

II. TRADE AND INVESTMENT REGIMES

(1) Introduction

1. The general direction of Indian trade and investment reforms initiated in 1991, and already very evident at the last Trade Policy Review of India in December 1993, has been maintained by successive Governments, although there is reason to believe that this process has slowed in the last few years. There has been a gradual opening up of the economy as items under quantitative import restrictions have been moved to the Special Import Licence (SIL) list and to the list of freely importable goods. Foreign direct investment (FDI) has also been allowed in most sectors, with varying restrictions on the share of equity that can be held by foreigners. The application procedure for FDI has been streamlined, and made more transparent although the process still provides a certain amount of discretion to the approval authority. The goals of the present Government include a further liberalization in tariff and non-tariff barriers and in FDI restrictions.

2. On all matters relating to international trade and international trade agreements or bodies, the Indian Constitution confers jurisdiction on the Parliament. India can become a party to all agreements and treaties, including international trade agreements, with the approval and ratification of the treaty by the Council of Ministers. However, where India's international obligations require amendments to existing laws or the introduction of new laws, Parliament must enact all such legislation. Sectoral matters are within the jurisdiction of the State Legislatures, requiring consultation between the Indian Government (the Centre) and the States before national policy can be formulated and implemented.

3. India was a founding contracting party of the GATT and is a founding member of the WTO. Its commitments under the WTO include binding 62 per cent of its tariff lines on industrial products (Chapter III). India has also bound its agricultural tariff lines, most ranging from 100 to 300 per cent, with a few at zero per cent.¹ In addition to its tariff commitments, India will amend its laws on intellectual property rights to bring them into conformity with its WTO obligations, but has until the year 2000 in which to do this for most cases (Chapter III(4)(vii)).² In addition, India's anti-dumping and countervailing legislation has been amended in line with the relevant WTO Agreements.³ India has also made commitments under the General Agreement on Trade in Services (GATS) in six services sectors, including financial services, telecommunications, business, tourism and some aspects of engineering and health services.

4. India is a participant in the South Asian Preferential Trading Area (SAPTA), which is expected to develop into the South Asian Free Trade Area (SAFTA). India also has regional or bilateral trade agreements with a number of its trading partners in the region and Commonwealth trade preferences continue to be granted to three countries.

¹GATT (1994). On average, developing countries bound 73 per cent of their industrial tariff lines and 100 per cent of agricultural lines. This covered approximately 61 per cent of industrial imports and 100 per cent of agricultural products, as compared to 21 and 22 per cent respectively before the conclusion of the Uruguay Round.

²India has a transition period until 2005 for some areas of technology to which it does not extend product patent protection on the general date of application of the WTO Agreement. (Article 65 of the Agreement on TRIPS.)

³These have been notified to the WTO Secretariat.

5. As with trade, India's foreign investment regime has been considerably simplified. India grants automatic foreign direct investment (FDI) approval for shareholding up to 51 per cent of equity in 48 priority sectors and for up to 74 per cent in nine others.⁴ An emphasis has recently been placed on attracting foreign investment in infrastructure⁵, where the Government hopes to increase annual FDI from its present level of US\$3 billion to US\$10 billion in the next few years.

(2) The Legislative Structure

(i) Legislative and executive branches of the Government

6. The President, who serves a five year term, is Head of State. The President is elected by an electoral college consisting of the elected members of both Houses of Parliament and the elected members of the State Legislative Assemblies.⁶ The Vice President is elected for a term of five years by an electoral college comprising members of both Houses of Parliament.⁷ The Vice President, in the event of the President's death, resignation or removal assumes the office of President until an election can be held.

7. The Prime Minister of India is appointed by the President and heads the Council of Ministers. Members of the Council, who must be members of Parliament, are appointed by the President on the advice of the Prime Minister. The Council is collectively responsible to the House of the People and provides "aid and advice to the President".⁸

8. Parliament consists of the President and the two Houses, the Rajya Sabha (the Council of States) and the Lok Sabha (the House of the People). The Rajya Sabha, which cannot be dissolved, consists of not more than 238 representatives of the State Legislative and Union Territory assemblies plus 12 members appointed by the President and who are knowledgeable in literature, science, art and social services.⁹ One third of the seats of the Rajya Sabha are rotated every two years. The chairperson of the Rajya Sabha is the Vice President. Membership of the Lok Sabha should not be more than 535 members elected on the basis of national suffrage and not more than 20 representing the Union Territories.¹⁰ The members of the Lok Sabha are elected for a five-year term, unless it is dissolved by the President within that period.

⁴Up to 50 per cent of foreign equity participation is also automatically approved in the mining sector.

⁵Land and water transport, electricity generation and transmission and storage and warehousing services are among the sectors recently made eligible for automatic FDI approval for up to 74 per cent foreign equity holding.

⁶States here include the National Capital Territory of Delhi and the Union Territory of Pondicherry (Government of India, 1996g, Art. 54 b).

⁷Constitution, Art. 66(1).

⁸Constitution, Art. 74(1).

⁹Constitution, Art. 80.

¹⁰Constitution, Art. 81.

(ii) The Judiciary

9. The Supreme Court is India's highest judicial body; it is composed of the Chief Justice and not more than 26 other judges. The current number of Supreme Court judges is 24. The Supreme Court has original jurisdiction in all disputes between the Centre and State Governments or between State Governments.¹¹ The Court also has appellate jurisdiction in all criminal and civil matters arising from India's High Courts.¹² The legal decisions of the Court are binding.¹³

10. Each State has a High Court, composed of a Chief Justice and judges appointed by the President of India. In addition, district judges, who serve in subordinate courts are appointed by the Governor of the State in consultation with the High Court of the State. Control over the subordinate courts is with the High Court.¹⁴

11. International obligations, including those relating to WTO provisions must be formally incorporated into domestic laws before they can be invoked before national Courts. According to the authorities, however, in the case that there is no relevant Indian law, WTO provisions may be enforced through the Indian Courts if they are not in conflict with any other treaty obligations.

(iii) The legislative process

12. At the level of the Union, all legislation has to be passed by both Houses of Parliament in order to become law. Money bills can only be introduced in the House of the People and, once passed, are sent to the Council of States for its recommendations. Such a bill must be returned to the House of the People within a period of 14 days from its receipt in the Council of States. The House of the People may choose to re-pass the bill with or without any of the recommendations of the Council of States.¹⁵ All other bills may be introduced in either House.¹⁶ Changes in a bill can be made by either House, but must be accepted by both Houses before passage. A bill pending in either House will lapse upon the dissolution of the House of the People.

13. Once a bill has been passed by both Houses, it must be signed by the President to become law. The President cannot veto any bill passed by the Houses but can recommend changes, except

¹¹Constitution, Art. 131.

¹²Constitution, Art. 132-134.

¹³Constitution, Art. 141.

¹⁴Constitution, Arts. 214-237.

¹⁵Constitution, Art. 109.

