

*Chapter 9*

# INDIA

In the customs area, Japan is participating as a third party country in the WTO consultations following an EU petition concerning the introduction of a special additional customs duty. Japan believes that it should monitor India's conformity with the WTO Agreement on this issue.

Following the new automobile policy announced in December 1997, the United States and the EU petitioned for the establishment of a WTO panel, on the grounds that they should receive treatment equal to Indian nationals and companies and suspected violations of the TRIM Agreement. Japan participated as a third party country. The panel has handed down a judgment that largely acknowledges the U.S. and EU claims and India appealed the panel's decision in January 2002. Japan will monitor how the debate on this issue evolves.

In the area of standards and certification, it is highly likely that for iron and steel products the obligation to conform to Indian domestic prices and the obligation to register in order to utilize those prices, as well as the obligation to attach labels to wrapped products, constitute unnecessary trade barriers. Japan is concerned about how these matters relate to the TBT Agreement. Japan needs to discuss with India the purpose, necessity and details of these procedures, as well as their conformity with the WTO Agreement.

Problems also exist in the area of intellectual property protection, specifically dealing with the efficacy of exercising rights against infringements.

Tariff

1) *High Tariff Goods, Bound Rates*

Upon implementation of its Uruguay Round commitments, India will have uniform tariff rates for virtually all bound items: high rates will be 40 percent, and low rates will be 25 percent. Almost all textiles are subject to 40 percent tariffs, which are high given India's competitiveness and international standing in this sector. Likewise, the percentage of bound items is only 67 percent of tariff lines. Given the above, there is substantial room for improvement.

2) *The Introduction of Special Additional Customs Duty*

In August 1998, India introduced a new special additional customs duty (4 percent). Due to this additional duty, applied rates of some goods have exceeded the bound rates, and may violate GATT Article II. As a result, Japan has participated as a third party in the consultations that were requested by the EU based on GATT Article XXII.

India argues that the introduction of the special additional duty is aimed at providing a level playing field for the domestic industry, which is compatible with WTO rules. Japan though believes it is still necessary to evaluate the facts related to this issue to see whether these new special additional duties violate WTO rules. If they violate WTO rules, India must be asked to take remedial measures at an early stage. As of December 2001, India has not yet answered in writing the questionnaire presented by the EU during the first consultation in December 1998. India's budget in FY2001 says that India maintains special additional duties; yet India says that the measure is temporary, not permanent. We need to request India to cooperate fully to allow a smooth settlement of this case.

Anti-Dumping Measures

In recent years, India has imposed more anti-dumping measures against Japan than any other developing countries, and most of the measures are concentrated on chemical products.

India's anti-dumping law took effect in 1985, but had not been invoked until recent years. As soon as Indian tariffs were reduced, anti-dumping cases began to be seen and have continually increased thereafter. Since 1997 India has initiated several investigations against Japan, such as Lead Acid Battery, Cold-Rolled Flat Products, Poly-iso Butylene. (See Figure India-1) The increase in the number of initiations is probably the result of new competition faced by domestic Indian industries that had long been protected by high tariff rates.

Further reductions in Indian tariffs are anticipated, and we are concerned that they will lead to more anti-dumping measures against other sectors as well.

Figure India-1

**Number of Initiation by India against Japan**

1997	1998	1999	2000	2001
2	4	3	2	4

Note: Figures valid as of the end of December 2001.

*Trade-Related Investment Measures*

*1) Measures Affecting the Automotive Sector*

In December 1997, India announced a new automotive policy that requires manufacturers in the automotive industry and the Ministry of Commerce and Industry to draft and sign a memorandum of understanding (MOU) on new guidelines for the industry. The policy has the following problems in relation to the TRIMs Agreement. First, the policy requires that 50 percent local content be achieved within three years of the date on which the first imported parts (CKD, SKD) are cleared through customs, and then increasing to 70 percent within five years of first clearance. Second, the policy requires that export of automobiles or parts begin within three years of start-up, with the possibility of restrictions on the amount of parts (CKD, SKD) that can be imported depending

on the degree to which the export requirement is met. This amounts to an export/import balancing requirement. Even prior to this policy, India had a history of making auto parts import licenses for companies setting up operations within its borders conditional upon signing MOU containing local content requirements and export/import balancing requirements—despite the lack of any legal basis for doing so. It is clear that the new automotive policy of 1997 is designed to institutionalize the previous administrative guidelines.

In October 1998, the EU requested WTO consultations (in which Japan and the United States would participate in the consultation as third parties). The first consultation was held in December 1998, but was unsuccessful. A WTO panel was then established in November 2000 at the request of the EU. Japan participated on this panel as a third party. In June 1999, the United States requested consultations, the first of which was held in July 1999. These consultations were also unsuccessful. Japan and the EU participated as third parties. A panel was subsequently established at the request of the United States in July 2000. Japan, the EU, and the Republic Korea participated as third parties. At the end of November 2000, these two panels were combined into a single panel.

