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Macao Regional Knowledge Hub
Working Papers, No. 7, October 2008

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ASSESSING THE MARKET OPENNESS EFFECTS OF REGULATION IN INDIA: AN OVERVIEW OF EMERGING TRENDS AND POLICY ISSUES

By Sachin Chaturvedi and S.K. Mohanty

Introduction

Since the launch of the major liberalisation programme in the early Nineties, the Indian government has continued to exhibit a general commitment towards regulatory reforms while working toward market openness. This becomes particularly interesting given that during the 1980s India was one of the most protected economies in the world. The level of protection declined substantially with the on set of economic reforms in the 1990s. This is apparent from the trends in the overall tariff rate which indicates that there is a significant decline in the *ad valorem* tariff rates between 1986-7 and 1993-4, but a significant reduction took place between 1994-95 and 2002-03. At present, India's average tariff in the manufacturing sector is 12.1 per cent. The Indian Government has taken a consensus view that India's average tariff may be brought down to a level at par with that achieved by ASEAN. In a similar direction, there are some initiatives to bring tax harmonisation between goods and services as part of which, new goods and services tax (GST) is to be implemented from 2010. Further, the Indian government has allowed foreign investment in most of the sectors including the public sector units. FDI Policy has also been streamlined to accommodate the interests of small and marginal players in the market, for instance, certain sectors which were hitherto reserved only for small scale units are now being opened up for FDI beyond the cap of 24 per cent.¹ Similarly, FDI in case of the retail sector would also be opened up with a segmented approach. As part of this, FDI would be first allowed in the electronics and sports good retail, followed by other sectors over a period of three years.² In most of the sectors, India has adopted an open sky policy for FDI. Even in public sector unit's strategies, sector partnership is allowed to foreign investment with management control.³

The policy thrust for market openness led to the privatisation of several infrastructural services which hitherto were the prerogative of certain state owned public sector corporations only. The key services which proved to be the test cases for regulatory reforms were electricity and telecommunications. In these sectors, India launched important initiatives at the policy and institutional level to achieve regulatory reforms. India established the telecom regulatory authority in 1997 and the electricity regulatory commission in 1998. The benefits of independent regulation are evident from the competitive prices in the telecom industry, rationalisation of tariff and reduction in the distribution losses in the electricity.⁴ The New Telecom Policy (NTP) 1999 was a major step taken by the government in terms of creating competition and addressing the need of expanding markets. The follow-up of this through NTP 2007 is an attempt to encourage industry to come up with self regulation.⁵

India has initiated several measures as part of the Trade Facilitation (TF) programme.⁶ Adoption and application of information communication technology (ICT) is the major plank of Indian Customs initiatives to expedite the clearance of import and export cargo and provide a fool-proof paperless system of assessment and clearance. A framework has also been established for electronic message-exchange between customs and their trading partners, such as banks, airlines, Directorate General of Foreign Trade (DGFT), Directorate General of Commercial Intelligence and Statistics (DGCIS) etc. and export promotion agencies like Apparel Export Promotion Council

(AEPC), etc. The Central Board of Excise and Customs (CBEC) under the Ministry of Finance has taken steps for the setting up of a Customs Data Warehouse (CDW) to store data which may be made available in a standard format for any enquiry/investigation or analysis, reporting, etc.

However, the practitioners particularly, the industry very often points out failings in the approaches of the government officials at the lower ladder particularly at customs valuation and the unfair treatment that new entrants get vis-à-vis. the established public sector enterprises.⁷ Slow systemic response to the investors and entrepreneurs is another major impediment for traders and investors. The recent amendments in the Indian Competition Act requires that companies, based on their size, asset/turnover, obtain clearance of the Competition Commission before they proceed for 'combinations', mergers, acquisitions etc.⁸ Issues related to the government's commitment towards services sector reform and the opening up of various domestic sectors through FTAs and other needed deregulation initiatives have also been raised by industry at various points of time.

This paper attempts to look into some of these issues. Section II examines the efforts made for integrating transparency and openness in the decision making process while Section III enumerates the international trade and investment framework as it has evolved over the years with specific reference to the participation of foreign firms through the government procurement system. Issues related to customs reforms, tariff and non tariff barriers are covered in the Section IV. Efforts for international harmonisation of regulatory processes are covered in the subsequent section. The last section draws the conclusions.

1. Integrating Transparency and Openness in Decision Making

In the recent past, there have been several attempts in the government to engage private sector in the reforms process so as to shift way from government-led reforms to private sector-led reforms. In 1998, the Prime Minister established a task force to monitor the progress in business and industry. The Prime Minister appointed the Prime Minister's Council on Trade and Industry for a policy dialogue on important economic issues relevant to Trade and Industry between the Prime Minister and Members of the Council. The Council had as its focus six major areas, viz. Food & Agro-industries Management Policy; Infrastructure; Capital Markets and Financial Sector Initiatives; Knowledge-based Industries; Service Industries; and Administrative and Legal Simplifications. The New Government in 2004 also continued with a similar set up and the newly-constituted Prime Minister's Council on Trade and Industry focused exclusively on streamlining of rules and regulations.⁹

A. Engaging the Business Community

Subsequent to the major work done on trade facilitation in 2002 in India, almost all the concerned ministries and government agencies have launched industry consultation at every possible opportunity. Both the Ministry of Finance (MoF) and the Ministry of Commerce and Industry (MoCI) and their respective agencies have led the process. The Union Finance Minister announced in March 2002, the setting up of an Authority for Advance Rulings to ensure foreign investors, of their likely indirect tax liability in terms of customs and other instruments. The authority has started functioning since April 2003. The government has come out with several brochures publicising the setting up of the Authority which are being distributed at embassies in India and the Indian missions abroad. In the time period, January 1, 2004 to December 31, 2004, 18 applications were received seeking the pronouncement of advance ruling.¹⁰ Recently, a website has also been launched by the Authority.¹¹

Similarly, the MoCI also enters in several industry consultations in various ways. It places policy amendments/announcements on its web for comments from industry. It also engages key trade organisations, think-tanks and other agencies for holding industry consultations. The CBEC has started the practice of keeping some of the proposed amendments on the CBEC website for comments from industry. However, some of the rules for which legislative approval is required, are first presented to Parliament and then are opened for public comments and discussions.¹² The CBEC keeps interacting from time to time with trade and industry organisations to streamline working. For instance, one of such consultations led to a new provision according to which for ‘Shipping Lines’, handling more than 5000 TEUs (as import containers) in a financial year for the purpose of trans-shipment of import and export cargo from any gateway port to feeder port/ICDs/CFSs and vice versa or by road should be exempted from furnishing bank guarantee.¹³

However, some institutions require far more preparedness for coping up with the new approach to governance. For instance, as part of the Foreign Trade (Development and Regulation) Act, 1992, the Customs Department created options for appeal. Any firm or individual aggrieved by any decision or order made by the Appellate Authority under this Act may make an appeal within a period of forty-five days from the date on which the decision or order is served. An additional forum for resolution of dispute for assesses without going into the prolonged litigation in adjudication/appeals/revisions, etc., has been created by constituting the Customs and Central Excise Settlement Commission (provisions of Section 127A to 127N of the Customs Act). Despite these arrangements, the number of cases pending before the Settlement Commission (see Table 1) remains extremely high.¹⁴ These cases involved huge amounts of duty payment amounting at several thousand million rupees. In some cases it is the lack of manpower which restricts the handling of cases at the initial stage itself. The Parliamentary Standing Committee on Finance, SCF (2005) has pointed this out in two consecutive reports.¹⁵

Table 1: Cases Pending before Settlement Commission (1999-2005)

(Rs. million)

	Principal Bench	Kolkata	Mumbai	Chennai	Total
Cases Received	377	47	661	465	1550
Cases Pending	79	24	149	38	390
Duty Realised in respect of settled cases	1572.30	27.90	1949.30	982.00	4531.50

Source: Chaturvedi (2006).

B. Public Engagement

In recent past, several mechanisms have been introduced by various government agencies to ensure wide public consultation before a legislation comes into effect. Government also gives public notices on the proposed domestic laws and internationally recognised procedures and requirements for exporting and importing items classified under HS codes. In this respect, the Indian government is increasingly making information that includes major laws, regulations and policy data available on the internet. For instance, the Directorate General of Foreign Trade (DGFT), CBEC and other key trade related organisational websites have been made more comprehensive in terms of their data contents.¹⁶ This includes detailed information on all the acts, rules, regulations, circulars and ministry notifications issued so far, apart from the latest ones. On the DGFT and CBEC websites, over 15,000 pages covering these details are posted. Apart from this there is a powerful search facility for extracting relevant and latest information made available on the site. Apart from CBEC, the RBI and MoCI are the other two agencies which help in the

further dissemination of legal details and information about the new policies. Several private agencies and legal publishing house are also into the business of selling relevant publications on trade and customs procedures apart from maintaining their own websites. The judicial decisions are also printed by several private publishers.

Similarly, the agencies responsible for standards have also set in place the mechanism for ensuring public participation. The BIS has introduced a mechanism for placing new standards for public response on its web site. The time given is 60 days. The BIS develops standards through its 14 different divisions. The Ministry of Health and Family Welfare (MH&FW) is responsible for setting new standards or amending the existing standards of any specified food item. The MH&FW places the new proposal on their website for domestic consultation and through MoCI circulates it across the WTO members for their comments. Once comments are received the consolidation takes place at the Ministry and the changes are announced on the website of MH&FW and are informed to WTO through the MoCI.

C. Interpretation and Application of Regulations

Industry organisations, in their submissions have often raised issues that many regulations lacked clarity as a result, officials are given large discretionary powers in the application of rules. Government has made significant efforts to remedy this through training programs for officials and by holding regular meetings with major foreign organisations. Another limitation is that while policy changes are made at the top but in the field, interpretation of same laws is so different that it creates a major hurdle for the business and industry. There is a need to take further measure for mitigating the discretionary powers and the scope of subjective interpretations. For instance, despite India's signing of the Customs Valuation Agreement (CVA), it is observed that the field staff prefers such options in the rules which provide absolute discretion. In order to address this constraint, the CBEC has undertaken a programme of training such officers as are engaged in the work of assessment, examination, etc. so that they can efficiently deal with the situations arising out of the ongoing reforms and the streamlining of the various trade measures.¹⁷ In order to address slow flow of information to the field offices, an effort is being made through quick training programs to reduce the information gap which comes up due to a very hierarchical structure. This may eventually help in a faster clearance of goods and reduce grievances from the trade. The National Academy of Customs, Excise and Narcotics (NACEN), Faridabad has several regional institutes which conduct training on a regular basis for staff who are posted for the first time and a refresher course for the pre-existing staff to acquaint them with ongoing reforms. The training programs are attended by such staff as is engaged in assessment, examination, bonded warehouse, container freight stations, prevention, etc. The participants are informed of all the legal/procedural changes brought about by any instructions/circulars/notifications apart from the issues arising from public notices or other technical details.