¹⁶A Money Bill is defined as dealing with: "(a) the imposition, abolition, remission, alteration or regulation of any tax; (b) the regulation of the borrowing of money or the giving of any guarantee by the Government of India, or the amendment of the law with respect to any financial obligations undertaken or to be undertaken by the Government of India; (c) the custody of the Consolidated Fund or the Contingency Fund of India, the payment of moneys into or the withdrawal of moneys from any such Fund; (d) the appropriation of moneys out of the Consolidated Fund of India; (e) the increasing of the amount of any such expenditure; (f) the receipt of money on account of the Consolidated Fund of India or the public account of India or the custody or issue of such money or the audit of the accounts of the Union or of a State; or (g) any matter incidental to any of the matters specified in sub-clauses (a) to (f)" (Constitution, Art. 110(1)).

in the case of Money bills. Once the bill has been reconsidered by the Houses and resubmitted to the President for signature, with or without the recommended changes, the President must sign the bill.

14. The President may promulgate Ordinances during recess periods of the two Houses. An Ordinance has the same force and effect as an Act of Parliament but must be passed by the Houses within six weeks of their reassembly. If it is not passed during this period, the Ordinance automatically lapses; if it is passed, the Ordinance is enacted.

15. Ministries play an important role in the legislative process. Legislation is framed through a process of consultation between the Ministry submitting the legislation and all other concerned Ministries. Any agreements or disagreements are incorporated into the proposed legislation by the Ministry concerned and submitted for consideration by the Cabinet. Once a decision has been taken to introduce the legislation in Parliament, the matter is referred to the Legal Affairs and Legislative Department of the Ministry of Law where a draft bill is prepared. The draft is introduced in Parliament by the Ministry concerned.

16. Once the bill has been passed by the Houses, and the President has assented, the originating Ministry becomes responsible for implementing the Act. Parliament also supervises the implementation of laws, for example, through parliamentary consultative and standing committees.¹⁷

(a) Trade policy legislation

17. The Indian Constitution confers on Parliament the exclusive power to make laws that concern the Union on any matter provided in List I of the Seventh Schedule (referred to as the "Union List"). State Legislatures make laws that concern matters provided in List II of the Seventh Schedule (known as the "State List")¹⁸, while both Parliament and State Legislatures can make laws on matters concerning List III of the Seventh Schedule (known as the "Concurrent List").¹⁹ The Union List includes, *inter alia*, all matters relating to "trade and commerce with foreign countries; import and export across customs frontiers; definition of customs frontier" (Art. 246 (41)) as well as "Inter-State trade and commerce" (Art. 246 (42)).²⁰ Thus, on international trade policy, legislation is enacted by Parliament. However,

¹⁷Trade matters for example are discussed by a Standing Committee on Commerce.

¹⁸Parliament may however enact legislation in areas normally reserved for the States in List II if at least two thirds of the members of the Council of the States declare by resolution that it is necessary and expedient in the national interest to do so (Constitution, Article 249 (1)).

¹⁹In case of conflict between the laws of a State and those passed by Parliament, Parliamentary legislation will prevail on matters relating to the Concurrent List however (Art. 251). In the case of legislation relating to international trade relations, Parliamentary legislation prevails unless the State law has been consented to by the President (Constitution, Art. 254).

²⁰Other key subjects under the Union List include all matters relating to the defence of India, the armed forces, atomic energy, prevention of crime within India and on the high seas or in the air, immigration and citizenship, communications, currency and coinage, the Reserve bank of India, banking, insurance, national standards and regulation of labour and industrial disputes concerning union employees. The State List covers public order and policing, public health, communications not specified in the Union List, agriculture, animal husbandry, water supplies and irrigation, land rights, fisheries, state industries and the incorporation, regulation and closure of companies, and taxes relating to land, excise, electricity etc. The Concurrent List includes matters relating to criminal law and internal security, commercial and industrial monopolies, trade unions, industrial and labour

(continued...)

because State Legislatures have jurisdiction over items mentioned in the State List, they have to be consulted on such matters before any legislation is enacted by Parliament in order to ensure its smooth implementation by the States.²¹

18. International trade legislation or amendments to existing trade laws are introduced into Parliament by the Ministry of Commerce. Once such legislation is in place, the Directorate General of Foreign Trade can make minor changes, for example, to tariff rates, as long as those tariff rates remain within the bounds established by the Customs and Tariff Act. Parliament has to be notified of all such changes.

(b) Legislation relating to the World Trade Organization

19. India's instrument of ratification of the Agreement Establishing the World Trade Organization was deposited on 30 December 1994. Parliament was notified upon ratification. Any subsequent changes in trade-related legislation required in order for India to meet its Uruguay Round commitments, are enacted by Parliament in order to become national law. In this instance, because of the relationship between Parliament and State Legislatures on matters relating to the Union List, Parliament has competence to enact or amend all laws relating to the implementation of India's obligations, even in matters falling within the competence of the State Legislatures.

(3) Objectives of Trade Policy

20. In 1991 India initiated a wide-ranging programme of trade liberalization and economic deregulation. In the previous decades policy had sought improved living standards through self-sufficiency in food and manufacturing; this had led to far-reaching protection of Indian industry and agriculture. Since 1991 policy has become more outward oriented with the objective now of achieving stable, sustainable growth, in part by "integrating the Indian economy more closely with the world economy".²² India's current trade policy objectives include the acceleration of the country's transition to a "globally oriented vibrant economy"; the stimulation of sustained economic growth through the provision of access to essential raw materials, capital and consumer goods; the technological improvement of production in order to increase efficiency and attain internationally acceptable quality standards, and the provision of high quality products at reasonable prices to consumers.

21. Thus the Eighth Five-Year Plan (1992-97), called for the movement of India's trade policy regime "towards greater openness and to reap the full benefits of international trade".²³ This is to be achieved through: (i) a reduction of the "negative" list of imports and exports and (ii) a gradual reduction in the level and dispersion of tariff rates. The first steps included a reduction in the peak tariffs rates from more than 300 per cent to 150 per cent in the 1991/92 Budget and to 110 per cent in the 1992/93 Budget.

²⁰(...continued)

disputes, working conditions and labour welfare, education, price controls and trade and commerce in some goods including foodstuffs, cattle fodder, cotton and jute.

²¹For example, all matters relating to agriculture and agricultural pricing are subject to State law. Any national law relating to international and inter-state trade in agricultural products would therefore have an effect on the States and would have to be implemented by the States.

²²Government of India (1996o).

²³Government of India (1992), p. 85.

22. During the period of the Eighth Plan the Government targeted a further reduction in tariffs, to bring the average rate down to around 25 per cent within four years and to eliminate tariffs on raw and intermediate capital goods at a faster rate than tariffs on consumer goods. Tariffs on imports of consumer goods were to be removed as the domestic industry became more resilient.²⁴ The negative list was also to be pruned and it was envisaged that by the end of the Eighth Plan period, the list would contain only those items banned for safety or environmental reasons.²⁵ Over 70 per cent of products according to tariff lines are now freely importable. The number of canalized goods by broad category is now six for exports and eight for imports, compared to seven each in 1993 (Chapter III(2)(vii)(d) and (3)(v)(d)).

