These general and security exceptions are listed in the Articles XX and XXI of GATT.

Import restrictions have been maintained in India under various categories, such as those subject to non-automatic licensing, prohibited items and items importable only by government trading monopolies. Most of them take the form of Non-Automatic Licences (NAL). There were approximately 582 items in the restricted list in 2001. This included agricultural products, chemicals, fertilisers, pharmaceuticals, metal, stones, jewellery, transmission apparatus, helicopters and aircraft, just to mention a few.

The EC has repeatedly raised the issue bilaterally with the Indian authorities and identified priority items for which the removal of import restrictions has been required. In 1998 out of the 600 restricted items, the EC requested the removal of the import restrictions for 205 priority items. In May 2001 the EC provided India with an updated version of the priority list containing 171 products. In autumn 2001 five priority areas were identified on the basis of industry interest, and the Commission efforts focussed on those. They were marble, granite, paper & paper products, antibiotics and gold & jewellery.

In the EXIM policy for 2002-2007 introduced in end March 2002, there was some forward movement by the removal of 63 items from the restricted list. The major products, which were freed, belong to pharmaceutical products, antibiotics, chemicals (with certain conditions), organic and inorganic compounds and gems & jewellery. Certain insecticides and pesticides (32 products falling under heading 3808) were freed provided that they are registered and not prohibited for import under Insecticides Act, 1968.

Thus, the constant efforts of the EC before and after the turn of the year 2001/2002 had some impact on market access in two of the priority categories namely: antibiotics and gold & jewellery.

- In the framework of the WTO Trade Policy Review Mechanism India replied as follows: "The list of products, which are restricted for imports under Article XX-XXI exceptions were notified to the WTO in 1997. This list is being reviewed from time to time. 83 items were removed from this list prior to 31 March 2002 and restrictions on 63 more items have been removed on 31 March 2002."
- In December 2002, the EC requested WTO consultations on import restrictions maintained under India's Export and Import Policy. The first round of consultations was held on 17 February 2003.
- In its EXIM Policy announced on 31 March 2003 India decided to remove restrictions on 69 items covering animal products, vegetables and spices, antibiotics and films.

Agriculture and Fisheries

Sanitary and phytosanitary measures

020071-*India- Black olives* [2004-10-14]

Ferrous gluconate is apparently not permitted as a colour stabiliser in India by virtue of the Prevention of Food Adulteration Act of 1954, Section 5 (iv) and the Prevention of Food Adulteration Rules of 1955, Rules 60 and 61. Ferrous gluconate is normally present in black olive packs being a commonly used additive. The shipments of black olives, when analysed, are not allowed to be imported into the country. Thus, in practice the importation of black olives to India is prohibited.

This prohibition is contrary to all international regulations, which allow certain amounts of ferrous gluconate. According to the General Standard on Food Additives of Codex Alimentarius, maximum level of ferrous gluconate (E 579/INS 579) used in olives is 150 mg/kg (as iron).

- At a trade sub committee meeting in September 2004, the Indian side assured the EU that the new legislation to allow the us of ferrous glucomnate as a food additive was nearly complete.

  On 11 October 2004, during the EU-Indian AgriMarine working group India re-itererated that it will notifiy the use of Fe-gluconate in the course of next week.

010048-*India- Sanitary import permits for livestock products* [2004-09-27]

The Indian Government decided in July 2001 (Notification No. 21 (RE-2001)/1997-2002) to restrict the import into India of all live-stock products:
- meat and meat products of all kinds including fresh, chilled and frozen meat, tissue or organs of poultry, pig, sheep goat
- egg and egg powder
- milk and milk products
- bovine, ovine and caprine embryos, ova or semen and
- pet food products of animal origin.

The import of all live-stock products is allowed only against a valid sanitary import permit issued by the Department of Animal Husbandry and Dairying. The import permit is issued for import of livestock products if, after a detailed import risk analysis, the concerned authorities are satisfied that the import of the consignment will not adversely affect the health of the animal and human populations of the country. The import risk analysis shall be conducted by the concerned officers of the Department on the basis of internationally recognised scientific principles of risk analysis and with reference to the specific product and the disease situation prevailing in the exporting country vis-à-vis the disease situation in India.

The issue of permits shall be refused if the results of the import risk analysis show that there is a risk of the specific product bringing in one of more specific diseases, which are not prevalent in the country and which could adversely affect the health and safety of the human and animal populations of this country. The import permit lays down the specific conditions that will have to be fulfilled in respect of the consignment, including pre-shipment certifications and quarantine checks. It also specifies the post-import requirements with regard to quarantine inspections, sampling and testing. The permit is valid for a period of six months, but can be extended by the concerned authority for a further period of six months, on request from the importer and for reasons to be recorded in writing.

All livestock products shall be imported into India through the seaports or airports located at Delhi, Mumbai, Kolkata and Chennai, where the Animal Quarantine and Certification Services Stations are located. On arrival at the entry point, the livestock product shall be inspected by the Officer-in-charge of the Animal Quarantine & Certification Services Station or any other veterinary officer duly authorised by the Department Of Animal Husbandry and Dairying.

After inspection and testing the concerned quarantine or veterinary authority accords quarantine clearance for the entry of the livestock product into India or, if required in public interest, orders its destruction or its return to the country of origin. If disinfection or any other treatment is considered necessary in respect of any livestock product, the importer shall, on his own or at his cost through an agency approved by the Department of Animal Husbandry and Dairying, arrange for disinfection or other treatment of the consignment, under the supervision of a duly authorised quarantine or veterinary officer.

- According to **the study on labelling and marking requirements** the difficulties dramatically worsened for meat and meat products since Indian authorities require a sanitary import permit. Importers of meat and meat products have complained about the delay for getting the permit (can take even 3 months). In addition, for primary agricultural products a Bio Security & Sanitary–Phyto Sanitary import permit is required.

Standards and Other Technical Requirements

010034-*Shelf life requirements for foodstuffs* [2003-06-16]

At the time of importation edible or food products must have a valid shelf life not less than 60 % of the original one. The amendment in the ITC(HS) Classifications of Export and Import Items was made by the Government in July 2001 (Notification No. 22 (RE-2001)/1997-2002 dated 30.7.2001). Shelf life of the product is calculated taking into account the date of manufacture and the due date for expiry.