Prior to this issue, India had already lost at the Appellate Body in a WTO complaint brought by the United States concerning import restrictions on specific items including automobiles. India reached an agreement with the United States to eliminate import restrictions between December 1999 and April 2001. Consequently quantitative restrictions on 714 items were eliminated on 1 April 2000 and a further 715 items on 1 April 2001. Following elimination of these measures, the Department of Commerce and Industry Notice No. 60 was abolished in September 2001, except for the export obligations. The export obligations, which were being incurred up until 31 March 2001, continued, and thus, these measures, cannot be regarded to have been fully eliminated. Indeed, the individual panel mentioned above consequently examined the Commerce and Industry Department Notice No. 60 and found that the MOU based on it was in violation of GATT Articles 3 and 11. India, dissatisfied with the substance of the panel's report, appealed to the Appellate Body on 31 January 2002. Japan believes that the Indian government should move quickly to fully eliminate these measures.

*Standards and conformity assessment systems*

*Obligation to conform to domestic Indian Quality Standards for products such as iron and metal ones, and the obligation to register such products with the Bureau of Indian Standard (BIS) for conformity assessments, as well as the obligation to attach labels to wrapped products*

The Indian Ministry of Commerce and Industry, through its notice of 24 November 2000, has been operating a system from January 2001, whereby for items imported into India that are stipulated in the Notice, the manufacturers and exporters are obliged to have the items conform to the domestic Indian Quality Standards and to register such items with the Bureau of Indian Standard (BIS) as a conformity assessment procedure, as well as to attach mandatory labelling including the product name and volume to all wrapped products.

Japan is concerned about the conformity of this system with the TBT Agreement because the covered items are obligatory, wide-ranging, and very likely to constitute unnecessary trade barriers. In addition, there has been no TBT notification. Japan therefore should need to ask India to seek clarification of the purpose and necessity of the system and the details of conformity assessment procedures, as well as conformity with the WTO Agreement (especially Article 5 of the TBT Agreement).

*Trade in Services*

1) *Financial Services*

In December 1999, India passed the new Insurance Regulatory and Development Authority (IRDA) Regulation, which will open the state monopoly of the insurance market to private companies, including those from overseas. Foreign companies are allowed to invest up to 26 percent. Under this law, the IRDA issued insurance licenses to fifteen companies (joint ventures with foreign companies) in December 2001. Fourteen companies, which included a Japanese insurance company began operations. Investments in banks and non-banks require separate approval from the Foreign Investment Promotion Board (FIPB). Regulations on foreign direct investment in the banking sector were liberalized in May 2001. While investment previously had been restricted to 40% equity ratio for non-resident Indians and up to 20% for

other foreign companies, equity ratios of 49% have now been permitted for both categories. For non-banks, direct investment in 19 business categories has been permitted, including designated merchant banking and housing finance. Up to 100% investment is possible, although the minimum capitalization is regulated depending on the equity ratio.

## 2) *Distribution*

In April 2000, the Reserve Bank of India (RBI) published a negative list of sectors for which direct investment permits would not automatically be issued. Investors wishing to invest in sectors on the negative list must seek individual permits from the Foreign Investment Promotion Board. For other sectors, permits are automatically granted upon filing of a notification with the RBI. Currently, FIPB permits are required for investments in wholesaling businesses when the business is primarily export and there is a foreign stake of 51 percent or greater; permits are also required for investments in non-export commercial sectors. The areas for which permits are granted are extremely limited -- only export transactions, import transactions up to the bonded house, and domestic transactions of products from domestic Indian joint ventures in which the applicant has invested. No permits are granted for investments in supermarkets, convenience stores and other retail sectors; investments in these sectors are for all practical purposes banned. In the last two years, there have been reports in newspapers and the media that the government is considering partially opening retail business to foreign companies (within 20-26% foreign equity ratio), although no specific progress has been seen.

Consequently, foreign companies have expressed strong desires to see the regulations on domestic transactions relaxed. In the Japan-India Government-Private Investment Dialog, held from August 1999, Japan expressed its desire for deregulation to the government of India. We hope for further deregulation.

## 3) *Construction*

Investment in construction and engineering is permitted as they are not included in the negative list. Although two companies from Japan have entered the Indian market (with equity ratios of 80 percent and 100 percent respectively), companies with foreign investment, other than from non-resident Indians, are not permitted to work in the housing construction industry. Japan looks forward to this restriction being removed.

### TRIPS

#### *1) Issues of Counterfeit and Pirated Products, etc*

India is working to improve its legal system for intellectual property in order to conform to the TRIPS Agreement. India has passed new laws. India has been proactive in protecting copyrights from the point of view of developing its software industry, while at the same time maintaining its own system of regulating the distribution of profits from patent holders with patents on new plant varieties. Japan needs to carefully monitor that the nature and administration of these systems are in conformity with the TRIPS Agreement.

India has no government statistics on actions taken by its police and customs, on pirated, counterfeit and other goods which infringe upon intellectual property rights. Japanese businesses have pointed out that no action is exerted unless a complaint is brought with strong evidence and the court issues a directive. In order to ensure the proper protection of intellectual property and proper performance of the TRIPS Agreement, Japan needs to monitor India's efforts to improve its administration while encouraging industry, rights holders and other users of the system to provide more information on specific problems. Similarly, the issue of license regulations on patents and know-how needs to be monitored. (See Chapter 10 on ASEAN.)