23. A further key change in India's trade policy since 1991 has been the greater emphasis now given to export facilitation, which, according to the authorities is used to counter import charges, especially on imported inputs used in the production of exports. The Government provides a number of export incentives including income tax exemptions, the import of capital goods at concessional rates of duty for exporters, and special privileges to export-oriented units and export-processing zones. The negative list for exports has also been shortened and the number of export products requiring a licence has been reduced.

24. India's trade policy objectives are aimed at consolidating the gains made under the liberalization programmes so far. This includes continued trade liberalization, especially through reductions in the negative list of imports and general tariff levels ensuring also that the gains from liberalization strengthen the economy and generate higher levels of employment.

(i) Participation in the WTO²⁶

25. India actively participated in the Uruguay Round and is a founding Member of the WTO. The authorities strongly favour the multilateral approach to trade relations and India grants at least most favoured nation (MFN) treatment to all its trading partners including those not Members of the WTO.²⁷ India's view on regional groupings is that they must fully conform with and support the rules of the multilateral system. In this context it participates in regional groupings such as the South Asian Association for Regional Cooperation (SAARC) and has expressed an interest in participating in APEC Working Groups on Energy, Industrial Science and Technology, and Trade Promotion. India participated in the meeting of the Working Group on Energy in the Philippines in October 1996.

26. While India is generally pleased with the results of the Uruguay Round and the subsequent Singapore Ministerial Meeting, it has frequently expressed concern about a number of market access issues. These relate primarily to the Agreements on Textiles and Clothing (ATC), Agriculture, and on Trade-Related Aspects of Intellectual Property Rights (TRIPS). India is concerned about the slow pace of elimination of restrictions under the ATC, and on the continued prevalence of agricultural subsidies in industrialized countries. India also feels that a distinction should be made between those countries that are primarily exporters and therefore have a potential to distort international market prices

²⁴Government of India (1992), p. 86.

²⁵The negative list for imports now includes 58 items that are prohibited and 168 items that are restricted.

²⁶This section is in part based on a statement by Dr. B. B. Ramaiah, Minister of Commerce at the Ministerial Conference in Singapore, 9 December 1996 (WT/MIN(96)/ST/27).

²⁷Fiji, with which India has no diplomatic relations, is an exception to this.

by subsidizing their products, and those such as India that primarily cater to their own markets and provide subsidies to protect their poor farmers and to achieve self-sufficiency in food production. Similarly, because the TRIPS provisions require India to provide stronger patent protection in the pharmaceutical sector, there is a fear that this will be costly to India, mainly in the form of higher royalty payments, administrative costs and perhaps monopoly control which may have adverse effects on India's access to technology. There is also considerable debate domestically on the harmonization of legislation relating to TRIPS and India's obligations under the Convention on Biological Diversity.

27. According to the authorities, another potential source of worry to India, and perhaps other developing countries, is the rising incidence of non-tariff barriers such as temporary safeguard measures and anti-dumping cases, especially against exports from developing countries. India is also concerned that the special consideration of developing country members called for in Article 15 of the Agreement on Anti-Dumping Measures, Article 10 of the Agreement on Sanitary and Phytosanitary Measures and Article 12 of the Agreement on Technical Barriers to Trade is not being adequately addressed.

(ii) India's WTO commitments

28. As a result of the Uruguay Round, India bound 67 per cent of all its tariff lines; bound rates range from 0 to 300 per cent for agriculture and 0 to 40 per cent for other products. Before the Round, only 6 per cent of India's tariff lines (4 per cent on industrial products) were bound. India's Schedule under the General Agreement on Trade in Service (GATS) covers 33 activities. According to the authorities, the phasing out of tariff barriers in compliance with WTO commitments began in March 1995 following a declaration by the Finance Minister in the 1995/96 Budget that all non-tariff measures restraining imports would be tariffied. The phase-out is to be implemented in six annual instalments. In the case of textiles and clothing, tariff reductions to between 25 and 40 per cent are to be achieved over a ten-year period beginning in March 1995. According to the authorities, if the integration process envisaged under the ATC is delayed, India's tariffs on textiles and clothing products will revert to levels prevailing at 1 January 1990.

29. Anti-dumping and countervailing legislation became operational in India in 1985, with an anti-dumping authority established in the Ministry of Commerce in 1986. In July 1997, India introduced Safeguard Rules under the Customs Tariff Act, 1975 with a Director General of Safeguards established in the Ministry of Finance.²⁸ Legislation on anti-dumping, and subsidies and countervailing measures has been amended to bring it into conformity with the results of the Uruguay Round.²⁹

30. India is also committed to amending its intellectual property right legislation in compliance with the TRIPS Agreement. As a developing country, India has a five-year transitional period for a number of these changes and an additional five years to extend product patent protection to areas of technology not protected so far. For some, however, notably Articles 70.8 and 70.9³⁰, India's

²⁸WTO document G/SG/N/1/IND/2, 14 January 1998.

²⁹WTO documents G/ADP/N/1/IND/2, 15 August 1995, G/ADP/N/1/IND/2/Corr.1, 9 January 1996 and G/ADP/N/1/IND/2/Suppl.1, 23 December 1996.

³⁰Articles 70.8 refers to the obligation of a Member country that does not presently provide patent protection for pharmaceutical and agricultural chemical products to provide a means by which patent applications for these products can be filed and to apply the criteria for patentability as laid down in the Agreement from this date. Article 70.9 requires that the subject of the patent application referred to in 70.8 shall be granted exclusive marketing rights for a period of five years after obtaining marketing approval in the country.

obligations became effective with the signing of the WTO Agreement; India has not yet passed legislation to do so.³¹ On copyright, India amended its legislation in 1994 in compliance with the requirements of the TRIPS Agreement. With regard to trade marks, industrial designs, geographical indications and protection for plant varieties, India plans to make use of the transitional period before making the required amendments.

31. India, as other developing countries, has at least until the year 2000 to remove all direct and indirect trade-related investment measures in conformity with the Uruguay Round Agreement on Trade-Related Investment Measures (TRIMs).³² These include measures such as local content requirements. India has notified TRIMs maintained by it under Articles 2 and 5 of the TRIMs Agreement and the illustrative list annexed to the Agreement.³³ Substantial modifications have already been made to the foreign investment regime, increasing the number of sectors where foreign investment can take place and also increasing the foreign equity limit on these investments. India has also removed dividend balancing in a number of sectors and content requirements for newsprint.

(4) Trade Laws and Regulations

32. India's main legislation relating to international trade is the Foreign Trade (Development and Regulation) Act, 1992, which repealed the Imports and Exports (Control) Act, 1947. The Act provides for the development and regulation of India's foreign trade. The Customs Act, 1962 allows the Government to restrict imports or prohibit trade in any good by official notification and also empowers the Government to administer and collect the customs tariff.

33. The Customs Tariff Act, 1975 and the Customs Tariff Rules, 1977 determine India's administered tariff rates and rules of origin, and the Customs Valuation (Determination of Imported Goods) Rules, 1988 and the Customs Valuation Amendment Rules, 1991 are the main laws relating to customs valuation. Guidelines on Foreign Investment were approved by Parliament in 1991. Subsequently, amendments were made to the new Industrial Policy Statement, 1991, incorporating these guidelines. India's main trade related laws are noted in Table II.1.