The legislation in question appears to discriminate against imported goods in favour of products manufactured locally.

- The EU has repeatedly raised this issue with India.

Sanitary and phytosanitary measures

020010-*India- Sanitary requirements for mineral water* [2004-10-14]

The Ministry of Health and Family Welfare published on 29 September 2000 a Notification (G.S.R. 759(E)) setting new sanitary norms for natural mineral water. The new provisions came into force on 29 March 2001. These norms are stricter than those set in the Codex Alimentarius, especially as regards pH (requirement of India 6.5 - 8.5) and impede imports of carbonated mineral waters. Also strict limits for some other substances preclude certain waters from entering Indian market.

Rules on pesticide residues in Packaged Drinking Water (other than mineral water) were issued on 18th July 2003 in Notification GSR 554 (E), which came into force on 1st January 2004 (see attached notification).

At the same time mineral water was added to the list of products, whose import is subject to mandatory certification and registration (Notification No. 7 of DGFT dated 31 March 2001). For compliance of this requirement, all manufactures or exporters of these products to India have to register themselves with the Bureau of Indian Standards, BIS (see a separate barrier fiche on certification no. 010048).

- At present import of bottled carbonated mineral water is not allowed due to the absence of specific rules for this product. It was raised again 11 October 2004 during the EU-Indian AquaMarine workinggroup.India invited the EU to submit a technical brief on the products and their compliance with CODEX guidelines in order to assess if another catogory of waters should be added to the current Indian ones.

Registration, Documentation, Customs Procedures

020012-*Systematic customs control of foodstuffs* [2003-04-02]

By its Notification No. 3 (RE-2001)/1997-2002 dated 31.3.2001 the Directorate General of Foreign Trade asked the Customs to ensure that all the imported food products comply with the conditions of the Prevention of Food Adulteration Act, 1954, prior to the customs clearance. Therefore, the Central Board of Excise & Customs made certain decisions in order to fulfil its obligations (Circular No. 36/2001-Customs dated 15.6.2001; rescinded by Circular No. 58/2001-Customs dated 25.10.2001). The Customs has to undertake the following general checks in addition to the testing of samples:

1. The Customs should check the condition of the hold in which the products were transported in order to see whether it meets the requirements of storage and does not cause deterioration or contamination of the products.
2. The physical/visual appearance of goods in terms of possible damage has to be checked

(whether the product is swollen or bulged in appearance or contaminated by rodents or insects, presence of filth, dirt, etc.).
3. The products should meet the labelling requirements under the Prevention of Food Adulteration Rules and the Packaged Commodities Rules.

All the consignments of imported food products has to be referred to the Port Health Officer (PHO) for testing. At the customs clearance points where PHOs are not available, the Customs is required to draw the samples and get them tested from the nearest Central Food Laboratory or a Laboratory authorised by the Directorate General of Health Services. Clearance is allowed only after receipt of the test report. If the products fail the test, the goods have to be re-exported out of the country or destroyed.

Due to a number of complaints by the hotel industry stating that they were facing difficulties in clearance of perishable food items because of mandatory testing of all consignments, imports of perishables for self consumption have been allowed to be cleared without any testing (Circular No. 58/2001-Customs). On import of perishable food items like fruits, vegetables, meat, fish, cheese, etc. for direct use by the importers the consignments are not subject to drawal of samples and testing prior to clearance. Such items are cleared relying on the certificates from the internationally known testing labs or government labs.

Both Indian importers and EU exporters of food products have complained that they are facing growing difficulties with customs clearance of food products. Earlier Indian authorities released these goods on the basis of health certificates provided by the countries of origin. The long period of time taken to issue the certificates, as well as the limited number of designated labs available are the main sources of concern for the operators. The goods have to be detained for a long time in the customs warehouses leading to heavy damages and demurrage charges. Moreover, the temperature in the customs warehouses is said not to be conducive to the preservation of perishable goods.

Also according to **the study on labelling and marking requirements** the importers face difficulties with the controls carried out by accredited laboratories. The results of the laboratory tests cannot be challenged. There is no maximum time-duration for the tests. Sometimes, the accredited laboratory wrongly classifies and analyses the product under different standards, thus generating uncertainty. In the majority of the cases, the importer is charged with significant storage costs and the products are not always stored in adequate conditions.

A 100% check is done on foodstuff products. The laboratories are meant to conduct the control of compliance with the PFA rules, Standards and Measures Rules and other requirements (such as control of the mark of certification for the products subject to compulsory certification or the requirements on non vegetarian symbol and any requirement under other acts such as Meat Food Product Order, 1973, Plants, Fruits and Seeds Order, 1989; the Livestock Act etc). This means that the product composition, the size of packaging as well as the labels will be carefully inspected. As PFA rules are very detailed and complex, inspectors are alleged to use these regulations to discourage imports. The corruption is also denounced “out of the record”. In case of foodstuffs, importers need quick procedures, given the short shelf life of their products. (See a separate barrier fiche no. 010034 on shelf life requirements.)

- According to Indian authorities Ministry of Health has been considering to nominate some more laboratories for testing of food items under the PFA Act in order to speed up inspection procedures

Sanitary and phytosanitary measures

040053-*India- Live bovines, bovine products and derivates* [2004-12-20]

Ban on Live bovines, buffalo, and small ruminants, beef and beef products, meat and bone meal,embryo,ova and semen , including milk due to BSE

- General statement on BSE to all Third Countries at SPS Committee on 17/03/2004 in reaction on the statement of the USA. During the XXXI SPS Committee in October 2004 the Commission has given a general statement on BSE (Bovine Spongiform Encephalopathy). Some WTO members started to lift the ban due to BSE for some EU live ruminants and ruminant derivated products (e.g.: China, New Zealand, Brazil, Philippines). The EC requested other WTO members to follow the same line and to respect guidelines as set up by international organizations (OIE).

040060-*India- Chicken and chicken products, other birds* [2004-10-15]

India banned on February 2004 the import of chicken and chicken products including hatching eggs and other birds after to the outbreaks of High pathogenic Avian Influenza occured in several countries in Asia. The ban also was extended to animal products of other species from all around the world.