In the RIS Industry survey, it come up that in several ministries information related to various changes is published much after their implementation.¹⁸ As the ground staff lacks ICT orientation and due to slow automation and lack of alternative channels for information dissemination the ground staff comes to know of changes much later. This also creates problems for the trading community. The government has made some attempts to organise short-term training courses focused on automation initiatives to bridge the gap.¹⁹

Similarly, some initiatives have been launched to address these issues at the systemic level, for instance, the *Customs Excise and Service Tax Appellate Tribunal (CESTAT)* that has been created to provide an independent forum to hear the appeals against orders and decisions passed by the Commissioners of Customs and Excise under the Customs Act, 1962, Central Excise Act, 1944

and Gold (Control) Act, 1968.²⁰ The tribunal is also empowered to hear appeals against orders passed by the designated authority with regard to anti dumping duties under the Customs Tariff Act, 1975 and matters relating to Service Tax. The Appellate Jurisdiction of *CESTAT* covers baggage, drawback and short lending cases. In these cases, the aggrieved person may file an application for revision of the orders passed. The orders of the tribunal could also be considered for reference to the High Court and certain categories of decisions involving matters relating to the classification or valuation can be appealed even before the Supreme Court. This provides a large range of options to the trading community. An additional forum for resolution of dispute for assesseees without going into the prolonged litigation in adjudication/appeals/revisions, etc. has been created by constituting the Customs and Central Excise Settlement Commission (provisions of Section 127A to 127N of the Customs Act). The guidelines prescribed for its working suggest that the Settlement Commission cannot entertain the cases which are pending with the *Appellate Tribunal* or in a Court. Similarly, the matters relating to classification cannot be raised before the Commission. It is also specified that no application can be made unless the appellant has filed a bill of entry or a shipping bill. Presently, three benches in the Settlement Commission have been constituted and they are functioning at Delhi, Mumbai and Chennai. The fourth bench at Kolkata will be constituted in the near future.²¹ Despite these arrangements, the number of cases pending before the Settlement Commission (refer Table 1) remain extremely high.²² These cases involved huge amounts of duty payment ranging to several thousand million rupees. In some cases it is lack of manpower which restricts the handling of cases in the initial stage itself. The Parliamentary Standing Committee on Finance (2005) has pointed this out in two consecutive reports.

2. Market Openness and Non-Discrimination

India has emerged as a high-performing economy in the world. The external sector and the domestic sector form the cornerstone for such an accomplishment. Amidst stiff global competition the flourishing state of the external sector is the outcome of persistently pursued sound domestic trade policies and the resultant surge in the export competitiveness of a wide range of products. In the Medium-term Export Strategy (2002), Government of India had perceived the export sector as the driving force to contribute substantially to the 'new age' economy. It sets the target of the export sector to grow at the rate of 12 per cent during the period 2002-07 to achieve 1 per cent of world exports by 2006/07 and to double its share further to 2 per cent by 2009. The external sector performance of India has shown robust growth during 2006-07, registering an impressive growth of 23.7 per cent over the previous year in dollar terms. The two-way trade was \$312 billion, where the levels of imports and exports were recorded at \$186 billion and \$126 billion, respectively in 2006-07. Imports (24.5 per cent) increased much more sharply than the exports (22.6 per cent), leading to a widening of trade deficit by 29 per cent over the previous year. The export-import ratio has declined and the share of exports in the total trade is 40.5 per cent in 2006-07. India is gradually improving its engagement with the emerging economies to intensify its involvement with them through suitable regional arrangements. India's export and import baskets have been expanding over years, and the export/import items at 6 digit-HS have exceeded over 5000 products at present.²³

The government has been actively working towards reducing the nature and extent of examination by officers and has attempted instead, to develop a systemic management where least human intervention is required. This forms part of the proposed Risk Management System (RMS), that will enable self assessment for examination of consignments which are of high risk. As it will be a system driven programme, it will considerably reduce the discretion of the department officers. This initiative will offer a greater measure of facilitation to the credible traders and will also contribute towards the reduction in dwell time of cargo and thus to transaction cost. According to the CBEC plans, the RMS would work through the Accredited Client's Programme, where the

importers and exporters are enlisted with the department which enables access to facilitation services. At present, a pilot project is being run at select points in India. The RMS is expected to cover all the EDI points by end of 2005. The Information Technology Act 2000 has empowered the CBEC to issue digital signature certificates which would make it possible to provide legal validity to the electronic declarations.²⁴ The Ministry of Commerce and Industry has initiated several measures to activate various mechanisms for dissemination of information. However, in the area of trade, investment and government procurement there are still some issues to be addressed by the government, which are being discussed in the following section.

D. International Trade Framework

India is strongly adhering to both multilateralism and regionalism as a key policy strategy, and also believes in the complementary nature of both the processes. India has benefited from regionalism in its policy as this allowed the external sector to grow fast and to play a bigger role in the domestic economy with a minimum risk. The Ministry of Commerce and Industry has mentioned about 23 RTAs in (Implemented/under negotiation/Joint study Group) its website; and out of which 8 of them are PTAs, 7 FTAs, 6 under JSG and 3 of them under Special Agreement. India's engagement with some of other notable regional groupings is not covered in this list. Some of these RTAs outside the list of the Ministry of Commerce and Industry are IBSA (India-Brazil-South Africa Economic Cooperation)/ SIM (SACU-India-Mercosur Economic Cooperation), European Union and IOR-ARC (Indian Ocean Rim Association for Regional Cooperation).

At present India has reported about nine such initiatives to the WTO (Table 2), and out of which five of them are notified in the WTO. They are APTA, GSTP, SAFTA/SAPTA, Sri Lanka (ISLFTA) and Singapore (CECA). The Global System of Trade Preferences (GSTP) was notified to the WTO in 1989 and others were notified later. The remaining four such as BIMST-EC, Afghanistan, Nepal and Thailand, are reported to the WTO but are not notified yet. The negotiations concerning BIMSTEC and Thailand are not yet concluded; and therefore notifications are to be made once the negotiations conclude. The process of notifying SAFTA to the WTO has already been initiated. Moreover, India is currently engaged with another 14 RTAs, which are in different stages of negotiations as shown in Table 3.

Table 2: India's Commitments under Regional Trade Agreements, 2007

Agreement	Trade in Goods	Trade in Services	Other Areas
SAFTA	Non-LDC members, including India are to reduce tariffs to 20 per cent within two years, followed by a reduction to 0-5 per cent in five years (six years for Sri Lanka) and three years for imports from LDC members. India has a negative list of 744 imports from LDCs and 865 items from non-LDC members that are excluded from tariff reduction commitments. The first tariff reductions came into effect on 1 July 2006.	n.a.	n.a.
Asia Pacific Trade	Tariff preferences for 570 HS six-digit tariff lines and an	n.a.	n.a.

Agreement (Bangkok Agreement)	additional 48 tariff lines for LDC members with a margin of preference ranging from 5 per cent to 100 per cent. Special concession on some items have also been extended to the LDCs.		
BIMST-EC	Framework Agreement signed in February 2004 to form a free-trade area by 2012 with an additional five years given to the LDC members. Negotiations on trade in goods were to be completed by the end of 2005, but are yet to conclude. Negotiations on services and investment have commenced and must be concluded by 2007.	n.a.	n.a.
GSTP	Tariff concessions of 10 per cent to 50 per cent on 53 tariff lines at the HS six-digit level. Tariff concessions of 50 per cent apply to three tariff lines and are available only to Bangladesh, Benin, Guinea, Haiti, Mozambique, Sudan, and Tanzania.	n.a.	n.a.
Special preferential areas	Tariff preferences for certain imports from Mauritius, Seychelles, and Tonga.	n.a.	n.a.
Afghanistan	Tariff reductions on 38 HS six-digit tariff lines, with margins of preferences of 50 per cent or 100 per cent of the MFN tariff in force from 13 May 2003.	n.a.	n.a.
Nepal	Tariff exemptions for all goods subject to rules of origin. Imports of certain goods (vanaspati, copper products, acrylic yarn and zinc oxide) are subject to annual quotas.	n.a.	n.a.
Singapore (CECA)	Zero duty as of 1 August 2005 for 506 HS eight-digit products covered by the early harvest programme. Phased reduction and elimination of duty by 1 April 2009 for 2,202 HS eight-digit products and phased reduction of duty by 50 per cent by 1 April 2009 for 2,407 HS eight-digit products. Some	Services included are: business services, communication (telecommunications and audiovisual), construction, distribution, financial (banking), health, tourism, recreational and transport	Investment, standards, SPS, intellectual property rights, science and technology, education and dispute

	6,500 HS eight-digit products are excluded from duty reductions.	(maritime) services. Temporary movement of natural persons and media are addressed in separate chapters.	settlement.
Sri Lanka	Zero duty as of 1 March 2000 for over 1,000 tariff lines and a 50 per cent margin of preference for all other items except 429 items on a negative list. Tariff concessions on textiles are 25 per cent below the MFN rate. Tariff quotas apply to tea and garments and vanaspati. Total quantum of import restricted to 250,000 tonnes per annum.	n.a.	n.a.
Thailand	Early harvest scheme for 82 products at the HS six-digit level; tariffs to be reduced in phases from 1 September 2004 and to be eliminated by 1 September 2006.	n.a.	n.a.

Source: Trade Policy Review: India 2007, WTO.