³¹According to the authorities, although the legislation has not been passed by Parliament, India has provided a means to receive patent applications for pharmaceuticals and agricultural chemicals through administrative instructions. A panel decision (DS50/R), followed by an Appellate Body decision (DS50/AB/R) concluded that India's administrative instructions were inconsistent with Article 70.8(a) of the TRIPS Agreement, and that by failing to have a mechanism in place to provide for the grant of exclusive marketing rights effective from the date of entry into force of the WTO Agreement.

³²Article 2 of the Agreement on Trade-Related Investment Measures requires that "no member shall apply any TRIM that is inconsistent with the provisions of Article III or Article XI of GATT 1994" which refer to national treatment and quantitative restrictions respectively (WTO, 1995a).

³³WTO documents TRIMS/N/1/IND/1, 11 April 1995 and TRIMS/N/2, 24 February 1997.

Table II.1
Indian legislation relating to trade

Area	Law
Customs Tariff	The Customs Act, 1962 empowers the Indian Government to collect and administer the customs tariff. The first schedule of the Indian Customs Tariff Act, 1975, contains India's administered tariff rates.
Customs Valuation	The Customs Act, 1962 and the Customs Valuation (Determination of Imported Goods) Rules, 1988
Countervailing duty	Indian Customs Tariff Act, 1975
Import regulations	Section 11 of the Customs Act, 1962 empowers the Central Government to restrict or prohibit trade in any goods by official notification; The Foreign Trade (Development and Regulation) Act, 1992 also gives the Central Government powers to restrict or regulate imports and exports.
Export regulations	Section 11 of the Customs Act, 1962; The Foreign Trade (Development and Regulation) Act, 1992.
Standards	Bureau of Standards Act, 1986; Prevention of Food Adulteration Act, 1954
Sanitary and phytosanitary measures	Drugs and Cosmetics Act, 1940 (last amendment in 1988); Prevention of Food Adulteration Act, 1955 (last amendment in 1994); the Insecticides Act, 1968
Marketing and labelling	Standards of Weights and Measures Packaged Commodity Rules, 1977 (last amended on 26 October 1997)
Government procurement	Governed by provisions of the Indian Sales of Goods Act, 1930 and the Indian Contracts Act, 1972; the Indian Arbitration and Reconciliation Act, 1996. Government departments are guided in their purchases by the Government's General Financial Rules, and by India-specific World Bank Standard bidding documents for World Bank assisted projects.
Anti-dumping, countervailing and safeguard measures	The Indian Customs Tariff Act, 1975.
Pricing and marketing arrangements	No single Central Government legislation; several Central Government Acts provide powers to the Government for pricing and marketing regulations, including the Essential Commodities Act, 1955; the Standards of Weights and Measures packaged Commodity Rules 1997.
Competition Law	The Monopolies and Restrictive Trade Practices Act, 1969 (last amendment in 1991).
Intellectual Property Rights	The Indian Patents Act, 1970; the Indian Copyrights Act, 1957 (amended in 1994); the Trade Marks and Merchandise Act, 1958; the Designs Act 1911.
Foreign Investment	There is no separate law for foreign investment. The Industries (Development and Regulation) Act of 1951 outlines licensing procedures for industries. Foreign investment policy was incorporated in this Act to target industries in which foreign technology and foreign exchange was desirable.

Source: Government of India.

(i) Changes to trade legislation

34. The major modifications to Indian laws to ensure compliance with its WTO commitments include changes to the Indian Customs and Tariff Act, 1975, specifically Sections 9, 9A and 9B dealing with subsidies and countervailing duties and with anti-dumping measures.

(ii) Notifications to the World Trade Organization

35. As all other Members of the WTO, India is required to make notifications of changes in legislation and trade measures to the Secretariat. Table II.2 below provides a list of India's major notification requirements to the WTO and the current status of these notifications.

Table II.2
Status of selected notification requirements to the WTO, as at February 1998

WTO Agreement	Description of requirement	Periodicity	Document No. of most recent notif. (if none, date of scheduled notification)	Comments
Agriculture (Art. 18.2; DS:1+)	Domestic support	Annual, 90 days after end of FY	(end June 1996)	
Agriculture (Art. 18.2; ES:1+)	Export Subsidies	Annual, 90 days after end of FY	(end June 1996)	
Textiles and Clothing (Art. 3.1)	Quantitative Restrictions	Once before 1 March 1995	G/TMB/N/72 April 1995 G/TMB/N72/Add.1 June 1996	India maintains import restrictions on consumer goods, including textiles and clothing, under Art. 18, Section B of GATT. Restrictions on fibres, yarns and industrial fabrics listed in this notification were recently lifted.
Textiles and Clothing (Art. 6.1)	Safeguard decisions	Once before 1 March 1995	G/TMB/N/21 March, 1995	India retains the right to use the safeguard provisions of Art. 6.
Textiles and Clothing (Art. 2.6/2.7)	First Integration	Once	G/TMB/N/48 March, 1995 G/TMB/N/48/Add.1 June 1996	Notification of products that account for not less than 16 per cent of India's imports of products listed in Annex to ATC.
Textiles and Clothing (Art. 2.11)	Second Integration	Once	G/TMB/N/224 February 1997	Notification of products accounting for not less than 17 per cent of India's imports of products listed in Annex to ATC.
Import Licensing (Art. 7.3)	Laws and Regulations	Annual	G/LIC/N/3/IND/1 January 1996	Imports into India are regulated by means of a Negative List of goods, which are declared in the Export and Import Policy.
Subsidies (Art.25.1)	Specific subsidies	Annual	G/SCM/N/3/Add.1/Rev.3 January 1997	
Subsidies (Art. 32.6)	Laws and regulations	Once by 15 March 1995, then changes	G/SCM/N/1/IND/2/ Suppl.1 December 1996	
Subsidies (Art. 25.11)	Countervailing duty actions taken	Twice annually	Referenced in G/SCM/N/19/Add.1 October 1996	No countervailing duty action was taken by India until 30 June 1996.
Anti-dumping (Art. 18.5)	Laws and regulations	15 March 1995 and subsequent changes	G/ADP/N/1/IND/2/ Suppl.1 December 1996	
Anti-dumping (Art. 16.4)	Actions taken	Twice annually	G/ADP/N/16/IND September 1996 G/ADP/N/16/IND/Corr.1 April 1997	Until 30 June 1996, India had initiated 21 anti-dumping cases of which 13 cases faced definitive duties.
Safeguards (Art. 12.7)	Pre-existing Article XIX measures	March 1995 and subsequent changes	G/SG/N/2/IND-SG/N/3/IND August 1995	India does not maintain any safeguard measures relating to this article.
Safeguards (Art. 12.6)	Laws and regulations	Once and then changes	G/SG/N/1/IND/2 January 1998	
Sanitary and Phytosanitary measures	Measures taken	Ad hoc	G/SPS/N/IND/1-8	India has notified 8 measures.