On 6th August 2004, the Indian administration issued a new Notification (S.O. N° 899 (E) published at the Extraordinary Gazette of India on 6th August 2004) opening weakly the market to some products of animal origin which used to be banned during the previous notification. However, regardless of the lift of the ban on some animal products from 6th August 2004, the following EU exports continue to be banned by the Indian authorities: domestic and wild live birds, live pigs and pork meat products (except processed), meat and meat products from domestic or wild birds (except processed), semen of domestic and wild birds and products of animal origin (from birds) intended to be used in animal feeding or for agricultural or industrial use.

- The measure imposed by India was supposed to end in August 2004. However the Indian authorities have extended the ban from 6th August 2004 for six months. Restricitions on some type of products of animal origin has been lifted. The Commission (DG TRADE G.2) has already denounced India twice at the SPS Committee in Geneva (March, June 2004). During 2004 summer, the EU Delegation in Delhi is actively involved on bilateral discussions with Indian Competent authorities to push for the resolution of this SPS export problem. On 11 October 2004, during meeting of the EU-Indian AgriMarine working group the EU asked again for the uncondiational removal of the ban.. India claimed that the current decision was made on risk assessment. However it was currently re-assessing the situation again.Next round of lifting would include products like non heat treated meat and Pet food.

Automotive

Registration, Documentation, Customs Procedures

010047-*Automobile Policy* [2003-06-16]

Following the lifting of quantitative restrictions, the Government of India announced import rules for used and new vehicles through Notification No. 4 (RE-2001)/1997-2002 dated 31st March 2001. India declares the reason for the measures to be road safety and environmental considerations. All imported vehicles are subject to the following conditions: right hand steering and controls, speedometer indicating the speed in kilometres and photometry of the headlamps to suit “keep left” traffic. In addition, they have to conform to the provisions of the Motor Vehicle Act, 1988.

A new imported vehicle is defined as follows: it has not been manufactured or assembled in India; neither been sold, leased or loaned prior to importation into India nor been registered for use in any country, prior to importation into India. New vehicles have to be imported from the country of manufacture and their import is permitted only through the Customs port at Nhava Sheva, Calcutta and Chennai. The provisions of the notification do not apply to the imports of new vehicles for the purpose of certification, defence requirements or for the purpose of R&D by vehicle manufacturers.

For the imports of new vehicles a valid certificate of compliance as per the provisions of rule 126 of Central Motor Vehicle Rules (CMVR) 1989 is required. The importer is responsible for all the provisions assigned to the manufacturer as per Rules 122 and 138 of CMVR and for issuing Form 22, as per provisions of CMVR. In addition, he should give an undertaking in writing that the proof of compliance to conformity of production as per rule 126A of CMVR shall be submitted within six months of the imports.

The imported second hand or used vehicles shall not be older than 3 years from the date of manufacture. Imports of these vehicles are allowed only through the customs port at Mumbai. The second hand or used vehicles imported into India shall have a minimum roadworthiness for a period of 5 years from the date of importation into India with assurance for providing service facilities within the country during the five-year period. For this purpose, the importer has, at the time of importation, to submit a declaration.

At the time of importation, the importer must have a certificate issued by a testing agency that the second hand or used vehicle being imported into India has been tested immediately before shipment for export to India and that the said vehicle conforms to all the regulations specified in the Motor Vehicles Act, 1988. Also, a certification has to be submitted that the said vehicle conforms to the original homologation certificate issued at the time of manufacture. On arrival at the Indian port but before clearance for home consumption, the importer has to get the second-hand or used vehicle tested by the Vehicle Research and Development Establishment, or Automotive Research Association of India, or Central Farm Machinery Training and Testing Institute and other agencies specified by the Central Government.

Through Notification No. 31 (RE-2001)/1997-2002 of 14 September 2001, imports of vehicles by foreign diplomats and other privileged persons in this category, who are exempt from payment of customs duty, are exempt from all the conditions of Notification No. 4. However, such imported vehicles cannot be sold in India except to another diplomat or privileged person and are compulsorily required to be re-exported. This exemption is applicable on all imports made subsequent to 31 March 2001.

- In June 2002, within the context of the WTO Trade Policy Review (TPRM), India stated the following: "Certain regulations have been prescribed on the import of new and second hand or used vehicles on 31.03.2001, in order to ensure consumer protection, road safety and pollution control. These conditions have been imposed for complying with the provisions of the Central Motor Vehicles Act, 1988 and the Rules made there under, which are equally applicable on domestically produced vehicles. The condition of used/second hand vehicles more than 3 years old not being allowed for import has been imposed because of non-availability of spare parts and lack of service chain for these old vehicles, which would jeopardize consumer protection and road safety."

Iron, Steel and Non-Ferrous Metals

Quantitative Restrictions and Related Measures

990011- *Floor prices for defectives* [2002-10-21]

The Government issued two notifications, on 10 December 1998 and on 17 February 1998, whereby seven items of prime and defective quality steel were brought under floor price regime. Minimum prices announced were much higher to prevailing international prices of those items at that time solely with the intent to promote/protect the domestic industry.

The floor price was for the purpose to levy customs duty as minimum transaction value. However, import against advance licence falls outside the floor price scheme.

Floor prices on steel were withdrawn on 1 January 2000 for primary products by Notification No. 31 (RE) dated 1 November 1999. However, the floor prices continue for seconds and defectives. They are as follows (Minimum c.i.f. value, US $ per tonne):

ITC(HS) 72.08, Hot-Rolled Coils 190.5
ITC(HS) 72.08, Hot-Rolled Sheets 201.75
ITC(HS) 72.09, Cold-Rolled Coils/Sheets 263
ITC(HS) 72.10, Tinplates Waste/Waste Tinplate Misprints 465
ITC(HS) 72.25/72.26, Electrical Sheets (CRNO) Plates 493
ITC(HS) 72.08/72.11, Plates 278
ITC(HS) 7227.90, Alloy Steel Bars and Rods (Hot-Rolled in Coils) 435

The present floor prices (set by Notification No. 31) are lower than those originally imposed in 1998. Customs duties are levied on the basis of floor prices, and items subject to floor prices cannot be imported below these prices (exception: import against advance licence).

