

Trade Policy Review Body
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TRADE POLICY REVIEW

INDIA

Minutes of Meeting

Addendum

Chairperson: H.E. Ms Amina Chawahir Mohamed (Kenya)

This document contains the advance written questions, and replies provided by the delegation of India.¹

Organe d'examen des politiques commerciales
19 et 21 juin 2002

EXAMEN DES POLITIQUES COMMERCIALES

INDE

Compte rendu de la réunion

Addendum

Président: S.E. Mme Amina Chawahir Mohamed (Kenya)

Le présent document contient les questions écrites communiquées à l'avance et les réponses fournies par la délégation indienne.¹

Órgano de Examen de las Políticas Comerciales
19 y 21 de junio de 2002

EXAMEN DE LAS POLÍTICAS COMERCIALES

INDIA

Acta de la reunión

Addendum

Presidente: Excma. Sra. Amina Chawahir Mohamed (Kenya)

En el presente documento figuran las preguntas presentadas anticipadamente por escrito, junto con las respuestas facilitadas por la delegación de India.¹

¹ In English only./En anglais seulement./En inglés solamente.

**ADVANCE WRITTEN QUESTIONS BY MEMBERS AND REPLIES PROVIDED BY THE
DELEGATION OF INDIA**

SWITZERLAND

FDI (II para. 35 and I, para. 26):

Q.1 India has undertaken a series of liberalization measures in the area of foreign direct investment. Despite this, there has been no increase in FDI inflow so far. A number of possible reasons is given in chapter I, para. 26. In our own experience, reasons quoted by foreign investors include bureaucratic hassles, long list of approvals required to start industrial operations, non-consistency in certain policies, rigid labour laws, and lack of infrastructure facilities. What are in the opinion of the Government of India the main reasons, and what are the concrete plans to address these additional restraints hampering FDI ?

FDI inflows into India have registered a consistent growth since 1991 and touched US\$4.06 billion during 2001-02. Going by the present trend, especially taking into account the substantial increase in FDI inflows into sectors such as telecom, transportation, IT enabled services, electronics and computer software as also the investment opportunities arising out of the on-going disinvestment process in the public sector, the Government is optimistic that the FDI inflows would increase substantially in the coming years. The Government also has taken several concrete measures to attract FDI, which, inter alia, include higher degree of automaticity in approvals; further fine tuning of sectoral policies (for example the new Telecom Policy, the new Auto Policy, etc.); setting up of independent regulators in sectors such as telecommunications, hydrocarbons, electricity, ports, etc.; and putting in place an attractive package of incentives for investment in the infrastructure sector. These initiatives have contributed to India's image as an attractive investment destination, which is also reflected in several independent studies such as that of A. T. Kearney, JBIC Survey, EIU Survey, etc. The Government has also set up a high-level Committee on 'Reforming Investment Approval and Implementation Procedures', which is likely to submit its recommendations soon.

Q.2 For the existing investors, another important hurdle remains: the 'No Objection' Clause introduced vide Note 18 dated 14.12.1998 of the Ministry of Commerce and Industry. This clause restricts an existing foreign investor to start a new subsidiary/joint venture unless and until a 'no objection' is obtained from the previous partner in India. What is the reasoning for maintaining this clause?

Press Note 18 (1998 Series) provides for a case by case consideration of proposals relating to new ventures by an existing foreign investor if the said investor already has or had an existing/previous joint venture (financial and/ or technical) in the same or allied field. This provision is aimed at enabling objective assessment of the impact of the new proposal on the existing joint venture from the point of view of its resident partners, lending institutions, retail investors, etc. as also from the national point of view in terms of quality of investment. The Government takes into account all these factors while considering grant of approval for such new ventures and a 'no objection' from existing/previous partners is sought only when it is considered necessary.

Q.3 The insurance sector was earlier opened up for foreign investment, allowing a maximum of 26% FDI. The amount of minimum investment prescribed for private companies is, however, quite high (INR 1 billion for general and life insurance and INR 2 billion for reinsurance business). On the one hand, it is difficult to find/select Indian partners with big financial resources (for 74% shareholding) and common long-term business plans, on the other hand, participation in such a big

venture with only 26% shareholding may not be so attractive. What is the view of the Government of India regarding this issue ?

As per extant policy, FDI up to 26% is permitted in the insurance sector subject to obtaining a license from the Insurance Regulatory & Development Authority. The minimum capitalization norms prescribed by IRDA are applicable uniformly to all Indian companies, irrespective of whether there is any foreign equity participation or not. The capitalization norms for the sector have been fixed taking into account the nature of the business. Many reputed foreign players have evinced interest to set up joint ventures with Indian partners for undertaking insurance and insurance related activities and some have already commenced operations.