Table II.2 (cont'd)

WTO Agreement	Description of requirement	Periodicity	Document No. of most recent notif. (if none, date of scheduled notification)	Comments
Preshipment Inspection (Art. 5)	Laws and regulations which put the Agreement into force	Once and then changes	G/PSI/N/1/Add.4 October 1996	
TBT (Art. 15.2)	Laws and regulations	Once upon entry into force		
TBT (Art. 2)	Technical Regulations	Ad hoc	India has notified 12 measures in 1995 and 22 in 1996	
TBT (Annex 3(c))	Acceptance of Code	Once and then changes	G/TBT/CS/N/26 January 1996	The Bureau of Indian Standards has accepted the WTO Technical Barriers to Trade Agreement's Code of Good Practice.
Rules of Origin (Annex II, para 4)	Preferential rules of origin	Once and then changes	Referenced in G/RO/N/1 and G/RO/N/1/Add.1	India has preferential rules of origin relating to the GSTP, SAPTA, the Commonwealth preferences system and to Bhutan and Nepal.
GATT 1994 (Art. 17(4)(a))	State Trading Activities	Annual	G/STR/N/1/IND January 1996	11 canalizing agencies granted monopolies on export and import of essential goods. Government may grant licences to private parties to import or export any of the canalized goods.
GATT Council for Trade in Goods G/L/59	Non-tariff measures	Every two years beginning January 1996	G/MA/NTM/QR/1/Add.2; October 1996	Full notification available in Secretariat.
GATT 1994 (Art. VII)	Customs Valuation (Art. 22.1)	Once and then changes	G/VAL/N/1/IND/2 March 1996	India's legislation notified under the Tokyo Round Customs Valuation Agreement, remains valid under the WTO Agreement.
GATS (Art. III)	Changes to certain laws and regulations	Annual	(January 1996)	
TRIMs (Art. 6.2)	Publications in which TRIMs may be found	Once and then changes	(February 1997)	
TRIMs (Art. 5.1)	Investment Measures	March 1995 and subsequent changes	G/TRIMs/N/1/IND/1/ Add.1 January 1996 G/TRIMs/N/1/IND/1/ Add.2 May 1996	India maintains TRIMs in the consumer goods sector and in the case of some pharmaceutical products.
TRIPS (Art. 70)	Laws and regulations	Within 30 days of the WTO agreement	IP/N/1/IND/1 March 1995	Notification of a mailbox facility. The notification has however lapsed since it was not approved by the Indian Parliament.

Note: FY = Fiscal year, which in the case of India runs from 1 April to 31 March.

Source: WTO documents.

(5) Execution of Trade Policy

(i) The Executive

36. The Department of Commerce, within the Ministry of Commerce, is the main body responsible for India's trade policy formulation and all matters connected with it, including commercial relations with trading partners, state trading, export promotion and the development and regulation of export

oriented industries and products. The Department of Commerce is headed by the Secretary for Commerce. The Department is assisted by the Director General of Foreign Trade who is the head of the Import-Export Trade Control Organization which executes all export-import related policies of the Government of India. Since the recent changes in trade policy, the Director General's role has become one of "export promotion and facilitation of imports".³⁴ The Directorate General of Commercial Intelligence and Statistics is the primary government agency for collecting, compiling and publishing trade and commercial statistics. The Development Commissioners in charge of India's seven export processing zones are also part of the Ministry of Commerce.

(ii) Autonomous and advisory bodies

37. The Ministry of Commerce is also assisted by a number of autonomous and advisory bodies. The Board of Trade, constituted in 1989, provides an important input into trade policy formulation; its membership includes the Governor of the Reserve Bank of India (RBI), Secretaries of the Ministries of Commerce, Industry, Finance, and Textiles, the Special Secretary from the Prime Ministers Office and the presidents of various industrial and export councils and specialists. The Commerce Minister is the Chairman of the Board, and the Director General of Foreign Trade is the Member Secretary. The Board normally meets two or three times a year.

38. The Indian Institute of Foreign Trade is an autonomous body which performs training and research in international trade and marketing. Other autonomous bodies include the Indian Institute of Packaging, the Indian Diamond Institute, Indian Council of Arbitration, and 20 export promotion councils for several sectors and products, including apparel, basic chemicals, pharmaceuticals and cosmetics, cashew nuts, carpets, chemicals and allied products, cotton textiles, electronics and computer software, engineering, gems and jewellery, handicrafts, handlooms, silk, leather, construction, plastics and linoleum, shellac, sports goods, synthetic and rayon textiles, wool and woollens and powerloom development.

39. There are also six statutory Commodity Boards, responsible respectively for the production and export of tea, coffee, rubber, spices, tobacco and coir. The Export Inspection Council is a statutory body for the enforcement of quality control and is in charge of preshipment inspection of all Indian exports.

40. The Department of Commerce also takes into account the views of various advisory and review bodies that may be established from time to time, and of academic institutions and industrial associations such as the Federation of India Exporters' Organization (FIED), the Confederation of Indian Industries (CII), the Federation of Indian Chambers of Commerce (FICCI) and the Associated Chambers of Commerce (ASSOCHAM). The Presidents of FICCI, ASSOCHAM, and CII also represent industrial interests in the Board of Trade.

³⁴Government of India (1996o).

(6) Trade Relations

(i) Multilateral agreements

41. India was an original contracting party to the GATT and became a founding member of the World Trade Organization in January 1995. As a member of the WTO India has observer status in the Agreements on Government Procurement, Trade in Civil Aircraft and also in the International Dairy and Bovine Meat Arrangements, which expired at the end of 1997.

42. India is a member of all the major multilateral economic fora, including the International Monetary Fund, the World Bank and the Asian Development Bank.

(ii) Regional agreements

43. 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. Its major achievement in 1995 was the conclusion of the negotiations on trade preferences within the framework of the Agreement of the SAARC Preferential Trading Arrangement (SAPTA). SAPTA became operational on 7 December 1995 and includes preferential tariff concessions on 226 items and product groups. India has offered tariff concessions on 106 items, ranging from 10 per cent to 90 per cent of present tariff levels (Chapter III(2)(iii)). Tariff concessions for least developed countries range from 50 per cent to 100 per cent on many of these products.³⁵

44. A second round of SAPTA trade negotiations was launched in January 1996 to broaden tariff concessions. India granted concessions on 902 tariff lines, effective 1 March 1997. Tariff preferences ranging from 25 per cent to 50 per cent were granted on 512 lines exclusively to the least developed members of SAARC; tariff concessions ranging from 10 per cent to 40 per cent on 390 lines were granted to all SAARC members. A third round of trade negotiations commenced in July 1997. The goal is to continue the SAPTA process with the ultimate aim of having a South Asian Free Trade Area (SAFTA) by not later than the year 2001.³⁶

45. India is a member of the Bangkok Agreement, originally signed in 1975, and which now also includes Bangladesh, the Republic of Korea, the Lao People's Democratic Republic, Papua New Guinea and Sri Lanka.³⁷ The Agreement provides for the liberalization of tariff and non-tariff barriers between

³⁵WTO document WT/COMTD/10, 25 April 1997. The least developed countries in the agreement include Bangladesh, Bhutan, the Maldives and Nepal.

³⁶The target date for accomplishing free trade was moved forward from the original date of 2005 at a recently concluded summit meeting between the seven heads of State in the Maldives (International Herald Tribune, 15 May 1997).