India has signed/negotiated bilateral economic arrangements with five South Asian partners, out of which two of them (Nepal and Sri Lanka) are reported in the WTO. Out of five bilateral Agreements in South Asia, the Indo-Sri Lanka FTA (ISLFTA) has been the most impressive trading arrangement in terms of volume of trade. This Agreement was signed in 1998 and was made operationalable in March, 2000. The ISLFTA possesses a relatively small negative list, progress of trade under the Agreement is subject to periodic review. In accordance with the Agreement on phased liberalisation, India has completed the process of tariff elimination in March 2003, Sri Lanka is scheduled to reach zero duty by 2008. In order to deepen the process of trade integration, a Comprehensive Economic Partnership Agreement (CEPA) was signed in 2004, covering the broad areas of trade in services and investment along with trade. India is also a member of BIMST-EC (Bangladesh, India, Myanmar, Sri Lanka, Thailand Economic Cooperation) formed in 1997. During the first BIMST-EC Summit held in July 2004, the initiative has been renamed as the Bay of Bengal Initiative for Multi-sectoral Technical and Economic Cooperation (BIMSTEC) with the admission of Bhutan and Nepal as members to the grouping. The Framework Agreement on the BIMST-EC FTA was signed in February 2004. The Framework Agreement includes provisions for negotiations on an FTA in goods, services and investment. A Trade Negotiating Committee (TNC) has been constituted to carry forward the program of negotiations.

India is one of the founding Members of the Bangkok Agreement in 1975 and the organisation has since been re-named as the Asia Pacific Trade Agreement (APTA). More dynamism was brought into the regional organisation with the induction of P. R. of China in 2000. The caucus of six regional Members, mostly South Asian countries, has reached a milestone with the implementation of the third Round of tariff concessions in 2006. The last Round of tariff concessions was more profound than the earlier ones in terms of volume of trade concessions offered between Members, particularly between India and China. Another important bilateral trade agreement has been the India–Singapore Comprehensive Economic Agreement (CECA), signed in

2005. The framework Agreement has been comprehensive, covering a wide range of sectors including goods, services and investment.

Table 3: India's Engagement with Different RTAs

S. No	Regional Trading Arrangements	Status
1	India-Nepal Treaty of Trade	Spl. Treaty & Reported to WTO
2	Agreement on India-Bhutan Trade & Commerce	Special Treaty
3	Agreement On South Asia Free Trade Area (SAFTA)	FTA and Notified in WTO
4	Bay of Bengal Initiative for Multi-Sectoral Technical and Economic Cooperation (BIMSTEC)	FTA & Reported to WTO
5	India-Singapore Comprehensive Economic Cooperation Agreement (CECA)	FTA & Notified in WTO
6	INDIA-SRI Lanka Free Trade Agreement	FTA & Notified in WTO
7	Framework Agreement for establishing Free Trade between India and Thailand	FTA & Reported to WTO
8	Comprehensive Economic Cooperation and Partnership Agreement (CECPA) between India with Mauritius	FTA & Reported to WTO
9	Free Trade Agreement (FTA) between India and Gulf Cooperation Council (GCC)	FTA & not reported to WTO
10	Bangkok Agreement	PTA & Notified in WTO
11	Generalised System of Trade Preferences (GSTP)	PTA & Reported to WTO
12	India-Afghanistan	PTA & Reported to WTO
13	Preferential Trade Agreement (PTA) between India and SACU	PTA & not reported to WTO
14	Preferential Trade Agreement (PTA) between India and Chile	PTA & not reported to WTO
15	India-MERCOSUR PTA	PTA & not reported to WTO
16	Generalised System of Preferences (GSP)	PTA & not reported to WTO
17	Framework Agreement on Comprehensive Economic Co-operation between the Association of South East Asian Nations (ASEAN) and India.	PTA & not reported to WTO
18	Joint Study Group (JSG) to Explore the Feasibility of Comprehensive Economic Cooperation Agreement (CECA) between India and Malaysia	Joint Study Group (JSG)
19	Setting Up of a Joint Study Group (JSG) to Explore the Feasibility of Comprehensive Economic Cooperation Agreement (CECA) between India and Indonesia	Joint Study Group (JSG)
20	Joint Study Group on the feasibility of entering into a Free Trade Agreement between India and Chile	Joint Study Group (JSG)
21	Joint Study Group between India and Korea	Joint Study Group (JSG)
22	Joint Study Group between India and Japan	Joint Study Group

		(JSG)
23	Joint Study Group between India and China	Joint Study Group (JSG)

Source: Compilation of authors based on Ministry of Commerce and Industries' website.

India's engagement with ASEAN has been the outcome of its 'Look East Policy' launched in the year 1991. India rapidly graduated from the Sectoral Dialogue Partner of ASEAN in 1992 to Full Dialogue Partner in 1996 and further to Summit Level partner in 2001. India was invited to be a partner in East Asia Summit in 2005. ASEAN and India signed a FTA (Framework Agreement on Comprehensive Economic Cooperation, FACEC) in 2003 and the liberalisation process was scheduled to be completed within a period of ten years. India's commitment is to extend special & differential trade treatment to ASEAN countries, based on their levels of development to improve their market access to India. The FACEC covered comprehensive liberalisation in Goods, Services and Investment in a phased manner. The Agreement has the provision for an Early Harvest Programme (EHP) and exchange of tariff concessions for improving confidence building measures. The negotiation process was slowed down on the issue of rules of origin, but this hurdle is bilaterally ironed out, and an early announcement on mutual agreement is expected in mid-2008. Meanwhile, Indian continued with the liberalisation of FDI regime.

E. Foreign Investment Framework

India has made significant reforms in her FDI policy since the commencement of reforms in 1991, and further liberalisation is underway. Currently, FDI is permitted on the automatic route in most sectors. Prior approval from the government or any body is not required for FDI in these sectors and the only requirement is to notify to the Reserve Bank of India within thirty days of such receipt of inward remittance; and filing of the required documents within thirty days of issue of shares to foreign investors. Specific formats for notifying foreign investments, transfer of shares to non-residents and payment for foreign technology/use of trademark/brand name made under the automatic route are prescribed in the FEMA Regulations. Those FDI proposals which do not conform to the guidelines of automatic approvals, are examined, cleared and approved by the Foreign Investment Promotion Board (FIPB). Government also encourages investment from Non-Resident Indians (NRIs) including Overseas Corporate Bodies (OCBs – a company or other entity owned by NRIs, directly or indirectly, to the extent of at least 60 per cent). NRIs and OCBs are allowed to invest in housing and the real estate development sector. They are also allowed to hold up to 100 per cent equity in civil aviation companies in which foreign equity is otherwise permitted only up to 40 per cent.

Investments and returns are freely repatriable, except where the approval is subject to specific conditions such as lock-in-period on original investment, dividend cap, foreign exchange neutrality, etc. as per the notified sectoral policy under the FEMA regulations. The condition of dividend balancing that was applicable to FDI in 22 specified consumer goods industries stands withdrawn for those dividends declared after 14 July, 2000. All investments by non-residents eligible to invest in India are permitted only on a repatriation basis. Under the FDI policy, investments by NRIs on a non repatriation basis can be considered as repatriable investments provided the amount originally invested was brought in by way of foreign remittance through the banking channels. Income arising from such investments is a current account transaction and repatriation of such earnings is freely permitted subject to compliance with the tax requirements.

Under the disinvestment policy, the Central Public Sector Undertakings in India are permitted Strategic Sale of a block of shares with transfer of management control. Because of disinvestment, the company ceases to be a Government Company as defined in the Companies Act,

1956. Foreign investors are permitted to bid for the sale of the public sector units (PSUs) with management control under the new privatisation policy. Such foreign company can be regarded as a strategic partner in that particular company. They are given national treatment at the time of initial investment or after the investments are made. In sectors where licensing is required, procedures do not discriminate against foreign companies. At present the government has decided to keep all disinvestment decisions and proposals on hold pending further review and this decision is in effect since July 2006.

The Outward FDI (OFDI) policy has been liberalised in phases since the early 1990s. The Guidelines for Indian Joint Ventures and Wholly Owned Subsidiaries Abroad as amended in October 1992, May 1999, July 2002 and March 2007 provide for the automatic approval of outward FDI proposals up to a certain limit that has expanded progressively from US\$ 2 million in 1992 to over US\$ 100 million in March 2007. In order to streamline India's OFDI policy, Government of India has allowed Indian corporate / Registered partnership firms to invest in entities abroad up to 300 per cent of their net worth in a year, without prior approval of the Reserve Bank or Government of India. The investment can be funded out of balances held in Exchange Earners Foreign Currency Account (EEFC) of the Indian company or 100 per cent ADR/GDR proceeds or by drawing foreign exchanges from an authorised dealer in India up to 100 per cent of the net worth of the Indian company. In the new policy, the earlier monetary ceiling of US\$ 100 million (US\$ 10 million for partnership firms), is removed. Further, the limit for portfolio investment abroad by listed Indian companies in listed overseas companies has been increased from 25 per cent of net worth to 35 per cent of net worth. The aggregate ceiling on overseas investment by mutual funds has been increased from US \$ 3 billion to US \$ 4 billion.

Remittances of Dividend and Royalty

There are no restrictions on remittances for debt service or payments for imported inputs. Dividend remittances are permitted without approval from the Reserve Bank of India (RBI). There are no delays beyond 60 days on remittances for dividends, lease payments, etc. It only requires income tax clearance to ensure that taxes, have been paid before the transaction is concluded. The RBI's approval is required to remit funds from asset liquidation. Foreign partners may sell their shares to resident Indian investors.

Foreign Institutional Investors (FIIs) may transfer funds from rupee to foreign currency accounts and vice versa at the market exchange rate. They may also repatriate capital, capital gains, dividends, interest income, and any compensation from the sale of rights offerings, net of all taxes without approval.

Indian companies having technology transfer agreements with foreign companies may remit royalties; but recurring royalty payments, such as patent licensing payments, are normally limited to eight per cent of the selling price. Restrictions on payments (currently seven years) and the stipulation of minimum foreign equity holdings have been lifted. Royalties and lump sum payments are taxed at 20 to 30 per cent. Payment of royalty up to two per cent on exports and one per cent on domestic sales is allowed under the automatic route on the use of trademarks and brand names of the foreign collaborator without technology transfer.

Performance Requirements

Local sourcing is generally not required. In some consumer goods industries, GOI requires the foreign party to ensure that the inflow of foreign exchange and foreign equity covers the foreign

exchange requirement for imported goods. In 2002, the GOI removed measures previously requiring local content and foreign exchange balancing in the automobile industry.

Plant location: Industrial undertakings are free to select the location of a project; in case of cities with a population of more than a million, the proposed location should be at least 25 kilometers away from the standard urban area limits of that city. Electronics, computer and printing, as well as other non-polluting industries are exempt from such location restrictions.

Employment: There is no requirement to employ Indian nationals. Restrictions on employing foreign technicians and managers have been eliminated, though companies complain that hiring and compensating expatriates is time-consuming and expensive. The RBI has raised the remittable per-diem rate from US\$ 500 to US\$ 1000, with an annual ceiling of US\$ 200,000 for services provided by foreign workers payable to a foreign firm. Employment of foreigners in excess of 12 months requires approval from the Ministry of Home Affairs.