Tariff rates (III, paras. 2 and 13)

Q.4 There is a considerable gap between bound and applied rates which provides ample scope for duty increases, as for instance applied in the case of agricultural products recently. This gap does little to contribute to predictability of the trading framework. Does the Government of India view this lack of predictability and certainty also as problematic for domestic producers and consumers ?

Tariffs in India are generally being progressively reduced. The gap between bound and applied rates provides the Government with some flexibility to adjust the tariff rates to suitable levels. Any change in tariff rates including upward revisions are undertaken after duly taking into account interests of all including producers and consumers.

Q.5 The proportion of tariff lines bound is around 70%. Binding of tariff rates are meant to contribute to predictability; does the Government of India view it as feasible to substantially increase the number of bound tariff lines ?

This would be an issue for consideration in relation to the negotiations on market access for non-industrial products under the Doha Work programme and cannot be commented upon at this stage.

Q.6 Additional duties (III, paras. 18/31/32): India imposes additional duties as well as special additional duties to the "standard" rates of duty with a view to correct import-bias of excise duties and sales taxes. Given the fact that "standard" rates of duty are relatively high, couldn't it be argued that the import-bias of excise duties and sales taxes is already compensated ? What would be the effect in terms of trade facilitation, increased transparency and reduced complexity in the administrative handling of imports if the additional duties were abolished ?

The Additional Duty and the Special Additional Duty are levied in lieu of domestic taxes namely, excise duty and sales tax which are imposed on all domestic products. Thus, these duties only attempt to bring on the same level of tax incidences on imported products as faced by domestic products in India. Therefore, phasing out of these duties is neither required nor feasible.

Customs clearance and Import Restrictions

Q.7 A recent advisory report regarding customs administration (III, para. 9) reported continued delays in customs procedures. What is the follow-up being given to that report and to suggestions made to reduce delays ?

In the past few years, a number of steps has been taken to simplify the tariff structure. Some of these measures include (i) reduction in number of slabs of duty rates, (ii) reduction in number of exemption

notifications, and (iii) uniformity in rates of duty in chapters etc. These measures have considerably reduced disputes in classification and delays in Customs clearance.

The Department is in the process of establishing the EDI connectivity among Customs formations, which would not only bring about transparency in Customs clearance procedures, but also uniformity in assessment practice. However, a number of Customs formations in India are still not under EDI and efforts are under way to implement EDI at all places.

To eliminate delays in various activities undertaken by Customs, a number of procedures has been simplified. Some of the simplification measures undertaken in the recent past are given in reply to Q.90.

Q.8 For some products, entry of imports is possible through certain ports only which delays and restricts imports: what is the reason for this measure ? (III, para. 36)

Port restrictions exists for a few items in view of certain considerations. Import of new and second hand cars is permitted through specified ports in order that testing and certification etc. can be carried out at the port, for which facilities may not be available at every port.

Natural rubber is allowed to be imported through Kolkata and Vishakapatnam in order to ensure better monitoring of quality standards already complied with by domestic producers. As the major area of import of natural rubber is from South East Asia, these two ports in eastern India have been specified.

Imports of Seconds/defectives steel items are allowed only through customs sea port at Mumbai, Chennai and Kolkata. Import consignments of these items are to be accompanied by a pre-shipment certificate containing description of material quality, chemical analysis of the material, visual inspection, thickness and width of the material and the ITC (HS) code no. from any of the inspection agency as specified in Appendix 28 of the Handbook of Procedures, Vol. I, 2002-07. Port restrictions ensure testing facilities.

Q.9 Before removing quantitative restrictions, the Government of India was fearing to be flooded by imports. This seems not to have happened; in fact, imports into India (and trade in general) are sluggish and the benefits of liberalization are not really taking place. In the view of the Government of India, what are the reasons for stagnation of imports after removing quantitative restrictions? Could it be that non tariff barriers are preventing an increase of imports (according to an expert, nearly 40 per cent of the some 1200 four-digit tariff lines are having non-tariff barriers in India) ?

India has not imposed any Non Tariff Measures. Standards and other regulations which are applicable to domestic producers are applicable to imported products also. Further, the quantum of imports or exports depends on, and is a consequence of, the normal economic factors of demand and supply, business cycles etc.

Q.10 Licensing requirements for medicines are to be tightened by 1 January 2003. What are the concrete measures India will introduce to implement the new requirements - is there an intention to carry out inspections abroad / will India recognize inspections performed by foreign institutions, and if yes, under which conditions? Furthermore, if products to be sold in India have already a marketing authorization in Switzerland, will Indian authorities recognize results of the testings performed by Swiss authorities for the approval of pharmaceuticals in Switzerland in order to speed up / facilitate the licensing procedure in India?