³⁷According to the notification (GATT document L/6718) all developing countries in the ESCAP region are eligible for membership. The People's Republic of China has recently applied for membership and is in the process of acceding to the Agreement (Government of India, 1996o).

its members. A total of 104 products are covered in national lists of concessions, including 15 special concessions granted to the Lao People's Democratic Republic (Chapter III(2)(iii)).

46. The Indian Ocean Rim Association for Regional Cooperation was recently formed along with 13 other countries in the region.³⁸ The Charter of the Association was adopted in March 1997. Economic cooperation is expected to take place in trade facilitation, promotion and liberalization, promotion of foreign investment, promotion of scientific and technological cooperation, tourism, the movement of natural persons and service providers, and the development of infrastructure and human resources. An enabling clause to identify other areas of cooperation is also included in the agreement. India has also signed sub-regional agreements with Nepal, Bangladesh, Myanmar and Bhutan and more recently with Bangladesh, Sri Lanka and Thailand. Details of the agreement known as BISTEC are presently being formulated.

(iii) Bilateral agreements

47. India has signed bilateral agreements with two neighbouring countries, Bhutan and Nepal, to provide them with preferential access. The agreement with Bhutan signed in 1984 provides transit facilities to that landlocked country and trade is conducted in Indian rupees and Bhutanese ngultrums. Indian trade with Nepal is conducted on a preferential basis for a range of products, and India also provides transit facilities for Nepal. More limited agreements have been signed with Bangladesh, which receives the preferential treatment India accords to least developed countries under SAPTA, and with Myanmar. A Memorandum signed in 1991 under the Sino-Indian Border Agreement allows limited border trade across two points along the India-China borders (Chapter III(2)(iii)).

48. Commonwealth preferences continue to be extended to Mauritius, Tonga and the Seychelles.

(iv) Other

49. India's ban on trade with South Africa notified under Article XXXV was lifted in October 1994.³⁹ India continues to maintain no diplomatic or trading relations with Fiji.

50. Indian exports receive preferential treatment under the Generalized System of Preference (GSP) schemes of Australia, Bulgaria, Belarus, Canada, the Czech Republic, the European Union, Hungary, Japan, New Zealand, Poland, Norway, Russia, Switzerland, Slovakia and the United States. GSP treatment on exports from India and for a number of other developing countries also, are gradually being phased out by a number of countries including the EU, the United States and Australia.⁴⁰ India is also a member of the Global System of Trade Preferences among Developing Countries (GSTP), agreed in 1988, which has presently been ratified by 41 countries. India offered tariff concessions

³⁸The other members are Australia, Indonesia, Kenya, Madagascar, Malaysia, Mauritius, Mozambique, Oman, Singapore, South Africa, Sri Lanka, Tanzania and Yemen.

³⁹GATT (1994); and document L/7547.

⁴⁰The EU, for example, allows for tariff rates to be varied according to the sensitivity of product categories: Australia's GSP scheme is gradually being phased out for most developing countries (WTO, 1997 and WTO, 1998).

ranging from between 10 and 50 per cent on 31 products during the first round of negotiations, and preference margins between 10 and 100 per cent on 27 tariff lines at the six-digit level during the second round. Negotiations to conclude the second round are based on further tariff concessions on a product-by-product basis and are yet to be concluded.

(v) Dispute settlement

51. Under the GATT, India was involved in one dispute, with Poland. India requested consultations under Article XXII:1 of GATT 1947, concerning a modification of Poland's tariff structure on motor car imports from countries outside the European Economic Community. Formal consultations began on 22 June 1993 and India requested the establishment of a panel under Article XXIII:2 (DS40/2) in October 1994. A panel was established in December 1994 and India withdrew its claim under GATT 1947 (DS40/4), to request consultations with Poland on the same issue pursuant to Article 4 of the Understanding on Rules and Procedures Governing the Settlement of Disputes and Article XXXIII:1 of GATT 1994 (WT/DS/9/1) in October 1995. A mutually agreed solution was notified in September 1996 (WT/DS19/2).

52. India has used the WTO's dispute settlement mechanism four times.⁴¹ In the case of a complaint by India against transitional safeguard measures used by the United States affecting imports of woven wool shirts and blouses (WT/DS33), the Panel found in favour of India in January 1997 (Table II.3).⁴² Panels have also been established in the case of import prohibitions by the United States on certain shrimp and shrimp products, under Section 609 of U.S. Public Law 101-602⁴³; and in the case of Turkish restrictions on certain imports of textiles and clothing, where India claims a violation of Articles XI and XIII of GATT 1994 and of Article 2 of the Agreement on Textiles and Clothing. India was a third party to a similar complaint brought by Hong Kong against Turkey. In addition, in early 1996 a panel was established on an Indian complaint regarding U.S. measures on imports of certain wool coats; the panel was not constituted, following termination of the U.S. measures in April 1996.

⁴¹Contained in documents WT/DS32, 15 March 1996, WT/DS33, 24 February 1997, WT/DS34 and WT/DS58, 14 October 1996.

⁴²The Report of the Appellate Body in May 1997, similarly, found that the measures imposed by the United States had violated the provisions of the WTO Agreement on Textiles and Clothing.

⁴³This was a joint complaint brought to the WTO's Dispute Settlement Body by India, Malaysia, Pakistan and Thailand.

Table II.3

Disputes involving India in the GATT and WTO

Description	Raised by/against	Actions	Outcome
Duty exemptions for automobiles originating from the EU	India/Poland	Consultations requested under Art. XXIII:2 by India on 20 May 1993 (DS40/1) India requests panel under Article XXIII:2 in October 1994 (DS40/2) Panel established Dec 1994 (C/M/276)	India withdrew claim in October 1995 (DS40/4)
Duty exemptions for automobiles originating from the EU	India/Poland	Consultations requested under Art. XXIII:1 in October 1995 (WT/DS/19/1)	Mutually agreed solution notified in August 1996 (WT/DS19/2)
Measures affecting imports of women's and girls' wool coats	India/USA	Panel established under Art. XXIII:2 and Art. 8.10 and other relevant provisions of the Agreement on Textiles and Clothing in March 1996 (WT/DS32/1)	India requested termination of further action in light of the decision taken by the USA to remove the safeguard measures in April 1996
Measures affecting imports of woven wool shirts and blouses	India/USA	Panel established under Art. XXIII:2 and Art. 8.10 and other relevant provisions of the ATC in March 1996 (WT/DS33/1) Panel established June 1996 (WT/DS33/2)	Panel found in favour of India in January 1997. India appealed some aspects of the decision in February 1997 (WT/DS33/3). Appellate body upheld the decision of the panel in April 1997 (WT/DS33/AB/R).
Restrictions on imports of textile and clothing products	India/Turkey	Consultations requested under Art. XXIII:1 in March 1996 (WT/DS34/1) Establishment of panel requested in February 1998 (WT/DS34/2)	
Import prohibition of certain shrimp and shrimp products	India/USA	India joined governments of Malaysia and Thailand as a co-complainant, requesting panel in February 1997 (WT/DS58/8). DSB agreed to establish and incorporate panel with panel already established for Co-Complainants (WT/DS58/9).	
Inadequate patent protection for pharmaceuticals and agricultural chemical products	USA/India	Request for consultations in July 1996 (WT/DS50/1) Establishment of panel requested in November 1996 Panel established in November 1996 (WT/DS50)	Panel found that India had failed to comply with Articles 70.8 and 70.9 of the TRIPS Agreement in September 1997 (WT/DS50/R). India appealed the decision in October 1997. The Appellate Body Report supported some aspects of the Panel's decision on Articles 70.8 and 70.9 but not on Art. 63 of the TRIPS Agreement (WT/DS50/AB/R).
Inadequate patent protection for pharmaceuticals and agricultural chemical products	EC/India	Request for consultations in April 1997 under Art. XXII of GATT 1994 (WT/DS79/1). Panel requested in September 1997 and established November 1997 (WT/DS79/3).	