Taxes: The GOI provides a 10-year tax holiday for knowledge-based start-ups. Most state governments also offer fiscal concessions. All foreign firms are allowed to participate in government financed or subsidized research and development programs on a national treatment basis.

Capital Markets and Portfolio Investment

FII's may invest in all securities traded on India's primary and secondary markets, in unlisted domestic debt securities, and in commercial paper issued by Indian companies. According to the general policy of the government, the limits for FII investment in government securities and corporate debt have been gradually enhanced in order to provide more investment opportunities to FII's. The limit has been enhanced from the limit of USD 2 billion in a phased manner to USD 2.6 billion by December 31, 2006 and further to USD 3.2 billion by March 31, 2007 without any change in the extant limit of USD 1.5 billion for investment in Corporate Debt. The ceiling of an investment by FII's is equal to the sector-specific FDI limits. Indian mutual funds may invest in rated securities in other countries. Disinvestments and repatriation of dividends are permitted after payment of capital gains taxes.

SEBI regulates all market intermediaries. The takeover regulations require disclosure on acquisition of shares exceeding five per cent of total capitalisation. In case of acquisition of over 10 per cent, the buyer must make a public offer for a minimum of 20 per cent from the remaining shareholders at a fixed price. Companies may buy back their shares in the market to make inter-corporate investments. RBI and FIPB clearances are required to acquire a controlling stake in Indian companies.

Special Economic Zone (SEZ)

The Special Economic Zones policy has been an important initiative to promote exports. Often concerns are expressed about the fiscal costs of SEZs. It is expected that the implications of investment in SEZs may generate multiple effects in the form of additional economic activity in the SEZs, demand creation on this account in the domestic areas and sizable generation of employment. These spin off effects of new investment may outweigh the adverse effects of tax exemptions. Under the SEZ scheme, there is vast opportunities for investment. Since the SEZ policy does not refer to any specific target industries, Special Economic Zones can be set up in any of the areas which are not otherwise banned under the existing Industrial Policy.

SEZ/EPZ/STP units may import intermediate goods duty-free. The minimum net foreign exchange earning as a percentage of exports by EPZ/STP units is required to be at least 3 per cent. EPZ/STP units may sell up to 50 per cent of their level of exports on the domestic market after payment of taxes. Export Oriented Undertakings (EOUs) are industrial companies established anywhere in India that export their entire production. There are about 2,300 fully operational EOUs in India. They are allowed to import intermediate goods duty-free; have a ten-year corporate income tax holiday; are exempt from excise tax on capital goods, components and raw materials; and are exempt from sales taxes. EOUs may sell up to five per cent of 'seconds' on the domestic market after paying appropriate taxes. The government recently extended Special Additional Duties (SAD) exemption to EOUs.

Special Economic Zones (SEZs) are designated duty-free enclaves with developed industrial infrastructure. These zones are regarded as foreign territory for the purpose of duties and taxes, and are excluded from the domain of the custom authorities to enjoy full freedom for the in and outflow of goods. SEZ units enjoy a tax exemption for seven years: 100 per cent exemption in first 5 years, and 50 per cent in the remaining 2 years. They have the facility to retain 100 per cent foreign exchange earnings in Export Earners Foreign Currency Exchange accounts. All SEZ units are free to sell their goods in the domestic tariff area (DTA) on payment of applicable duties.

F. Government Procurement

India is not a party to the WTO Agreement on Government Procurement (GPA) and in the past has firmly rejected the idea of such participation. However, the government is giving further consideration to accession to the WTO Agreement on Government Procurement. India has also made some efforts to increase transparency and competition in its procurement system, mainly through improvements in the field of electronic procurement. The Indian Government has launched a mandatory electronic procurement programme since April 1, 2007 as part of which all government agencies are mandated to go for electronic tendering.²⁵ All commercial operations by the public sector entities in the utilities in the oil and natural gas sector, irrespective of the intended end consumer for the products, are subject to the general procurement procedures applicable for public sector entities. Such procedures however, are not applicable for private sector entities in the utilities in the oil and natural gas sector, who adopt their own procedures for procurement.

Government procurement in India is delegated at various levels. Different ministries and departments have been delegated powers to make their own arrangements for the procurement of goods. Depending upon the delegation of financial powers, the ministry or departments can procure items through a limited tender or an open tender. For procurement of Goods of estimated value of Rs.2.5 million and above, open tenders are generally invited. Limited tender enquiry is normally adopted only when the estimated value of the goods to be procured is upto Rs.2.5 million. However, purchase through a limited tender enquiry can be adopted even where the estimated value of procurement is more than Rs. 2.5 million, in the special circumstances when competent authorities in the ministry or department certify that it will not be in public interest to procure the goods through advertised tender enquiry or that the sources of supply are definitely known and possibility of fresh source(s) beyond those being tapped is remote. Although there is no independent review body where the appeal can be preferred, such decisions are subject to scrutiny by audit done by a constitutional body like Comptroller and Auditor General (CAG) to ensure transparency and accountability in government procurements. The broad guidelines are provided in the General Finance Rules (GFRs) issued by the Ministry of Finance. These were revised in 2005 so as to enhance flexibility and full accountability for the use of the public funds and enhance transparency. As part of this, all ministries and departments are expected to place all tender notices on their website or on the site of the National Information Centre (NIC).

However, commonly used goods by the ministries and the departments are purchased and procured by a government agency viz. Directorate-General of Supplies and Disposals (DGS&D), in the Department of Commerce. DGS&D has a full fledged quality assurance wing rendering wide ranging technical services inclusive of formulation of need based procurement specifications, vendor development/evaluation and assuring quality of goods for their conformity. Service charges range from 0.25 to 2 per cent.²⁶ DGS&D, in principle is open to procurement from domestic and foreign suppliers except in the cases where government policy reserves purchases from small and medium enterprises. Currently, this list is confined to 358 items only. The small-scale units are also entitled to price preference up to 15 per cent over the quotations of large-scale units. DGS&D has some 124 foreign manufacturers or their Indian agents or stockists of foreign goods registered as suppliers. DGS&D has operationalised e-Procurement modules concerning purchase, inspection, payment, etc. The system was developed in-house with NIC providing e-support in developing software modules. It has been made compulsory from April 2006. The Indian Government has launched a mandatory electronic procurement programme since April 1, 2007.²⁷ All government Departments and Ministries and all other government agencies are mandated, in respect of all goods covered under the rate contract (RC) concluded by DGS&D, for placing orders through the website of DGS&D. All communication between indenting officers and potential vendors/suppliers/service providers shall be conducted 100 per cent electronically, using e-mail and standardised formats and templates to be used uniformly within each ministry. At an appropriate stage of the tendering process, this communication shall be placed in the public domain with digital access.

3. Avoidance of Unnecessary Trade Restrictiveness

India was one of the highly protected economies in the world during the 1980s, but the level of protection declined substantially with the on set of economic reforms in the 1990s. The trend in the overall tariff rate indicates that there is a significant decline in the *ad valorem* tariff rates between 1986-7 and 2002-03. It is interesting to note that tariff rates declined steadily between 1986-7 and 1993-4, but a significant reduction took place between 1994-5 and 2002-03.²⁸ During the years 2000-01 and 2001-02, the average tariff rate for the manufacturing sector remained more or less similar, but the average tariff for the agricultural sector increased significantly compared with previous years. This is primarily due to adjustment in the tariff structure to protect the agricultural sector in response to a removal of quantitative restrictions. The average *ad valorem* tariff rates of India and the sectoral averages including those for agriculture and manufacturing fluctuated significantly in some years. In a recent study, Mohanty (2006) has observed the same findings. But some other studies including, WTO (2002) and Goldar and Mehta (2001) have pointed out that sectoral average tariff rates are consistent while using additional duties with applied tariff rates. In the present analysis, no such adjustment is made to accommodate additional duties.

Tariff is a major source of revenue for both Central and Federal Governments in India. Government has taken a major initiative to harmonise the tax structure between trade and services tax on the one hand and between the central and federal tax structure on the other. It is expected that this policy of Goods and Services Tax (GST) is likely to be implemented from April 1, 2010. The Union and State Governments are to finalise the design and structure of GST for implementation. The decisions concerning devolution of resources between the Union and the States may be settled through consultations. Under the GST, there would be full tax credit. But under the present scheme, as the State taxes and Central taxes are charged differently, there is no provision for allowing credit of central taxes against State taxes and vice-versa.

Tariff-rate quotas (TRQs) are maintained on 14 tariff lines at the HS 8-digit level, and it is regulated by Director General of Foreign Trade (DGFT). The procedure for the issuance of the

TRQ is laid out in the Foreign Trade Policy.²⁹ The quotas are allocated to the extent that there is an expression of interest from interested importers. There is complete transparency maintained in the allocation of TRQ, which is available on the DGFT website. Some of these quotas have not been implemented due to lack of demand for the items in the Indian market. Often some concerns are raised on account of non-fulfilment of TRQs.³⁰

There has been persistent request for duty free and quota free market access for LDCs in India. The government has granted unilateral tariff preferences to these countries (LDCs). The main objective of any such scheme would be to provide integrated development assistance to help in their economic development. India has allowed duty free imports of bulk drugs from African countries for further processing in India. However, no formal decision has been taken on the modality of the overall product coverage, specific product coverage, preferential rate of duty, qualifying rule of origin and other conditions on market access in India.

G. Tariff Bands and Trends in NTBs

India has been making steady progress in liberalising its tariff policies in the 1990s.³¹ The structure of tariff bands is analysed to throw some light on the speed of tariff liberalisation in the country. Though economic liberalisation started in the latter half of the 1980s, the economy was highly protected as shown in Table 4. In 1986-87, the tariff rate ranged between 0 to 300 per cent in terms of *ad valorem* duties. As many as 62 National Lines (NL) were subjected to zero tariffs, and about 72.6 per cent of the total number of products were subjected to a tariff rate of either 100 per cent or more. Moreover, there has been a high concentration of products in a selected number of tariff bands. There has been a perceptible change in the tariff structure of India following implementation of economic reforms in 1991-2. While the highest peak tariff declined steadily, the number of products with tariff rates equal to 200 per cent or more decline steadily over years. In 1991-2, highest peak tariff was recorded at 355 per cent which declined significantly to 290 per cent in 1995-6 and declined further to 182 per cent in 2002-03. Similarly, the number of products (6-digit HS) subjected to a tariff rate of 200 per cent or more was 419 items in 1986-87, 288 in 1991-92, 13 in 1995-6 and zero items in 2002-03. During the period of reforms, the level of mode tariff band had declined significantly. Between 1986-7 and 1991-2, the mode tariff rate³² was 100 per cent, but the rate declined to 50 per cent in 1995-6. Since 1999-2000, a sizable number of products were concentrated on a group of tariff bands rather than concentrating around a single tariff band. For example, three tariff bands (viz. 25, 35 and 40) cover almost 89 per cent of the total tariff lines in 1999-2000 and 85 per cent of total tariff lines (viz. 25 and 30) in 2002-03. Though tariff liberalisation took place during the 1990s, the number of tariff bands did not decline, rather, it increased during this period. Thus, the number of tariff bands increased substantially to above 40 per cent, despite a decline in the level of peak tariffs at the upper layer during the second generation of reforms.