- In the 2002-2003 Budget, the basic customs duty on seconds and defectives of steel has been increased to the bound rate of 40 % in order to protect the domestic steel industry from imports at cheaper prices.
- In the framework of WTO Trade Policy Review Mechanism India provided clarification on its regime as follows: "By Ministry of Commerce (DGFT) Notification No. 35 (RE-98) dated 11.12.1998, floor prices were fixed on import of prime steel items. However, Government of India decided to remove minimum floor price restriction on import of prime steel items and accordingly, vide Notification No. 31 dated 1.11.99, price restrictions on prime items were withdrawn with effect from 1.1.2000. But this withdrawal Notification has been challenged before Hon'ble High Court of Kolkata and the matter is sub judice."

Machinery

Registration, Documentation, Customs Procedures

010030-*Import licensing of second-hand machinery* [2002-07-11]

India has a strict import licencing system which renders the exports of second-hand machinery. Machines older than 10 years are excluded from the general import regime regardless of their actual state, type and their previous and intended users. Indian licensing system demands a so-called product machine life expectation certificate, which cannot in practice be given by the manufacturer or the trader. Therefore, the measure could lead to total abolition of imports. To Commission´s knowledge there is no prohibition to re-sell similar second-hand machines on the domestic market.

- Following the announcement of the EXIM Policy 2003, second hand capital goods up to 10 years old may also be imported under the Export Promotion Capital Goods (EPCG) Scheme. To facilitate upgradation of existing plant and machinery, import of spares is also allowed under the Scheme. In addition, the actual user condition for the imports of capital goods up to 10 years old was dispended with. However, these changes do not facilitate the imports of second-hand machinery older than 10 years.

Other Industries

Registration, Documentation, Customs Procedures

990041- *Floor prices for marble* [2003-02-18]

In 1999 the Directorate General of Foreign Trade (DGFT) amended the EXIM Policy to raise the minimum prices for import of marble against Special Import Licence (SIL). The amendment of 8 May raised the minimum price of marble in the form of slabs to $ 450 per tonne. Rough marble in blocks continued at $ 300 per tonne. Polished marble, on the other hand, was up steeply from the minimum of $ 400 per tonne fixed on 31 March 1999. The new minimum price for polished blocks was $ 700 per tonne and that for polished slabs was at $ 2700 per cubic meter while tiles were fixed at $ 3240 per cubic meter. Similar price limits were prescribed for polished granite products.

Due to the amendment importers who had placed orders on EU suppliers were in trouble because they could not afford to pay the high duty on the minimum price. The high tariff combined with the obtrusive licence system expelled the EU marble out of the market, in favour of the local one (Rajasthan). With a view to solving the problem, the EC has raised the issue with the Indian authorities at every occasion since 1999 (see also a separate barrier fiche No. 980017 on Article XX/XXI restrictions).

Shortly before issuing the new EXIM Policy for 2001-02, India removed the SIL for polished marble under tariff code 6802 21 01. The minimum import prices still continued to be applied to imports of rough marble products (HS 2515).

On 14 March 2002, the Directorate General of Foreign Trade issued a Policy Circular No. 29 spelling out guidelines for import of rough marble, blocks and slabs. The Policy Circular is related to EXIM Codes 2515 11 00, 2515 12 00 and 2515 20 02. Import of marble and traventine would still be restricted and subject to import licensing procedures.

Applications for licences are considered in the DGFT by the EXIM Facilitation Committee (EFC), an inter-ministerial committee comprising of representatives from various ministries and departments.

The EFC will consider applications of eligible applicants in the following manner:
- Applicants who have set up manufacturing or processing units in India and have imported these items in the preceding years when these items were under SIL list. For these applicants, value of the licence to be issued in one year is limited to 50 % of the average CIF value of their imports in the preceding years.
- 4 and 5 star hotels on the basis of recommendation of Ministry of Tourism.
- Applicants of places of worship and trusts of international repute etc. on the basis of recommendation of Ministry of Home Affairs (MHA).

All licences are subject to actual user condition. Prospective licence holders have to file monthly returns regarding imports made by them to the concerned Regional Licensing Authority.

Following floor prices are endorsed on all licences: for crude or roughly trimmed marble and rough marble blocks US $ 300 per metric tonne and for slabs US $ 450 per metric tonne. In other words, floor prices equal to former minimum prices are applied. Customs duties are levied on the basis of floor prices, and items subject to floor prices cannot be imported below these prices.

- Two Circulars were taken out by the Central Board of Excise and Customs, Department of Revenue concerning imports of Marble in 2002. Circular No. 40/2002-Cus of 17th July 2002 spells out guidelines for cases relating to marble imports, which are pending in Customs Houses for finalisation. The cases have been lying pending on issues such as classification of marble, missing documents, condonation of excess quantity of imported marble, valuation and applicability of principles of unjust enrichment. In another Circular No. 45/2002-Cus of 23rd July 2002, on the same issue, the Board directs to keep para 2 (d) of the above Circular (concerning valuation of imported marble) in abeyance.

Sanitary and phytosanitary measures

040135-*India- Xanthum Gum* [2004-12-21]

India has forbidden the use of Xanthan Gum as a food additive.

- 11 November 2004 UK has flagged its concern on the issue. It also indicated concern by Industry .

12 November 2004, TRADE has asked Delhi Delegation to give info of possible trade disruption related to Xanthan Gum. 25 November SANCO raised the issue with Indian Embassy and asked to provide information.

Services - Business

GATS Specific Measures

970168- *Practice of law in India* [2002-06-24]

Access of foreign lawyers in India is very limited and restrictive. The complaints relate to two main access barriers: the scope of practice and reciprocity. The absence of satisfactory market access in India for foreign lawyers has led to several lawsuits, the results of which are pending. Although India has not made any market access commitments on lawyers under the GATS, it is bound by the MFN obligation and as a result should grant its most favourable treatment to all GATS Members and not any longer depending on whether Indian lawyer have the right to practice in the foreign lawyers home state on a reciprocal basis.

Although a number of foreign lawyers have in the past received the permission by the Reserve Bank of India (RBI) to establish a project office status, these lawyers have been challenged the right to practice law. It is argued on the basis of Section 29 of the Advocate Act 1961, that the practice of law is reserved to Indian citizens and that this right includes both legal consultancy and representation before court, on a reciprocal basis only.