Table II.3 (cont'd)

Description	Raised by/against	Actions	Outcome
Quantitative restrictions on imports of Agricultural, Textile and Industrial products	USA/India	Consultations requested under Art. XXII:1 of GATT 1994, Article 19 of the Agreement on Agriculture and Art. 6 of the Agreement on Import Licensing Procedures (WT/DS90/1) in July 1997. Panel requested by the US in October 1997. Panel formed in November 1997.	
"	Australia/India	Consultations requested under Art. XXII:1 of GATT 1994 (WT/DS91/1).	Mutually agreed solution in November 1997 ^a
"	Canada/India	Consultations requested under Art. XXII:1 of GATT 1994 (WT/DS92/1) in July 1997.	Mutually agreed solution reached in November 1997 ^a
"	New Zealand/India	Request for consultations under Art. XXII:1 of GATT 1994 (WT/DS93/1).	Mutually agreed solution reached in November 1997 ^a
"	Switzerland/India	Consultations requested under Art. XXII:1 of GATT 1994 in July 1997 (WT/DS94/1).	Mutually agreed solution reached in November 1997 ^a
"	EU/India	Requested consultations under Art. XXII:1 of GATT 1994 (WT/DS96/1).	Mutually agreed solution reached in November 1997 ^a

a Yet to be notified to the WTO Secretariat.

Source: WTO documents.

53. In a matter regarding Indian action, the United States requested consultations on Indian patent protection for certain pharmaceuticals and chemical products. Failing a resolution, a panel was established to investigate the U.S. complaint in November 1996. The panel ruled in September 1997 that India had not complied with its obligations under the TRIPS Agreement to provide a mechanism for application for product patents for pharmaceutical and agricultural chemicals and to provide a system for granting exclusive marketing rights. India notified an appeal to the Appellate Body in October 1997. The United States also requested the establishment of a panel to examine India's remaining quantitative restrictions. A panel under Article 6 of the DSU with "standard" terms of reference was established in November 1997.⁴⁴ Mutually agreed solutions were reached, following consultations in cases brought on the same issue, with Australia, Canada, New Zealand, Switzerland, Japan and the EU (Chapter III(2)(xvii)).⁴⁵

⁴⁴According to the United States, India's quantitative restrictions appear to be inconsistent with its obligations under Articles XI:1 and XVIII:11 of GATT 1994 and Article 4.2 of the Agreement on Agriculture; the import licensing procedures and practices of the Government of India are inconsistent with fundamental WTO requirements as provided in Article III of GATT 1994 and Article 3 of the Agreement on Import Licensing Procedures (WTO document WT/DS90/8, 6 October 1997).

⁴⁵WTO document DSB/M/39, 7 January 1998.

(7) Investment Policy

54. Policy on foreign investment in India was guided in the past by industrial considerations, investment having been channelled into those industries where foreign technology and foreign exchange was deemed necessary for economic growth. Foreign equity participation was tightly regulated, usually to a limit of 40 per cent of total equity. Since 1991, there has been a relaxation of this policy and the foreign technology requirement has been discontinued. The number of sectors open to foreign investment has been enlarged and up to 100 per cent foreign equity participation is allowed in a number of industries.

55. India does not have a separate law for foreign investment, largely because of the relatively low importance given to foreign investment in previous decades. Instead, with industrial growth regulated through the Industries (Development and Regulation) Act, 1951, which outlined industrial licensing procedures for industries, foreign investment rules were incorporated in this Act; foreign investment was usually channelled into those sectors or industries considered important for India's industrial development.

(i) Foreign direct investment

56. The Common Minimum Programme (CMP) of the Indian Government is aimed at attracting foreign direct investment (FDI) inflows of US\$10 billion a year. At present, total annual inward FDI is around US\$3 billion. As with trade policy, radical reforms have been introduced in the area of investment policy since the early 1990s, although the policy remains discretionary in some respects.⁴⁶ The Government has significantly relaxed foreign investment regulations since the early 1990s as well as sectoral restrictions, both for FDI and for foreign institutional investors (FIIs). The main components of the programme to liberalize FDI included:

- (a) Automatic approval by the Reserve Bank of India (RBI) for up to 51 per cent of foreign equity participation in 48 priority sectors of the economy⁴⁷; up to 50 per cent in the case of the mining sector; and up to 74 per cent in nine sectors (Table II.4). In these nine sectors for proposals relating to technical collaboration or technology transfer, the RBI can grant automatic approval for investment in all sectors as long as they meet the requirement that lump sum payments do not exceed Rs 10 million; royalties do not exceed 5 per cent on domestic sales and 8 per cent on exports; and total payments do not exceed an 8 per cent ceiling of total sales over a period of ten years from the date of agreement or seven years from the commencement of commercial production.

The RBI normally gives automatic approval to proposals that conform to these requirements within a period of two weeks. Non-resident Indians (NRIs) and overseas corporate bodies in which NRIs hold at least 60 per cent of the equity, can invest up to 100 per cent in these sectors through the automatic route. No approval is necessary

⁴⁶The guidelines for the approval of foreign investment projects by the Foreign Investment Promotion Board (FIPB) were issued only by the Government in January 1997. Prior to that there were no guidelines for cases where foreign investors could not find appropriate Indian partners and in the case that the Indian partner was unable to find the resources for technological upgrading. Although these guidelines have made the process more transparent, it still leaves room for the FIPB to consider "recommendations based on other criterion it considers relevant" (*Economic Times*, 21 January 1997).

⁴⁷Until December 1996 a maximum foreign equity participation of up to 51 per cent was allowed in 35 sectors.

for an FDI inflow of up to 24 per cent of the equity in any Indian firm⁴⁸ and up to 20 per cent in any new private bank (40 per cent for NRIs). Investment limits apply to several sectors, including 49 per cent in telecommunications (basic, cellular and paging) services; 40 per cent (100 per cent for NRIs) in domestic air taxi operations or airlines, and 51 per cent in the pharmaceuticals sector for the production of bulk drugs.