Table 4: Number of Tariff Bands in India during 1986/87-2002/03

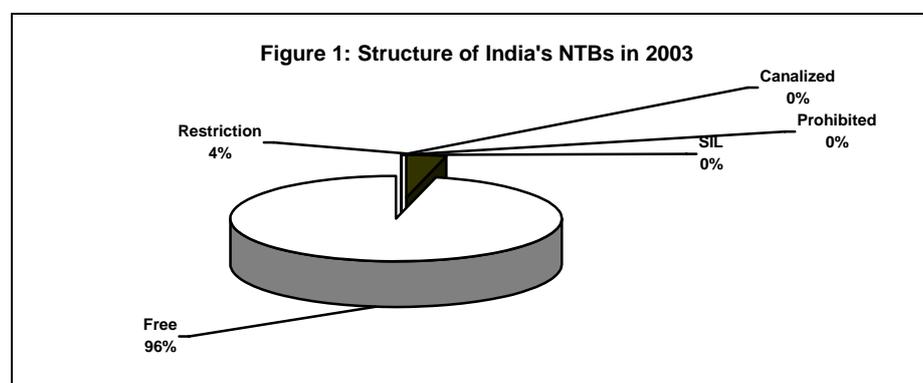
No. of Bands	1986-87		1990-91		1991-92		1995-96		1999-00		2002-03	
	Rate	NL	Rate	NL	Rate	NL	Rate	NL	Rate	NL	Rate	NL
1	0	62	0	68	0	68	0	29	0	48	0	57
2	47	287	40	288	30	1	3	7	3	7	3	6
3	50	214	50	213	40	288	5	4	5	107	5	75
4	60	758	60	744	50	213	10	302	10	11	10	35
5	70	85	70	85	60	744	15	3	15	354	15	181
6	100	2998	81	89	70	85	20	5	20	19	20	159

7	110	62	100	2292	81	89	25	79	25	1036	25	977
8	150	113	110	62	100	2283	30	99	30	14	30	3348
9	200	221	150	20	110	62	35	13	35	1544	35	8
10	250	61	200	114	150	20	40	155	40	1953	40	158
11	270	13	250	61	200	113	45	7	100	8	45	6
12	300	124	270	5	250	61	50	4383	120	1	50	4
13	..	..	300	101	270	5	105	1	180	2	55	1
14	..	..	355	8	300	101	135	1	230	8	60	3
15	..	..	..	..	355	8	145	3	..	..	70	13
16	..	..	..	..	..	..	290	13	..	..	75	2
17	..	..	..	..	..	..	..	..	..	..	80	4
18	..	..	..	..	..	..	..	..	..	..	100	49
19	..	..	..	..	..	..	..	..	..	..	105	16
20	..	..	..	..	..	..	..	..	..	..	160	2
21	..	..	..	..	..	..	..	..	..	..	182	8

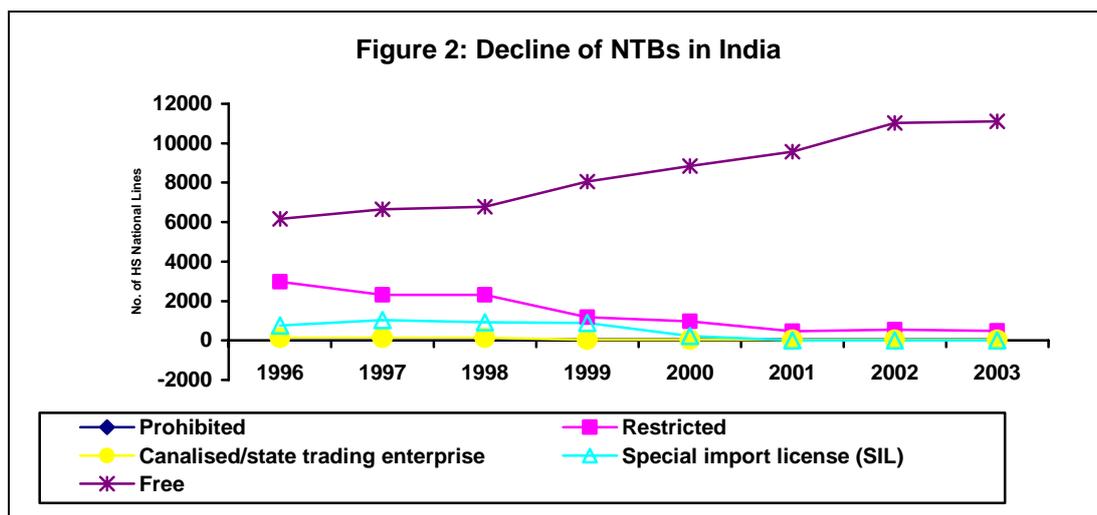
Source: Mohanty (2006).

Trends in NTBs

Simultaneously, India has made substantial progress in liberalising its NTBs during reforms. In 2003, the level of quantitative restriction has come down to nearly 4 per cent of its total number of tradable products at the 10-digit HS level as shown in Fig. 1. Under the provision of Article XX, and XXI of GATT, such restrictions are permitted under various grounds such as health, safety, essential security, etc.³³ The number of national lines subject to different forms of quantitative restriction comprise of 568 out of 11671 lines in 2003 at 10-digit HS. As the reform process is in progress, there is a possibility of further decline in the level of quantitative restrictions in future.



The level of NTBs remained high during the pre-reform period, and the trend continued in the 1990s. Among the total number of tradable items, the share of hard core NTBs was more than 30 per cent in 1996, which declined significantly in the latter part of the 1990s as shown in Fig. 2. The hard core NTBs consists of prohibited and restricted items in India. The proportion of the prohibited items to the total number of national lines was very small in 2000. The share of restricted and SIL remained very large in the mid-Nineties, but declined sharply towards the late Nineties. Because of reduction in number of lines subject to NTBs, the share of national lines in the free category rose significantly in the early part of the 2K. Though regulatory control was very strong on account of domestic compulsions, comprehensive economic reforms have brought down the NTBs to a significant level.



Though India has made significant efforts to remove NTBs in its trade policy, it is encountering a rising incidence of non-tariff barriers, in the form of Sanitary and Phytosanitary (SPS) Measures and Technical Barriers to Trade (TBT). This is becoming a major trade concern for India, and this has significant implications for market access. India also imposes NTBs on a number of product lines based on SPS and TBT, but these measures are based on scientific pest risk analysis in line with the provisions of IPPC and International Standard for Phytosanitary Measures and the Sanitary and Phytosanitary Agreement.

H. Customs Procedures

Though trade liberalisation in India was launched as early as in 1991, major policy attention paid to trade facilitation related initiatives is a rather recent phenomenon. The essential policy framework for trade facilitation emanates from the Report of the Task Force on Indirect Taxes constituted by the Government of India in 2002.³⁴ The recommendations of this Task Force led to the appointment of a Working Group on Trade Facilitation (WGTF) for suggesting a relevant roadmap. The Budget Speech of the Union Finance Minister (1999-2000) provided the necessary political will for launching various TF measures. In this Budget address, a Task Force on Indirect Taxes, popularly called the Kelkar Committee (2002), headed by Mr. V. Kelkar.

The Task Force provided the much-needed rationale and policy framework for TF. It suggested evolving specific policy instruments that related to dwell time, greater automation and other issues to improve the efficacy and effectiveness of the Indian trade facilitation measures. The Working Group set up under the Chairmanship of Dr. Jayanta Roy, Principal Adviser CII, was mandated to look primarily at those aspects of trade facilitation that concern formalities relating to clearances at Customs stations in the following areas:

- Reduce extensive documentation requirements
- Ensure full use of information technology
- Bring about transparency and accountability
- Introduce audit-based controls
- Introduce cooperation among all the government agencies involved in clearance of cargo.
- Introduce self-assessment
- Reduce examination of goods to a minimum
- Introduction of risk assessment techniques
- Reduction in the dwell time for clearance of cargo.

Trade facilitation emerged as a major focus in the 'Vision and Strategy Document' (1998), of the CBEC, the main arm of Government of India under the Ministry of Finance. Adoption and application of information communication technology (ICT) was the major plank of Indian Customs initiatives to expedite the clearance of import and export cargo and provide a fool-proof paperless system of assessment and clearance. A framework has also been created for electronic message-exchange between customs and their trading partners, such as banks, airlines, DGFT, DGCIS, RBI, shipping lines, Customs House Agents (CHAs) and export promotion agencies like Apparel Export Promotion Council (AEPC), etc. The idea is to ultimately ensure that the end users are able to conduct the complex transactions, with various agencies, concerning trade and transport by electronic means right from their own offices. The CBEC has taken steps for the setting up of a Customs Data Warehouse (CDW) to store data which may be made available in a standard format for any enquiry/investigation or analysis, reporting, etc.

In order to further facilitate matters, the Customs Department has issued Bill of Entry (Electronic Declaration) Regulations, 1995, to enable the submission of import details through electronic declarations. As part of this the authorised person shall furnish for the purpose of clearance of the imported goods a cargo declaration, in the format set out to these regulations for preparing an electronic declaration of the bill of entry, at the service centre. In order to ensure privacy, authenticity, integrity and reliability of the transactions the CBEC has introduced the public key infrastructure (PKI) technology popularly called digital signature. The Licensed Certifying Authority (iCert), established by CBEC makes available PKI to its trading partners and departmental staff. At present, iCert has five regional offices viz. in Bangalore, Chennai, Delhi, Kolkatta and Mumbai. The submissions from the business community showed that the facilities were not enough. After their submissions, the facility for electronic filing of customs documents for clearance of goods was made a round the clock service along with increase in the number of centres it was available at. The number of centres increased from 9 to 23. The EDI exercise is underway in India since 1995, when the CBEC launched the Indian Customs EDI System (ICES).³⁵ Initially, this was confined to Air-Cargo Delhi but now is operational at 32 customs locations covering over 80 per cent of the country's international trade. At the automated locations, 98 per cent of the exports and 95 per cent of import documentation are processed electronically. The business community has positively responded to these measures. According to the data provided by CBEC more than 4 million documents are being processed annually on the system which constitutes almost 86 to 89 per cent of total trade transactions.