The scope and meaning of practice of law is subject to interpretation: for India it covers all legal activities (advise, legal opinion) and the right to represent clients before the Court. Since the latter legal activity is often reserved to national lawyers and/or granted on a reciprocity basis, India is refusing the right of foreign lawyers to practice law all together, even if foreign lawyers are only interested in practising the non-litigation area and in particular international commercial law. Refusing foreign lawyers to practice such law is totally disproportional and contrary to the treatment that Indian lawyers benefit from in the EU where they can in most Member States, and certainly in one Member State (UK) establish as legal consultants giving advice on all legal matters.

The issue has repeatedly been raised bilaterally since 1996. Market access for professional services (including legal services) is subject to negotiation also during the Doha Development Round.

Services - Construction & Engineering

Government Procurement

020003-*Tender contracts for port maintenance* [2002-07-19]

The Ministry of Shipping issued on 8 June 2001 a Circular opening up dredging for competitive bidding for a three-year period from 2001 to 2004. Another Circular issued on 15 February 2002 to all the major port trusts reverses the earlier one stating that Indian companies will be granted the first right of refusal before the contract is awarded to a foreign company. Already in June 2001, the Ministry of Shipping had advised the ports to allow the Dredging Corporation of India (DCI) to match the lowest tender received for port maintenance contracts. DCI is a Government of India Enterprise, with a Government shareholding of 98.563%.

European companies, which have contracts to maintain India's ports, have complained that the policy of the Ministry of Shipping, clearly favouring national companies and in particular DCI, is detrimental to EU exporters. They are also concerned that DCI, while being priviledged in its home market and gaining profits there, has publicly announced a focus on export markets and is slated for privatisation in the medium term.

Services - Financial

GATS Specific Measures

960204- *Closed insurance sector* [2002-07-01]

Establishment of all forms of insurance was either severely restrictive (only representative offices of overseas brokers were allowed) or not allowed at all. A public monopoly existed in the insurance sector, except for re-insurance brokers under limited conditions.

New legislation has opened up the insurance sector to private investment. For foreign investors, a sectoral cap of 26 % has been put. An independent regulator, the Insurance Regulatory Authority (IRA), regulates the sector.

960203- *Limitations on foreign banks* [2002-04-19]

Earlier foreign banks were not allowed to establish subsidiaries in India. Although the situation has remarkably improved due to the 1997 WTO Financial Services Agreement and the commitments made by India in this context, entry of foreign banks to India has remained highly regulated.

In its Budget for the year 2002 -2003 India announced that foreign banks are permitted to operate in India as fully owned branches with specific permission of the Reserve Bank of India. Foreign banks can, thus, operate as branches of their parent banks or to set up subsidiaries. All banking regulations, including priority sector lending norms, are applicable to subsidiaries. It is planned to propose amendments to the Banking Regulation Act 1949 to relax the maximum ceiling of voting rights of 10 % for such subsidiaries.

Textiles and Leather

Registration, Documentation, Customs Procedures

020008-*Certification of textiles* [2003-04-30]

According to the Indian import policy, import of textiles and textile articles is permitted subject to the condition that they do not contain any of the hazardous dyes whose handling, production, carriage or use is prohibited in India under the provisions of the Environment (Protection) Act, 1986. This amendment was made to the Indian legislation by the Notification No. 3(RE-2001)/1997-2002 dated on 31 March 2001. For this purpose, a pre-shipment inspection certificate from a textile testing laboratory accredited to the National Accreditation Agency of the country of origin has been made mandatory. In cases where such certificates are not available, the consignment will be cleared after getting the sample of the imported consignment tested and certified from the notified agencies in India.

Some textile exporters have reported about problems with the customs clearance of textiles even if the tests have already been conducted in the EU. In some cases the Indian authorities did not accept the certificates from the EU and samples of the products had to be submitted to the authorised laboratories before the clearance process. Also in the report of **the study on labelling and marking requirements** the same problems are mentioned. According to the study the testing fees and procedures particularly hamper the importers of high quality apparel products, importing small quantities and different models. Importers must submit a sample of each model/design for testing. The costs of the tests represent about 10 % of the CIF value of the product.

- By Policy Circular No. 1(2002-2007) issued on 31 March 2002 by DGFT India announced that it exempts import of textile and textile articles intended exclusively for export production from the testing requirements. Particularly, this exemption is applied to imports made by units operating under the conditions of section 65 of Customs Act, 1962 (manufacture and other operations in relation to warehoused goods), as well as to imports made as per the conditions of paragraph 2.35 of the Exim Policy 2002-2007 (re-export of imported goods). However, testing requirements are applicable on such consignments, which are released for home consumption in India.
- In the framework of WTO Trade Policy Review Mechanism in June 2002 India declared that import consignments accompanied by a pre-shipment certificate from the national accredited agency of the country of origin are cleared by customs without any further testing in India.
- India granted on 17 April 2003 an exemption for the imports of of grey/raw white textile products and industrial products viz. transmission belts/pressure belts etc., which do not come into direct contact with the human body, by DGFT Policy Circular No. 01(RE-2003)/2002-2007. The import consignments of these goods do not have to be accompanied by a pre-shipment certificate. The importer is, however, required to give an undertaking to the customs authorities at the time of imports.

Standards and Other Technical Requirements

030039-*Marking requirements for textiles* [2003-06-06]

Textiles (Consumer Protection) Regulation of 1988, imposes strict marking requirements for yarns, fibres, fabrics and clothing products manufactured in India. These include producer identification and product composition, the colour and the form of letters and signs.

The following markings should be visible on the face plait of each piece of cloth:
(a) Name and address of manufacturer and the person who causes such manufacture, if any;
(b) Description of the cloth, for example, “dhoti”, “saree”, “shirting”, “suiting”;
(c) Sort number of the cloth;
(d) Length in meters and width in "cm";
(e) ”Fast to normal washing” or "Not fast to normal washing"; words "Preshrunk" or "Mercerised" or any other process actually carried out;
(f) The words “seconds” or "damaged piece/defective piece" when the piece of cloth is classified as seconds or damaged piece/defective piece;
(g) In case of cloth made from man -made fibre or filament yarn, the words “Made From”

followed by the words “Spun X Spun”, or “Filament X Filament” or “Spun X Filament”;
(h) Month and year of packing;
(i) The exact composition of the cloth expressed in percentage by weight of each of the individual constituents to the total yarn content of both warp and weft put together as illustrated below:
Polyester - 100%; or cotton 100% or viscose 100%.
In the case of blended cloth, the words "Blended fabric" followed by the generic name of each constituent and its exact percentage by weight in descending order shall be stamped.