- (b) The establishment of a Foreign Investment Promotion Board (FIPB) and the Secretariat for Industrial Approvals (SIA), to examine FDI project proposals that involve more than a 51 per cent foreign equity holding in priority industries and all other industries. In the case that foreign investment applications do not conform to the requirements for automatic RBI approval as listed above, they are referred to the FIPB or the SIA for approval. These proposals are examined on a case-by-case basis and discretion exists to grant permission. In general, the FIPB will approve up to 100 per cent foreign equity in cases where a foreign company has been unable to find a suitable Indian partner for a joint venture, subject to the condition that the foreign investor disinvest at least 26 per cent of equity to Indian companies within three to five years; where a holding company is to be established and all downstream investments need prior approval; where proprietary technology is sought; where at least 50 per cent of production is exported; and for consultancy services and projects in the power, roadways, ports and industrial towns and estates sectors. Up to 100 per cent foreign equity investment can also be allowed by the FIPB for firms engaged in exports, bulk imports, cash-and-carry wholesale trading and imports of other goods and services, provided that at least 75 per cent of output or imports is for trade among firms of the same group. They would normally clear the foreign investment proposal within a period of four to six weeks.

57. A Foreign Investment Promotion Council (FIPC) has been established to increase the rate of investment in priority sectors.

⁴⁸Investment in the small-scale sector is freely allowed up to a foreign participation of 24 per cent of the equity, but government approval is required through the Foreign Investment Promotion Board (FIPB). Investment is also restricted in the six sectors reserved for the public sector, including arms and ammunition and allied items of defence equipment, including defence aircraft and warships, atomic energy, coal and lignite, mineral oils, mineral specified in the Schedule to the Atomic Energy (Control of Production and Use) Order, 1953, and railway transport.

Table II.4
Sectors eligible for automatic foreign technology and foreign equity approval

50 per cent foreign equity participation	
Mining of iron ore	Mining of non-metallic minerals not else where classified
Mining of metal ores other than iron ore	
51 per cent foreign equity participation	
Metallurgical industries	Welding electrodes other than those for welding mild steel
Boilers and steam generating plants	Industrial synthetic diamonds
Prime movers (other than electrical generators)	Extraction and upgrading of minor oils
Electrical equipment	Pre-fabricated building material
Transportation	Soya products
Machine tools and industrial robots and their controls and accessories.	Certified high yielding seed and synthetic seeds and certified high yielding plantlets developed through plant tissue culture
Earth moving machinery and construction machinery and components thereof	All food processing industries other than milk food, malted foods and flour ^a
Industrial machinery and equipment	All items of packaging for food processing industries ^a
Agricultural machinery	Hotels and tourism related industry
Industrial instruments	Electronics software
Nitrogenous and phosphatic fertilizers	Manufacture of food products
Chemicals (other than fertilizers)	Manufacture of cotton textiles (spinning, weaving and processing in integrated mill sector)
Scientific and electromedical instruments and laboratory equipment	Manufacture of basic chemicals and chemical products (except products of petroleum and coal)
Drugs and pharmaceuticals (according to modified drug policy, 1994)	Manufacture of wool, silk and man made fibre textiles
Paper and pulp including paper products	Manufacture of basic chemicals and chemical products (except products of petroleum and coal)
Automobile tyres and tubes	Manufacture of rubber, plastic, petroleum and coal products
Plate glass	Manufacture of metal products and parts except machinery and equipment
Ceramics for industrial uses	Manufacture of metal products and parts except machinery and equipment
Cement products	Land transport (support services)
High technology reproducts and multiplication equipment	Water transport (support services)
Carbon and carbon products	Services incidental to transport not classified elsewhere
Pretensioned high pressure RCC pipes	Renting and leasing not classified elsewhere
Rubber machinery	Business services not classified elsewhere
Printing machinery	
74 per cent foreign equity participation	
Mining services	Construction
Basic metals and alloy industries	Land transport
Other manufacturing industries ^b	Water transport
Electric generation and transmission	Storage and warehousing services
Non-conventional energy generation and distribution	

a Excluding items reserved for the small-scale sector.

b Including NIC categories 380, 381 and 388.

Source: Government of India (1996e), Manual of Policy and Procedures Governing Industrial Approvals, New Delhi and Government of India (1997a), Press Note No.2 1997 series, Ministry of Industry, New Delhi.

58. Dividend balancing, which was previously required for all sectors where foreign investment occurred, is now required only in 22 specified industries, including food and food products, wood products, leather, footwear, automobiles, entertainment electronics and white goods (Table AII.1). For the 22 specified industries, dividend payments made by the foreign investor must be balanced by export earnings on the following basis:

- (i) dividend balancing is required over a period of seven years from commencement of production and not after this period;

- (ii) remittance of dividend should be covered by earnings from the export items covered by the foreign collaboration agreement, or through the export of items not mentioned in the agreement provided these are in the list of industries eligible for automatic foreign investment approval.⁴⁹

(ii) Portfolio investment

59. Policies on portfolio investment, by foreign institutional investors (FIIs) and/or by means of Global Depository Receipts (GDRs), have also undergone significant changes since 1991. Investment in the stock market was opened up to FIIs in September 1992. To invest, FIIs are required to be registered with the Securities and Exchange Board of India (SEBI). In order to do this, they have to be registered in their home country or country of origin. FII investment by a single investor can be up to 10 per cent of the share capital, raised recently from a 5 per cent limit, or up to 30 per cent by all FIIs as a group; it can also take place in non-listed companies, provided that the Board of Directors of the company approves the limit and a special resolution to this effect is passed by the general body of the company.⁵⁰ The SEBI also requires that the funds brought into India for investment must be a collective fund.⁵¹ In addition, FIIs are permitted to hold up to 100 per cent of the equity in debt funds and they can invest in government securities. There are no restrictions on repatriation of profits on portfolio investment, subject to India's foreign exchange regulations.

60. A further form of portfolio investment is through Euro-market issues of Global Depository Receipts and Foreign Currency Convertible Bonds (FCCBs). As part of the reform programme, Indian companies have been allowed since February 1992 to access the international capital market through placing such Euro-equity issues.

(iii) International investment agreements

61. India is a member of the Multilateral Investment Guarantee Agency (MIGA). Full subscription and membership rights became operational in January 1994. 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.

62. India has bilateral treaties for the promotion and protection of FDI with a number of European countries, including Denmark, Germany, Italy, the Netherlands and the United Kingdom. Similar agreements have been finalized with France and the Republic of Korea and India is presently negotiating agreements with Australia, Canada, Sweden and Switzerland. India also has agreements with a number of countries to avoid double taxation.⁵²

⁴⁹Government of India (1996e).

⁵⁰Government of India (1997a).

⁵¹According to the authorities, this restriction is to prevent money laundering activities.

⁵²These countries are Algeria, Australia, Austria, Belgium, Canada, Czech Republic, Denmark, Ethiopia, Finland, France, Germany, Greece, Hungary, Indonesia, Italy, Japan, Kenya, Kuwait, Libya, Malaysia, Mauritius, Nepal, New Zealand, Norway, Oman, Philippines, Poland, Singapore, Slovakia, Sri Lanka, Sweden, Switzerland, Syria, Tanzania, Tunisia, Thailand, the United Arab Emirates, the United Kingdom, the United States, countries of the former Soviet Union and Zambia.