As part of this initiative, the trading community may file customs documents through the internet. The programmes developed for the purpose are featured to take care of various exemptions being given to exporters. This has streamlined paper work and the time required in processing. There are some options for touch screen, SMS enquiry, kiosks and other web based facilities including the document tracking system which enable clients to know the latest status of their document over the internet. This facility is known as ICEGATE (Indian Customs and Central Excise Electronic Commerce/Electronic Data Interchange Gateway). The Customs E-commerce Gateway is functional at 23 Custom locations. Apart from its role in facilitating message exchange with agencies, it also facilitates the remote filing of import and export declarations by the importer/exporter. CHAs have also started working at 17 of these 24 locations.³⁶ On an average, about 8000 import and export declarations are being filed daily using the ICEGATE facility. The facility will be extended to other Custom Houses in phases. Most of the airlines are filing their import and export manifests using the Gateway.

Streamlining of Trade Documents

One of the key criticisms of the Indian trade regulation was about the number of documents required and the number of copies needed while exporting or importing from India. Several initiatives have been made in the last one year itself to avoid duplicate collection of information by the Customs Department.³⁷ The WGTF has worked as a catalyst in this regard.³⁸ The Action Group on Trade Facilitation at CBEC on its own also ensures possible reductions in the documents to be enclosed. For example, the current practice at Delhi Airport is to get the permission from the customs twice after the issuance of the Let Export Order (LEO), one for palletisation and another for loading in the aircraft. The Action Group on Trade Facilitation felt that there is no need for permission at two different stages. As a result unnecessary documentation was avoided.

The document required to be filled by the exporters is called the 'Shipping Bill'. The exporters' community has been repeatedly raising the issue of excess documentation required by the customs. The submission from the All India Association of Industries (AIAI), Mumbai to the Finance Minister pointed out that the large number of documents required to be signed by the manufacturer and exporters for their exports only contribute to delays and consequent increase in transaction cost. Earlier the Task Force Report had also mentioned this. The export document required 118 copies with 258 signatures and on an average it took 22 hours to fill. As a response to this, the CBEC, constituted a sub-committee to "Report on Reduction of Export Documentation for Customs Purposes" in 2004. The Sub-Committee was a multi-disciplinary group comprising of representatives from the Customs, DGFT, RBI, Federation of Indian Export Organization (FIEO) and Delhi Exporters Association.³⁹ The Sub-Committee eventually brought down the number to just 5. The Sub-Committee recommended that these documents can not be dispensed with as there are a number of declarations presently being filed by the exporters for exports under drawback and various export promotion schemes.

In case of import, if the goods are cleared through the EDI system no formal bill of entry is filed as it is generated in the computer system along with Bill of Entry number which may help in tracking the movement. However, the importer is required to file a cargo declaration having prescribed the particulars required for processing of the entry for customs clearance. The bill of entry, where filed, is to be submitted in a set that is different copies meant for different purposes and also given different colour scheme, and on the body of the bill of entry the purpose for which it will be used is generally mentioned in the non-EDI declaration. Under the EDI system, the importer does not submit documents for assessment but submits declarations in an electronic format containing all the relevant information to the Service Centre. A signed paper copy of the declaration is taken by the service centre operator for safety purposes of the declaration. The Action Group on Trade Facilitation has also made efforts to reduce the dwell time from 15 to 7 per cent for clearance of import cargo for which incorrect or incomplete import manifest is given. The Group suggests delayed submission is possible with full information at the time of arrival of the vessel.

The CBEC has implemented the recommendation of WGTF to issue data on release and clearance. This is being measured through dwell time. Dwell time is defined as the time taken from the time of arrival of goods to their clearance.⁴⁰ The data released conforms to the suggestion made by WGTF to precisely identify the time taken in manifest filing, declaration, assessment at customs and duty payment by importers and further time taken by customs for examination. In Table 5, we provide a comparative picture for Bangalore and Chennai based on the data released as per the WGTF report (January to March 2004) and CBEC for the period January to April 2005. Though, there are visible discrepancies in the table but as explained in the WGTF report, their data was part of the rough estimation while CBEC data is an outcome of precise calculation attempted scientifically. In case of several private companies new arrangements have benefited them immensely (see Box 1).

As mentioned earlier, the CBEC has launched a risk management system (RMS) on a limited basis at select custom ports. Based on data from ICEGATE and the EDI system 'Star Performers' are to be identified, depending on their creditability and goodwill.

Table 5: Focus on Dwell Time: Dwell Time (in hours) Period

Activity	Activity by	January-March 2004*		January-April 2005**	
		Bangalore	Chennai	Bangalore	Chennai
Manifest filing	Carrier	2	53	0.36	1
Declaration	Importer	55	74	55	57
Assessment	Customs	7	12	10	10
Duty payment	Importer	29	55	33	32
Examination	Customs	6	6	5	4
	Total dwell time	99	200	103.36	103

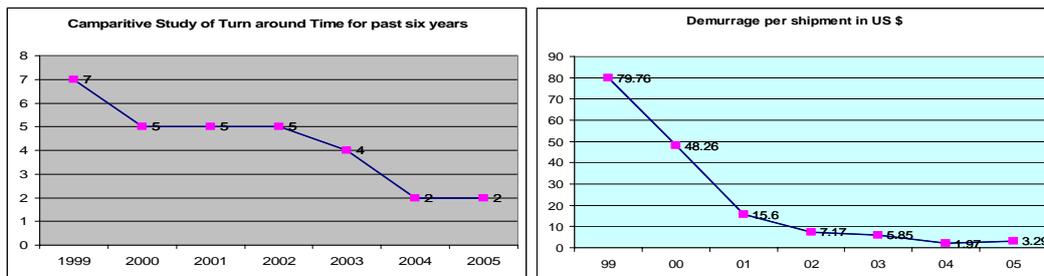
Source: * MoF (2004). *Report of Working Group on Trade Facilitation*, Central Board of Excise and Customs, Government of India, October;

** Subramaniam (2005). Presentation made at the National Seminar on Trade Facilitation, Department of Commerce, Department of Revenue and UNCTAD, 18th August 2005.

Box 1: Automation for Efficient Logistics: Case of Hewlett Packard

After initial investments in India for R&D purposes, HP has now expanded India-specific operations in manufacturing sector as well. These are in the areas of networking products, software and mobile, general office and wide-format printing categories.

HP's presence in the region also consists of 12 manufacturing sites located across various countries including India. HP has achieved the leadership position in the over all server market in India capturing 29 per cent share in units and 35 per cent in revenue terms according to International Data Corporation (IDC) reports. HP has recorded a year-on-year 35 per cent growth both in revenue and in unit terms.



Since HP has shifted manufacturing activities, over the year the cargo movement has gone up. The e-preparedness at HP is now at par with the requirements of various trade options offered by the CBEC through EDI and ICEGATE. For this, HP initially identified some key source persons and then got the staff at the operational end trained for the e-filing job. Thus a competent staff could easily supplement the efforts of the CHAs. As a result the time taken for cargo clearance has come down from seven days in 1999 to just 2 days in 2005. Similarly, the demurrage paid by the company per shipment has come down from \$80 paid by the company to just \$3 in 2005. This was when the volume of transaction from HP has gone up by 350 per cent.

Source: Based on Chaturvedi (2006)

4. Efforts for International Harmonisation of Regulatory Measures

The Bureau of Indian Standards (BIS) is the Indian nodal point for the TBT and is the national standards body of India. BIS took over work of Indian Standards Institution (ISI) through enactment of the BIS Act (1986) by the Indian Parliament. ISI was set up in January 1947 by a resolution of the Parliament. BIS represents India at the international standards organisations such as ISO and IEC. BIS has initiated measures to be accredited to ISO/IEC Guide 65.

While the WTO is not a standards setting body, the SPS Agreement supports the use of international standards for the benefit of harmonized food safety standards. WTO Member countries can choose to establish their own level of protection at higher levels provided it is justifiable and non-discriminatory. There is considerable discretion available to importing countries to impose their own rules regarding these standards and other regulations such as inspection of imported products, specific treatment or processing of products, fixing of minimum allowable levels of pesticide residue, labelling and packaging requirements, and good manufacturing practices. At times consignments are detained without any satisfactory explanation on the changes made in the importing regulations on microbial contamination and pesticide residue despite the transparency obligation under Article 7 of the WTO SPS Agreement. India has three SPS enquiry points and the national notifying authority for the SPS measures is the Ministry of Commerce and Industry. The three centres are as follows: the Department of Agriculture and Cooperation which is responsible for plant health; the Department of Animal Husbandry Dairying and Fisheries for animal health and Ministry of Health and Family Welfare for human health. The SPS measures are according to the international standards as adopted at the WTO recognised agencies like Codex Alimentarius Commission, OIE and IPPC. India has to take measures to improve the SPS

notification measures – a point often raised by several trade partners. During the period 2003-07, India notified 39 SPS measures, out of which 41 per cent (61) were notified after their commencement though out of these 2 measures did not have any trade implication and 8 were based on international standards.⁴¹

I. Harmonisation of Standards and Conformity Assessment

India has undertaken specific efforts to harmonise standards with relevant international standards such as ISO (International Organisation for Standardisation) and IEC (International Electrotechnical Commission). As is clear from the (Table 6) India has around 73 per cent of standards (4,307) harmonised with the international standards (8,300 standards). Nearly 53 per cent of newly set standards were harmonised which were issues between the period of July 2002 and October 2006.

Table 6: Status of Harmonisation of Indian Standards with International Standards

	2002-03	2003-04	2004-05	2005-06
Total Number of Indian Standards	17,830	17,928	18,114	18,219
Total Number of Corresponding ISO/IEC Standards	5,166	5,417	5,606	5,821
Per Cent Equivalent to ISO/IEC Standards harmonised	70	71	72	73
New and Revised Standards having corresponding ISO/IEC Standards	243	251	189	215
Per cent equivalent to ISO/IES standards harmonised	90	91	96	91
Per cent equivalent to ISO standards	88	89	97	89
Per cent equivalent to IEC standards	97	100	92	100

Source: WTO (2007).