The markings as in items (f) and (i) above shall also be made on every alternate metre of the cloth at a height not exceeding 2.5 cm from the selvage.

Marking of the words and letters has to be made in Hindi, in Devnagari script and in English in capital letters and the numerals marked have to be international numerals. The height of characters must be at least 0.5 cm for tops, yarns and cloths; at least 0.25 cm for packed yarn and at least 3 cm on bales and other packages. The lettering can be in any colour other than red.

In July 1998, marking requirements were extended to imported textile products, i.e. tops, yarns and fabric/cloth. However, these requirements are not being strictly administered by Customs, yet, in the absence of a formal administrative order to carry out physical verifications. Application of marking rules for imported products can cause enormous delays at customs.

Wood, Paper and Pulp

Other Non-Tariff Measures

030033-*Definition of newsprint* [2003-04-01]

The industry has complained that the definition of newsprint (HS 4801) in the Indian Customs Tariff is old and outdated. According to the Tariff the expression "newsprint" means uncoated paper of a kind used for the printing of newspapers, of which not less than 65% by weight of the total fibre content consists of wood fibres obtained by a mechanical or chemi-mechanical process.

It is difficult to guarantee that newsprint produced will contain 65% mechanical fibres. This requirement restricts import of newsprint from the European mills. Recycled paper used by most mills is environmentally friendly and preserves eco balance.

However, since the definition of newsprint applied by India is the one of the Harmonised System, 2002 version, the problem is not a bilateral one, and could be solved only in a multilateral forum (in the WCO).

In addition, the industry complains about the high tariffs in India, which are well beyond the tariffs applied in the sector in other Asian countries (see a separate barrier fiche no. 960028 on High tariffs).

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RESTRICTIVE EXPORT MEASURES

India promotes its exports in various ways. It relies on a wide range of indirect subsidies including duty and tax concessions and export finance. Special Economic Zones (SEZs) and Export Processing Zones have been established with the objective of promoting exports.

India has removed export taxes on all products except hides, skins and leathers, tanned and untanned (not including manufactures of leather). Despite no levy of export tax or duty on most products, Cesses are leviable on export of several commodities under various Acts.

Export Subsidies

970166- *Indian Pass Book Scheme* [2003-05-26]

The Government of India introduced the Duty Entitlement Pass Book (DEPB) Scheme in April 1997 by means of Customs Notification 34/97, after the abolishment of the Passbook Scheme. The objective of the measure is to provide duty free imports for export production, in other words to neutralise the incidence of Customs duty on the import content of the export product. The neutralisation is provided by way of grant of duty credit against the export product. Thus, for exporters not desirous of going through the licensing route, an optional facility is given under DEPB Scheme. In contrast to the usual temporary duty-free importation of goods for processing, the Pass Book Scheme may lead to an indirect subsidy of local Indian production.

It has to be noted that pre-export DEPB Scheme stands abolished w.e.f. 1.4.2000, and all the pending applications for the grant of pre-export DEPB stand rejected. However, the post-shipment DEPB still continues.

The Duty Entitlement Pass Book (DEPB) Scheme entitles an exporter (both a manufacturer-exporter and a merchant-exporter) for credit as a specified percentage of FOB value of exports, made in freely convertible currency. The credit is available against such export products and at such rates as specified by the Directorate General of Foreign Trade (DGFT) by way of Public Notice, for import of raw materials, intermediates, components, parts, packaging material etc.

The DEPB is valid for a period of 12 months from the date of issue. The DEPB and/or the items imported against it are freely transferable and, as a consequence, frequently sold. The transfer of DEPB is, however, for import at the port specified in the DEPB which is the port from where exports have been made. Imports from a port other than the one of export are allowed under TRA facility as per the terms and conditions of the notification issued by Department of Revenue.

The DEPB has emerged as a favourite instrument of export promotion. The DEPB rates are available on wide-variety of items compared to the coverage under the drawback scheme, which is limited to a few items. The DEPB entitlement is also liberal compared to the drawback rate. Imports through the DEPB Scheme are exempt from SAD and therefore, SAD can be avoided by duty payment through DEPB.

As part of simplification and rationalisation of schemes governing exporters, the EXIM Policy (2000) envisaged phasing out of the Duty Entitlement Pass Book (DEPB) scheme in the next two years. Within that period, the Commerce Ministry in consultation with the Finance Ministry was due to seek to strengthen drawback system. The drawback would be allowed for as many items as possible. The idea was to subsume the present post-shipment DEPB into a comprehensive duty drawback scheme, which would be put in place once the single Value Added Tax (VAT) becomes operational at both States and Centre.

A high-level EXIM Policy committee, which gave its report in February 2002, favoured the continuation of the present duty neutralisation schemes such as DEPB and Duty Drawback, but asked the Government to operate them in such a manner as to be least susceptible to countervailing action. The committee recommended that the DEPB should be continued for three years and then merged with the drawback scheme. The DEPB scheme should be modified and called the duty drawback credit scheme.

The Government decided to extend the life of the scheme in their EXIM Policy announced on 31 March 2002.

The Commission has received numerous formal industry complaints about the Indian measure. Countervailing duties on Indian imports has already been set for following products: certain broad spectrum antibiotics, polyethylene terephthalate (PET), PET film, stainless steel bars and wire, hot rolled steel coils, sulphanilic acid and polyester textured filament yarn (PTY). Anti-subsidy proceedings concerning imports of recordable compact disks (CD-Rs) and cotton-type bed linen have been initiated.

According to complaints of the pharmaceutical industry, the Passbook Scheme has resulted in Indian companies selling abroad below their own manufacturing cost, the Indian prices and their competitors cost. Thus, it has led to unfair competition against all non-Indian producers of products for which the Passbook Scheme can be utilised. As a consequence, Indian exporters of pharmaceuticals, for example, have been taking away more and more markets in third countries. At the same time, the Indian market is protected against international competition by high tariff barriers.

