

Chapter 9

INDIA

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 take remedial measures at an early stage. However, as of February 2003, India had yet to give a written response to the questions posed by the EU in the first consultation meeting held in December 1998. In the last of the three Japan-India Government-Private Investment Dialogues that have been held to date, India informed Japan that the additional duties are temporary and will be eliminated. However, they remain in force as of this writing. We seek appropriate responses from India to facilitate a solution to this matter.

ANTI-DUMPING MEASURES

India's anti-dumping law took effect in 1985, but had not been applied until recent years. As soon as Indian tariffs started to decrease, anti-dumping measures increasingly began to be applied. 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 reflects the fact that Indian domestic industries that had long been protected by high tariff rates are now facing keen competition caused by tariff rate reductions due to the Uruguay Round negotiations.

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 /2002
2	4	3	2	5/0

Note: Figures valid as of the end of December 2002.

TRADE-RELATED INVESTMENT MEASURES

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, which was dissatisfied with the Panel Report, appealed to the Appellate Body on 31 January 2002 but then withdrew the appeal on 14 March. Subsequently, in August 2002, the Indian Government abolished the export obligations and, consequently, the automotive policy was fully eliminated.

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 certain joint ventures with foreign companies. A Japanese insurance company also 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 percent equity ratio for non-resident Indians and up to 20 percent for other foreign companies, equity ratios of 49 percent

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 percent investment is possible, although the minimum capitalization is regulated depending on the equity ratio.

2) Telecommunications

Foreigners are automatically permitted to hold up to 49 percent of a telecommunications services company, as long as they obtain a license from the Department of Telecommunications. For non-gateway Internet service providers, and for e-mail and voice mail services, foreign investors are allowed to hold a 100 percent stake, as long as certain requirements are met, including securing an individual license from the government. Foreigners are also allowed to hold up to 74 percent of Internet service providers that have gateways. Japanese companies have requested the elimination of foreign investment restrictions and the economic needs test in the number of licenses granted, and Japan looks forward to further deregulation in this area.

3) 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 percent 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.

4) Construction

Investment in construction and engineering is permitted as they are not included in the negative list. However, there are some services that only Non-Resident Indians (NRIs) and

Overseas Corporate Bodies (OCBs) are allowed to perform. (OCBs are companies in which NRIs have a stake of at least 60 percent.) Foreign companies are also not allowed in the housing construction market. The opening of the construction sector is therefore insufficient and we look forward to the elimination of these restrictions.

TRIPS

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.)