For registration of manufacturers and for drug products to be sold in India, documentary requirements have been prescribed which include copy of the registration/approval certificate issued by the Ministry of Health/National Regulatory Authority of the foreign country concerned (duly notarized) as well as a copy of GMP notification as per WHO GMP guidelines and certificate of pharmaceuticals (GPP) issued by the National Regulatory Authority of the foreign country concerned in relation to the bulk drugs or formulations or special products meant for import into India. A list of countries where market authorization or import permission for the said drug has been given along with a copy of the authorization letter or cancelled if any, or pending should also be given. Inspections are provided for, but this would be on case-to-case basis depending on the information supplied. At present, there is no proposal to recognize foreign inspectors other than those mentioned above.

The requirements are indicated in Schedule D I and Schedule DII of the Notification No. GSR 604 (e) issued on 24 August 2001. These can be accessed on the website: mohfw.nic.in

International Standards

Q.11 According to the Secretariat's report, III para. 48, only some 17% of Indian standards have been harmonized with international standards. What measures is India taking to increase compatibility of its standards with international standards?

Since 1990-91, India began the process of harmonization of Indian standards with International standards and the steps taken in brief are:

- (a) The concerned technical committees (i.e. a body of national experts representing all concerned interests), in BIS identify the areas for harmonization and allot priorities taking into account trade/technical considerations;*
- (b) The international standards may be adopted in toto under the dual numbering system of ISO/IEC if considered appropriate by the technical committee with a national foreword;*
- (c) The international standards may be adapted by BIS as Indian standards where some parameters may not be totally equivalent to the international standards due to national requirements and as approved by the technical committee. The foreword mentions the equivalence and differences and reasons for the same.*

Q.12 In its Government Report, para. 51, India seems to make a difference between "highest level of protection for consumers" and "appropriate level of protection". At what level does India deem protection to be appropriate? Is it implied that India would want its export destinations to reduce their level of health protection and/or environmental protection to allow for larger trade volumes – in other words is it implied that India questions the right of each WTO member to set its level of protection?

Article 2.2 of the SPS Agreement clearly talks of SPS measures to be applied only to the extent necessary. There has been discussion in Codex regarding the level of protection. Citing the SPS Agreement, the developing countries have mentioned that appropriate levels of protection should be sought and not highest levels of protection. Clearly there is no definition as to what is the highest level of protection. Therefore, it is possible that this can be arbitrary. There have been instances where highest level of protection has been interpreted as that level where contaminant, can be detected and which has nothing to do with Risk Analysis.

India desires that risk analysis establish the appropriate level of protection based on the level of risk. This has also been accepted in the Working Principles of Risk Analysis formulated by the Codex Committee on General Principle in April 2002 meeting. They repeatedly talk about risk management measures, which are least trade restrictive.

Under Article 3.3 of the SPS Agreement, countries have the right to set their own level of protection, provided it is scientifically justifiable. India accepts this position and the Risk assessment process as established under Article 5. But the insistence by some countries for 4 ppb level of aflatoxin in peanuts is an example where the highest level of protection sought is neither backed by Risk Analysis nor has any scientific justification. These have been questioned in Codex meetings by all developing countries and not only by India.

Subsidies; Fiscal Position

Q.13 Subsidies in agriculture (IV, para. 22): Input subsidies, such as for fertilizers, still seem to be a major pillar of domestic support for the agricultural sector in India. Research in agricultural economics has shown that input subsidies are the least effective instrument to positively influence the income of farmers while direct payments directly addressing the problem are the most effective. Does the Government of India agree with the results of those studies, and that the consequences are overuse of fertilizers and environmental degradation as well as unwarranted monopolistic rents for the fertilizer producers?

It would not be a correct view that the fertilizer subsidy is ineffective and better results can be obtained by other means. The results of studies mentioned therein are in the context of countries where agricultural operations are undertaken on large scale with economies of scale. In India, agriculture activity is carried out mostly at the level of small holder units. Hence, any increase in fertilizer prices due to reduced subsidy will affect agricultural production since most farmers simply do not have sufficient surpluses to absorb the impact.

While it may be true that there is excess use of fertilizer in some parts of the country, the average fertilizer consumption in India was about 95 kg. nutrient (N+P+K) per hectare in 1999-2000 which is considerably less than the level prevailing in other developing countries with similar soil and other conditions. The consumption in the developed countries is much higher being 375 kg. per hectare in Japan, 542 kg. per hectare in Netherlands and 379 kg. per hectare in United Kingdom (UK). The fertilizer consumption in India, therefore, cannot be treated as excessive. In any case, side effects of overuse can be better handled in India through awareness building and training of farmers in modern agricultural techniques rather than by raising prices of fertilizers.