The scheme lacks a built-in obligation to import only goods that are consumed in production of the exported goods. There is no verification system in place to check whether the imports are actually consumed in the production process. It is not a substitution drawback scheme because the imported goods do not need to be of the same quantity and characteristics as the domestically sourced inputs that were used for export production. Exporting producers are eligible for the DEPB benefits regardless of whether they import any inputs at all. An exporter obtains the benefit by simply exporting goods without the need to show that any input material was indeed imported; thus, exporting producers which procure all of their inputs locally and do not import goods which can be used as inputs are still entitled to the DEPB benefits.

- A provisional countervailing duty on imports of graphite electrodes originating in India to the EU was imposed on 19 May 2004. Also in this case, the DEPBS played a major role in subsidy calculations. [2003-01-21]

  The DEPB rates have been rationalised in line with the general reduction in customs duties in the Exim Policy of March 31, 2003. [2003-05-26]

Textiles and Leather

Export Taxes

- 970186- *Export duties on raw and semi-finished leather* [2003-02-20]

In October 2000 India lifted its export restrictions in the leather sector, but simultaneously, the export duty on raw hides and skins and certain semi-finished leather was raised from 25 % to 60 % (Notification No. 132/2000-Customs). Certain leathers are exempted from the 60 % export duty rate, and lower export duties are applied on the following items (Notification No. 133/2000-Customs):

- E.I. tanned leather 15%
- Snake skin 10%
- Raw fur lamb skins 10%
- Luggage leather - case hide or side/suit case/bag luggage/cash bag leather 25%
- Cycle saddle leathers 15%
- Hydraulic/packing/belting/washer leathers 15%
- Industrial harness leather 25%
- Picking band leathers 15%
- Strap/combing leathers 15%
- Transistor case/camera case leathers 25%.

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INVESTMENT RELATED BARRIERS

Economic reforms of India since 1991 have considerably simplified and liberalised the Foreign Direct Investment (FDI) regime. Indian economy is now open to foreign investment with the exception of certain areas, such as railways, print media, retail business and agriculture. However, foreign investment remains relatively controlled with certain sectoral equity limits and mandatory approvals. Independent regulators have been established in certain sectors like insurance, telecommunications and electricity.

Businesses in 48 sectors may obtain automatic permission from the Central Bank for foreign investment for up to 51% of their capital with a proviso that the input of foreign capital must exceed the amount of foreign currency needed to import plant and machinery. Requests for higher foreign equity participation, as well as those in politically sensitive sectors are considered by the Foreign Investment Promotion Board.

India is a member of the Multilateral Investment Guarantee Agency (MIGA). All foreign investment approvals granted by the Government are therefore insured by MIGA against expropriation and nationalization. India is also a party to the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitration Awards. India has placed great importance on bilateral relations and has signed bilateral investment agreements with several countries including many EU Member States.

Direct Foreign Investment Limitations

960033- *Capital participation limits* [2003-03-10]

India still restricts foreign capital participation in certain sectors. However, since 1991, India has opened up considerably, foreign technology requirements no longer exist and in some cases 100% foreign ownership is allowed.

In 1998, up to 51% capital participation was automatically approved in 48 sectors and 74% in 9 sectors. Up to 100% foreign participation was subject to a discretionary decision of the Foreign Investment Promotion Board (FIPB) and the Secretariat for Industrial Approvals (SIA). This approval could be subject to disinvestment requirements (26% over 3-5 years) or export requirements (50% of production to be exported).

The Budget for 2001/2002, with its many changes to redress the shortcomings of the Indian economy, aimed at i.e. stimulating FDI, opening up for the first time certain sectors (e.g. defence) to FDI or increasing the percentage allowed. The Budget for 2002/2003 purposed that FII portfolio investments will not be subject to the sectoral limits for the FDI except in specified sectors.

The following percentages of FDI are allowed in different sectors under the new liberalised regime:

Automatic Route: % of FDI allowed

Manufacture of drugs and pharmaceuticals; hotels and tourism; mass rapid transport systems (MRTS) : 100 %;
Airports : 74 %;
Internet service providers with internet gateways, radio paging and end-to-end bandwidth service : 49 %;
Banking : 49 %.

FIPB Route: % of FDI allowed

(FIPB = Foreign Investment Promotion Board)

Airports; courier services : 100 %;
Internet service providers with internet gateways, radio paging and end-to-end bandwidth service : 74 %;
Defence, insurance : 26 %.

- FDI in print media has been allowed up to 26 % with the caveat that 50 % equity should be fresh equity while the balance can be from exiting equity. The investment is subject to other conditions also and the policy is quite restrictive, even though FDI has been allowed. All proposals for FDI in Indian entities publishing newspapers and periodicals will be processed and decided upon in the Ministry of Information & Broadcasting on the basis of inter-ministerial consultation with the Ministry of Home Affairs and other ministries.

970239- *Portfolio investments ban* [2003-02-24]

Foreign enterprises were previously not allowed to make portfolio investments through purchase of stock on the Indian stock exchange. This policy has been substantially liberalised.

Foreign Institutional Investors (FIIs), if registered with the Securities and Exchange Board of India (SEBI) can invest in up to 10% of share capital (single investor) or up to 24% as a group. However, the Reserve Bank of India by its Circular No. 6 dated 24th April 2000 has allowed this limit to be raised up to 40 % subject to the approval by the Board of Directors of the Indian company and a special resolution passed by the General Body of the said company. It can also take place in non-listed companies, if approved by the Board of Directors of the company. Also, Indian companies can access the international capital market through the placing of Euro-equity issues.

Tax Discrimination

960247- *Discriminatory Corporate Tax* [2003-05-28]

European business has complained about discriminatory tax rates for foreign companies. The corporate tax rate for domestically owned companies is now 35 %, while non-resident companies are subject to a 40 % tax rate as per Union Budget 2002-2003.

In the past, the EU had repeatedly raised the issue of discriminatory nature of the corporate taxes bilaterally.