The government has also streamlined the standard requirements for imports. It is important to realise that there are 18,300 standards adopted by the BIS and out of that 8300 are product standards. There are some product standards which are mandatory. The products which affect consumer health, safety, environment, and infrastructure are placed under mandatory certification. In 2004, India had identified 159 specific commodities (including food preservatives, milk powder, condensed milk, infant milk foods, colour dyes, steel, cement, electrical appliances and dry cell batteries) that the Bureau of Indian Standards (BIS) must certify before the products are allowed to enter the country.⁴² However the items mentioned in the list are constantly been reduced in 2005 this came down to 133 and in 2006 it stands at 66.⁴³

As part of India's commitment towards the TBT Agreement, India has developed an elaborate institutional framework to address capacity requirements for developing competence so that conformity assessment results have reliability as per the recommendations issued by international standardizing bodies and trading partners. In 1997, India established the Quality Council of India (QCI). The QCI works through various boards that implement the strategy, policy and operational guidelines set by the Quality Council of India with a view to achieve international acceptance and recognition of various components including the accreditation systems. They include National Accreditation Board for Certification Bodies (NABCB), National Accreditation Board for Hospitals & Healthcare Providers (NABH). NABCB offers accreditation in the areas of Management System Certification [based on ISO 9001 (QMS), ISO 14001 (EMS), ISO 22000 (FSMS)], Product Certification and Inspection bodies. NABH is a constituent board of the Quality

Council of India, set up to establish and operate accreditation programmes for healthcare organisations.

India has made significant progress in the implementation of international standards, in particular in the implementation of UN/EDIFACT (EDI).⁴⁴ This has brought major benefits to Indian Trade and Government. It is recommended to extend the implementation base and in particular to extend solutions to SMEs throughout the supply-chain, including payment systems, using open and interoperable solutions in the Internet domain. However, UNeDocs has emphasised that India should launch a major e-Trade initiative which could eventually become the basis for an Indian Single Window. This could lead to the integration of India with the emerging Regional Single Window initiative in Asia Pacific.

The Foreign Manufacturers Scheme of BIS aims at providing a guarantee of quality, safety and reliability of products. As part of this scheme, the BIS grants licenses to the foreign companies exporting to India. So far 60 such licenses have been granted in 15 different countries. These are licenses which are located in European countries namely, Germany (2), Greece (1), France (3), Hungary (2), Italy (1), Switzerland (1).

Food Authority

The Directorate General of Health Services in the Ministry of Health and Family Welfare is working to integrate Codex standards into the national food laws.⁴⁵ The Export Inspection Council of India (EIC), the official certification body for exports, is developing standards for exports based mainly on Codex, but it also takes into account that an importing country may impose stiffer requirements.⁴⁶ The Task Force constituted by the Prime Minister under the chairmanship of Shri Nulsi Wadia, one of the leading industrialist, has submitted its report which is under the consideration of the Government. The Task Force had advocated promotion of food safety and quality.

The Task Force has suggested that India should establish Food Regulation Authority (FRA) be set up to formulate and update food standards for domestic and export market. The FRA should replace the Prevention of Food Adulteration Act, 1954, to conform to international standards. The Task Force has given ten specific recommendations such as provision of storage, simplification of sampling procedure, simplification of procedure for nominee, time limit for prosecution, standard methods of analysis to be prescribed, penalty should be graded according to the gravity of offences and provision of adequate/infrastructure and laboratories.

Eventually in 2006, the parliament passed the Food Safety and Standards Bill 2006, in order to lay more emphasis on science based and participatory decisions and for adopting contemporary approach in both standard setting and implementation. The Bill envisaged setting up of the Food Safety and Standards Authority (Food Authority) for laying down science based standards for articles of food and to regulate their manufacture, storage, distribution, sale and import, to ensure availability of safe and wholesome food for human consumption. This new Act specifically repeals eight laws: The Prevention of Food Adulteration Act, 1954; The Fruit Products Order, 1955; The Meat Food Products Order, 1973; The Vegetable Oil Products (Control) Order, 1947; The Edible Oils Packaging (Regulation) Order, 1998; The Solvent Extracted Oil, De oiled Meal, and Edible Flour (Control) Order, 1967; The Milk and Milk Products Order, 1992 Any other order issued under the Essential Commodities Act, 1955 relating to food.

There are mixed reactions from the industry on this. The local industry chamber FICCI has welcomed the Bill while the US industry has expressed concerns that, if enacted, the proposed law

would provide inadequate due process because it: (1) imposes the burden of proof on the food producer when food products are 'seized' by a food inspector; and (2) provides limited procedural options to permit food manufacturers to appeal inspector decisions.⁴⁷ As state governments also have their own policy regimes at times confusion in this area increases for instance in the western Indian state of Maharashtra, the Food and Drug Administration (FDA) changed the classification of dietary supplements in tablet or capsule form to pharmacies by reclassifying such products from foods to drugs, which adversely affected the importers of those products.

Plant Quarantine Order

Recently, India has introduced the Plant Quarantine (Regulation of Import into India) Order, 2003 establishing new import procedures and quarantine requirements on agricultural products imported into India. There is a provision in this Act according to which all imports of agricultural produce be fumigated with methyl bromide.

The issue of India's Plant Quarantine Order figured at the World Trade Organisation (WTO) with the US and European Union complaining that India did not notify the order until March 2004. The European Community, Canada, New Zealand and Chile supported them. These countries also complained that they were not given the mandatory 60 days time to respond to the Indian order. India contended that it need not notify it at the WTO as it conformed to world standards but the European Union did not agree. In between, a Canadian pulse consignment was rejected for not being fumigated with methyl bromide. Following talks between the two countries, the deadline for allowing ships that brought agricultural products without methyl bromide fumigation was extended to April 30, 2004.

Labelling of GM Food

The supplement to the Government of India's Foreign Trade Policy (2004-09), announced that all imports containing products of modern biotechnology should procure prior approval from the Indian Genetic Engineering Approval Committee. It also announced that all imports would, on a shipment-by-shipment basis, be required to document the 'genetic-content' certification of the commodity. This announcement was subsequently circulated through the TBT committee on May 23, 2006 also.

At the meeting of the Codex Committee on Food Labeling in Canada, India has taken a position that work must be initiated to study the rationale for the labeling of food and food ingredients obtained through certain techniques of genetic modification/genetic engineering and for identifying the current standards, regulations, acts/decrees, etc. among the current Codex members with respect to the mandatory and voluntary labeling of foods and food ingredients obtained through genetic modification.⁴⁸ In the domestic regulations, processed GM foods will be monitored and regulated by the Food Safety and Standards Authority of India, established under the new Food Safety and Standards Act. Once the Food Authority is in place, the Prevention of Food Adulteration Act (PFA) will be repealed. Up till now GM food clearances were made by the Genetic Engineering Approval Committee (GEAC), which comes under the purview of the Ministry of Environment and Forests. GEAC exempted processed GM food products from its regulatory purview.

J. Mutual Recognition Agreements

With an increase in the number of FTAs, the number of mutual recognition agreements (MRAs) has also multiplied. India is increasingly entering into MRAs with major trading partners

in areas of mutual interest. The MRAs are established between the designated agencies as identified by the concerned ministry. The Export Inspection Council (EIC), under the MoCI, is one of the main agencies which has signed several agreements with its counterpart from the partner country in the area of goods. However increasingly several technical agencies are also being designated by the respective ministries. Telecommunication Engineering Centre (TEC) under the Department of Telecommunications (DoT), Ministry of Communications and IT, Government of India has been appointed as the Designating Authority (DA) on behalf of DoT for Telecom Equipment under MRA between India and Singapore. TEC has the role of designating Conformity Assessment Bodies (CABs) located in India to perform testing and certification of telecom products to the Mutual Recognition Agreement or Arrangement (MRA) partner's requirements. The role of TEC as DA is also to register CABs located in the territory of the MRA partner to perform testing and certification of telecom products to India's requirements.

The services sector has emerged as an important area for such collaborations. The Institute of Chartered Accountants of India (ICAI) is vigorously pursuing such agreements with various countries. In the recent past, EIC has signed almost 12 MRAs with different countries (Table 7). The CECA between India and Singapore has MRAs covering several products. The mutual recognition agreements in goods provided in CECA would increase India's exports especially in areas like milk and milk products and poultry.

India is attaching high priority to the MRAs in the services sector as well. Some of them have proved to be of great significance, for instance, the MRA in the services sector as covered under the Indo- Sri Lanka FTA also benefited both the economies immensely. Several Sri Lankan companies find it a constraint to recruit qualified man power and similarly Indian companies based in Sri Lanka also face a similar problem. In the bilateral negotiations India requested Sri Lanka to undertake full commitments under market access in architectural services, urban planning and landscape architectural services apart from additional commitment on MRAs for qualification and licenses to practice (use of professional title). Under the FTA, the professional bodies of the two countries can sign MRAs in select sectors such as health and architecture, which would ease the movement of professionals. As a result, the movement of professionals between India and Sri Lanka will increase if professional bodies of the two countries enter into MRAs.⁴⁹

Table 7: Various MRAs Signed by Export Inspection Council of India

Country	Date of Signing	Commodity
US Food and Drugs Administration (USFDA) USA	1988	Black pepper, whole or ground, processed at EIAs' approved processing and packing centers
European Commission	1997	Basmati rice, egg products, honey, dairy products and poultry meat and meat products
Australian Quarantine Inspection Services (AQIS)	2002	Fish & fishery products
Sri Lanka Standards Institution (SLSI)	2002	Covers 85 products including mMilk products, fruits and vegetable products, household electrical appliances &

		switches, steel & steel products, electrical cables and cement, etc.
Korea Food & Drug Administration (KFDA)	2003	Food products which include frozen marine products, jam, preserved goods, sauce, sugar syrup, edible oil and fat etc
Turkey	2005	Food products, food packaging materials and stainless steel utensils
Italy	2005	Fishery and aquaculture products
Singapore	2005	Covers four important sectors, i.e., food & agriculture, electric & electronic products (e&e), telecommunication equipments and drugs and pharmaceuticals
Japan	2005	Poultry and meat products
China	2006	Iron Ore
Nepal	2006	Food and agriculture products

Source: Based on various country agreements placed on the Web site of Export Inspection Council of India (http://www.eicindia.org/eic/int_recognition-main.htm)

K. Application of Competition Principles

India has recently introduced several changes in the Competition Policy which have been in place since the mid-sixties. The Monopolies and Restrictive Trade Practices Act (MRTP Act) came into force in 1969. Considering the primary requirements of a developing country like India, the MRTP Act was mostly focused on control of monopolies, prohibition of monopolistic trade practices, prevention of concentration of economic power, and restrictive and unfair trade practices. It was felt that the regulatory authority of the MRTP Commission (MRTPC) was lacking in certain areas like curbing monopolistic, restrictive, and unfair trade practices, and therefore amendment to the MRTPA was necessitated in 1991. Even after the amendment, the MRTP Act could not address issues such as cartels and abuse of dominant position. In order to cover some of these features of a modern statutory framework, the Competition Act was enacted by the Parliament in 2002, and enforced in 2003. This Act was more comprehensive, and dealt with number of modern features like anti-competitive agreements, abuse of dominant position and ‘combinations’ covering mergers issues.