- In the framework of WTO Trade Policy Review Mechanism in June 2002 India clarified that an additional 5% surcharge is currently levied on the income tax of both domestic and foreign companies. This raises the applicable corporate tax rate to 36.75% for domestic companies and to 42% for foreign companies and their branches. India claims that the differential between the corporate tax rate on foreign companies vis-à-vis the domestic companies does not effectively exist, since the shareholders of foreign companies are generally not taxed in India or are taxed as per the beneficial provisions of the bilateral tax treaty, whereas the shareholders of domestic companies are liable to pay tax on dividend income at the applicable tax rates. Moreover, it states that in any case, the rates have been recently brought down and are reasonable in comparison to tax rates on foreign companies applicable in other countries.

- In the Budget 2003-2004 the surcharge levied on the income tax was reduced from 5% to 2.5%, while the corporate tax rate remained unchanged. Thus, the applicable corporate tax rate is now 35,875% for domestic companies and 41% for foreign companies.

Automotive

Trade Related Investment Measures

970371- *Local content and trade balancing requirements* [2003-02-11]

On 12 December 1997, the Ministry of Commerce of India issued Public Notice No. 60 (PN) 97-02, specifying the trade-related investment measures, which were previously imposed privately on an ad hoc basis. As it was the case under the previous regime, the importation of components for motor vehicles in CKD or SKD form is prohibited unless a special licence is delivered. Such special licences are only delivered to local joint venture automotive manufacturers who have signed a Memorandum of Understanding (MoU) with the Directorate General of Foreign Trade.

The Public Notice lists the requirements for obtaining such a licence:
- The joint venture must manufacture, as opposed to merely assemble, vehicles.
- Minimum investment of USD 50 million within three years by the foreign partner.
- Minimum local content levels of 50% and 70 % by the third and fifth years from start of production.
- Imports must be balanced by exports during the whole duration of the MOU. The foreign exchange required to pay for imports of parts and components must be obtained by exporting vehicles and components.The scheme is intended to apply exclusively to investments for the manufacturing of passenger cars. Licences for the import of components to be assembled into commercial vehicles will continue to be treated individually, i.e. the conditions imposed are to be

negotiated on a case by case basis.

On the problem of the distinction between unassembled motor vehicles (i.e. completely knocked-down -CKD- or semi knocked-down -SKD- kits) and components, the text of the issued Public Notice does not distinguish between the two. Its logic relies on the practice of classifying all components presented to customs as part of kits and, hence to consider them to be vehicles whose importation is, in principle, prohibited.

Since the WTO consultations neither with the EU in December 1998 nor with the US in July 1999 succeeded in settling the dispute, a panel was established (joint panel for both complainants) in November 2000.

Through Public Notice No. 36 (RE-2000)/1997-2002 dated 4 September 2001, India finally withdrew its Public Notice No. 60. However, export obligation incurred by the MoU signatories in respect of imports made up to 31 March 2001 shall be fulfilled by them within the stipulated period unless extended by the Government for good and sufficient reasons. On 21 August 2001, the Directorate General of Foreign Trade (DGFT) issued Policy Circular No. 7 (RE-2001)/1997-2002, freeing imports of consumer durables including automobiles in CKD/SKD condition.

On 21 December 2001, the WTO Panel circulated its report concluding that India had acted inconsistently with its obligations
- under Article III:4 of the GATT 1994 by imposing on automotive manufacturers an obligation to use a certain proportion of local parts and components in the manufacture of cars and automotive vehicles ("indigenization" condition);
- under Article XI by imposing on automotive manufacturers an obligation to balance any importation of certain kits and components with exports of equivalent value ("trade balancing" condition); and,
- under Article III:4 by imposing, in the context of the trade balancing condition, an obligation to offset the amount of any purchases of previously imported restricted kits and components on the Indian market, by exports of equivalent value.

India appealed the Panel report but subsequently withdrew its appeal. Both the Panel and Appellate Body reports were adopted by the DSB on 5 April 2002.

The Commission will closely monitor that India implements the panel recommendations and rulings, and brings its measures into conformity with the WTO obligations.

See a separate barrier fiche on automobile policy No. 010047.

- The DGFT through Public Notice No. 31/2002-2007 dated 19 August 2002 withdrew the export obligation on joint venture auto companies, which had signed MoU with the DGFT. The joint venture auto companies will no longer have to fulfil the export obligation against imports of CKD and SKD kits or components.

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IPR

The protection of intellectual property rights in India has traditionally been dependent on other policy considerations. India has not up to date acceded to an important number of multilateral conventions of IPR protection. Indian legislation offers weak protection especially for patents. As a developing country India is permitted to delay the patentability of pharmaceutical and agrochemical products until 1 January 2005. Thus, the Indian system of intellectual property does not adequately protect the rights of European right holders.

Effective enforcement of intellectual property rights has constituted the main obstacle found by EC right holders in India. Piracy of all kinds of works and counterfeit of various products is still at unacceptably high levels.

India is party to the following multilateral Agreements:

Agreement on Trade-Related Aspects of Intellectual Property Rights;
Convention Establishing the World Intellectual Property Organization;
Berne Convention for the Protection of Literary and Artistic Works;
Geneva Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of their Phonograms

Universal Copyright Convention

Legislation on Patents (Including Plant Varieties)

020087-*The Patents Act* [2003-10-01]

The new Indian patent law, the Patents (Amendment) Act, 2002, was adopted by the Parliament in May 2002, approved by the President of India in June 2002 and came into force on 20 May 2003. In order to implement the provisions of the Act, the Patents Rules, 2003 have been notified and became effective from the same date as the Patents (Amendment) Act, 2002. The objective of the Act and implementing rules is to bring the patent law of 1970 into compliance with the TRIPs Agreement. From that perspective, the new law is more in line with TRIPs than the 1970 law.

The Patents Act provides, inter alia, for the possibility for the Government to issue compulsory licences in cases where there is a lack of local manufacturing, the application of which may constitute a breach of Article 27.1 of the TRIPs Agreement.

The law furthermore contains provisions that are unclear and ambiguous, leaving potential scope for possible TRIPs-inconsistent practices over time (especially as regards exclusion of certain types of product inventions from patentability).

India has opted to use the additional transition period, until 1.1.2005, for extending product patent protection to areas of technology not protected so far. Therefore, separate legislation in this regard has to be introduced by the end of the transition period.

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OTHERS

More information on India can be found by visiting **DG Trade's bilateral web page**, as well as from the web sites of **DG Relex** and **the Delegation of the European Commission to India**.