With the new Act, the Indian market was expected to be ready to face competition within the country and also from outside. As per the provisions of the Act, government facilitated the establishment of the Competition Commission India (CCI), which could oversee issues like promotion and sustained competition in markets, protection of consumers’ interest, protection of negative effects of competition and freedom of trade by the participants in the market. The CCI is empowered to take action against cartels and other anti-competitive practices originating outside India but affecting Indian markets and consumers. Besides, the CCI may also engage itself with activities of ‘competition advocacy’, which covers research and policy advice by the Commission

to overcome impediments in the operation of market forces. The Act makes it mandatory for companies to inform the CCI about mergers and acquisitions above a prescribed threshold limit within 30 days. The Monopolies and Restrictive Trade Practices Commission (MRTPC) continues to exist after the formation of CCI, and will clear the pending cases with it, without admitting new cases. The CCI will ultimately replace the MRTPC after two years of its existence; and is likely to takeover all the unresolved cases which are not concluded by the MRTPC. The CCI is mandated to admit new cases related to competition issues since its inception.

However, effective working of the CCI as anticipated could not occur, as certain constitutional issues came up relating to the structure of the Competition Commission. Against certain provisions of the Act, a writ petition was filed before the Supreme Court, and this has caused delay in making the CCI fully operational till now. In 2005, the government introduced a new Amendment Bill in the Parliament incorporating concerns raised over various provisions of the Competition Policy 2002. Because of various legal issues involved, the process of appointing the requisite staff in the Commission has been slow. At present, only one Member and a few staff members are appointed, therefore, the Commission has not started its operations to its full potential.

There are some apprehensions about the independent functioning of the Commission because of the persistence of government control over it. It is debated that the CCI should function independently in order to establish a free market environment in India. The Competition (Amendment) Bill 2006 attended to these apprehensions and suggested the formation of a separate Competition Appellate Tribunal. The Tribunal will take up and dispose of appeals against any order or decision of the Commission and decide on the due compensation. The Commission is mandated to set up a three-Member quasi-judicial body and the tribunal is to be headed by a retired Supreme Court judge or the Chief Justice of a High Court and will have two more technical members with a legal background. The Competition (Amendment) Bill 2006 was passed in September 2007, and some of the enforcement provisions were yet to be notified. The law is likely to be effective in mid-2008. The provisions of the new law will have strict guidelines for the enforcement of law; otherwise the provisions for the penalty have been very strong. The penalty provisions for the non-compliance of the law are severe for non-complying firms. According to the provision of the Act, the penalty could be up to Rs. 250 million or up to three-year imprisonment or both in cases of continued contravention of orders. The provisions of the Act are very categorical in stating that dominance of firm(s) in the market should not be there, but its abuse is sought to be prohibited. The CCI examines the case in an *ex-ante* situation except issues concerning 'combinations'. In case of mergers, prior permission is required from the Commission.

Conclusions and Policy Options

India has made substantive progress in putting together various regulatory mechanisms in different sectors and has received benefits from these reforms. Implementation of the unfinished tasks would be in the interest of India to achieve sustainability in the economic reforms and in the economy's growth performance.

As is clear from the earlier discussion, there are several areas in which, there is an urgent need to consolidate the diverse initiatives launched at different points of time. For instance, agencies like DGS&D have to address the perception of *de facto* discriminatory effects against foreign companies and investment despite the various measures introduced to enhance transparency and openness. The mandatory provision of electronic procurement in government purchases is an important development in this regard. DGS&D may bring out more details addressing the concerns for example of USTR (2004) that none of the foreign firms getting Indian government contracts. It is to be appreciated that restrictive or discriminatory national measures reduce the market entry

prospects for foreign companies with cost effective supply possibilities. The reforms as laid out by the twin agencies namely the Task Force on Trade facilitation and the Competition Commission have suggested, from time to time, ways and means to ensure policy enforcement to increase market openness regarding anti-competitive practices that impair market openness.

Though India has continued to exhibit interest in the multilateral regime but at the same time it has vigorously followed regional and bilateral trading agreements. India has signed more than 23 RTAs and some special agreements such as IBSA (India-Brazil-South Africa Economic Cooperation)/SIM (SACU-India-Mercosur Economic Cooperation), European Union and IOR-ARC (Indian Ocean Rim Association for Regional Cooperation), etc. As discussed there is much to be achieved from these in several areas related to trade facilitation as well as in adjusting to the norms, standards and regulations used in the international trade. This is where the role of national agencies becomes important. Efforts made for the automation of the customs department and the launching of a major EDI program would go a long way in addressing concerns of business community, however, frequent brake downs in the system and failure to reduce dwell time may eventually prove out to be counter productive.

Similarly, the efforts made by BIS and EIC have helped in evolving a robust framework for several MRAs. However, this is much lesser than is actually required on the ground, given the fact that India has entered into several FTAs and in many of these the MRA related provisions are missing. Moreover, in most of the exiting MRA agreements there is mutual recognition of laboratories, which is fine to begin with, but the actual advantage is when there is understanding for conformity assessment. This would reduce the costs of testing and would also reduce the scope for discrimination, thereby largely fulfilling the objectives of trade facilitation. In this context, improvement in the infrastructure at the test laboratories may emerge as a major challenge. Eventually India may attempt to achieve objectives as described in the Article 4.2 of the SPS Agreement which suggests that parties consider their domestic requirements as equivalent, with the consequence that a good, which can be legally sold in one country, may be legally sold in the others. As has emerged in the discussion there is an urgent need to speed up regulatory reform, deregulation and market opening in the traditionally protected sectors.

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End Notes

¹ At present there are some 12.8 million SSI units producing goods worth \$140 billion with exports of \$33 billion. (FE, 2007a).

² *ET* (2007).

³ The partnership of foreign investors is allowed in PSUs, but some conditions are attached to this provision.

⁴ Sundar and Sarkar (2001).

⁵ Prasad (2007).

⁶ Chaturvedi, 2006 and Subramaniam, 2005

⁷ For example, PSA-Sical, a private container terminal operator at Tuticorin, in Southern India, urged the Shipping Ministry to treat the company at par with the public sector company Chennai Container Terminal Limited (CCTL). The yardsticks for applying royalty/revenue share as part of the cost in tariff fixation are different for private and public sector operators. (Das and Simhan, 2007).

⁸ FE (2007).

⁹ *Hindu Business Line* (2004).

¹⁰ MoF (2004-05).

¹¹ www.cbec.gov.in/cae/aar.htm

¹² WTO (2004).

¹³ Circular No.52/2004-Customs 7th October, 2004.

¹⁴ SCF (2005).

¹⁵ Chaturvedi (2006).

¹⁶ <http://www.cbec.gov.in>; <http://dgft.delhi.nic.in>

¹⁷ Circular No. 17/2005-Customs 11th March, 2005.

¹⁸ Chaturvedi (2006).

¹⁹ See section II.3 for further details.

²⁰ MoF (2004).

²¹ MoF (2004-05).

²² SCF (2005).

²³ India imported 3349 item and exported 3259 products at 6-digit HS to the rest of world in 1990 and the corresponding figures were 4173 and 3867 items in 1995; 4541 and 4513 items in 2000; and 4983 and 4885 items in 2006, respectively.

²⁴ SCF (2005).

²⁵ MoF (2007).

²⁶ In 2006-07, DGS&D concluded rate contracts for over 350 product categories involving 20000 items besides spares etc and supplied to over 6000 users spread across the country in various government offices. <http://dgsnd.gov.in/about.htm>

²⁷ MoF (2007).

²⁸ Further decline in average tariff rate might have taken place after 2002-03, but we have not analysed the tariff policy after 2002-03. The Indian Government has taken a consensus view that India's average tariff may be at par with that of ASEAN soon. For achieving this end, the tariff rates might have declined further

²⁹ The desirous importers may apply to the Directorate General of Foreign Trade and completed applications must reach on or before 1st March of each financial year preceding to the year of quota. Imports have to be completed before 31st March of the financial year for which the quota has been allocated. Further details relating to TRQ administration are available at the DGFT website

³⁰ Among 14 products subjected to TRQ at 8-digit HS, milk powder is one which is subject to TRQ to the extent of 10,000 tonnes at a concessional duty of 15 per cent per year, but large quantities of imports have been made in 2004 and 2005. Some people question about the lack of expression by importers to use TRQ for milk powder.

³¹ The results of Mohanty (2006), WTO (2002), Goldar and Mehta (2001) show that average tariffs of India and also broad sectors have declined persistently in the 1990s.

³² In this case we have used individual series to calculate mode tariff.

³³ Batra (2005).

³⁴ Government of India (2002).

³⁵ Electronic Data Interchange (EDI) is the computer-to-computer exchange of structured information, by agreed message standards, from one computer application to another by electronic means and with a minimum of human intervention.

³⁶ CBEC (2005).

³⁷ CBEC (2004).

³⁸ Roy (2004).

³⁹ CBEC (2004).

³⁹ Roy (2004).

⁴⁰ Subramaniam, Kameshwari (2005).

⁴¹ WTO (2007).

⁴² To be certified, exporters/manufacturers must either establish a presence in India or name a local Indian representative to accept responsibility, pay an annual fee as well as a per centage of the invoice value of shipments to India, and subject all certified exports to inspection. USTR (2004)

⁴³ WTO (2007).

⁴⁴ UN(2006).

⁴⁵ Sareen (2003).

⁴⁶ *Ibid.*

⁴⁷ USTR (2007).

⁴⁸ MoH&FW (2006).

⁴⁹ *BNEIT Quarterly Newsletter* (2005).

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