Q.14 Subsidies and fiscal deficit: Subsidized energy leading to a deficit at the size of 1% of GDP in state-owned energy suppliers (summary para. 11), increasing subsidies in fertilizers, etc., contribute to the weak fiscal position (explicit and implicit subsidies were previously estimated at some 14% of GDP, according to summary, para. 16). Does the Indian delegation agree that redressing the fiscal balance is closely linked to expenditure reform including reducing and making more efficient the subsidy system? (I, para. 5).

Major subsidies in the Central Government Budget is of the order of 1.5% of the GDP. The Budget for 2002-03 has emphasized reduction in subsidies to a minimum over the next 3 to 5 years.

Q.15 Government revenue is highly dependent on customs duties, their share being at some 30% of net revenue (I, para. 5). Is it feasible to pursue both the objective of reducing the fiscal deficit and to

further reduce peak tariffs? What exactly are the planned steps and the sequencing to reach both objectives?

Yes, it is true that the Government revenue is reliant to a considerable extent on customs duty for revenue mobilization and for reducing revenue and fiscal deficit.

The economy is, however, expected to grow at a substantially higher growth rate during the Tenth Plan period (2002-07) and both exports and imports are also likely to rise significantly. A number of measures have also been undertaken which include review and withdrawal of a large number of customs duty exemptions, widening the base for domestic taxes by rationalizing the excise duty structure, widening the coverage of service tax from four services in 1994-95 to 51 services in 2002-03 and widening the base for direct taxes. As the economy grows greater reliance will be placed on direct taxes for revenue generation. All of these measures are expected to contribute to a rise in Government revenues despite the planned reduction in Customs duties.

Q.16 Reform in Tax Administration: Introduction of VAT, which could be helpful in simplifying the custom duty structure, has been postponed (Government Report, para 21). What are the measures by the Central Government to ensure timely implementation of this reform ?

The Central Government is closely working with the State Governments with a view to finding solutions to the outstanding issues so that centralized VAT System can be introduced from 1 April 2003. Please also refer to reply to Q.81

Contingency measures (III, para. 42)

Q.17 India has emerged as a very active user of antidumping measures. Does India share the concern of the Swiss Government regarding the systemic threat to multilateral trading system about the large and ever rising number of trade remedy cases being initiated worldwide? Does it agree that it will increasingly also become a problem in the trade relations among developing countries and that trying to solve the problem on the basis of special treatment for developing countries will not bring relief to the systemic problem?

In the context of economic liberalization wherein quantitative restrictions have been progressively removed over the years, India has been increasingly facing the problem of dumping by foreign exporters. The process of liberalization would be meaningful only if there is fair trade and a level playing field between the imported products and the domestic industry. India has unfortunately been facing the problem of dumping of goods by foreign exporters at a time when its industry is in a vulnerable situation of adjusting to a new QR free environment. To protect the industry from these unfair trade practices India has per force to take recourse to anti-dumping measures after initiating and conducting investigations in accordance with the procedure required under the Agreement on Anti-dumping and GATT 1994.

India shares the concern of Swiss Government regarding systemic threat to the multilateral trading system arising from abuse of trade contingency measures. India is equally concerned at the consistency of measures taken to comply with DSB recommendations and rulings in disputes relating to contingency measures. It may not be out of place to mention that contingency measures applicable to developing country exports are not disproportionately higher in developing countries as against such measures made applicable by developed countries. India is further of the view that operationalizing the special and differential treatment provisions in favour of developing countries would ameliorate, to a certain extent, the difficulties faced by developing country exports in developed countries. This is particularly relevant in respect of countervailing duty measures wherein

about 70% of the measures against developing countries have been resorted to by the developed countries.

CANADA

Government Report WT/TPR/G/100

I. Introduction, para. 3

Q.18 As part of India's EXIM Policy for 2002-2007, India has proposed transport subsidies for exports of selected agricultural products. Please specify the levels of subsidies that are expected to be granted and over what period for each agricultural product included under this provision.

Under the proposed policy for the provision of Transport Subsidies for exports of selected agricultural products, such subsidies are proposed to defray a part of costs incurred by the exporters in transporting selected agricultural products in which case the freight constitutes a major component of the total cost. These subsidies will be subjected to budget allocation during the period of the EXIM Policy (2002-2007) and will be reviewed every two or three years.

II. Key Developments in Trade and Economic Policy Since the Last Review, (5) Fiscal Consolidation, paras 22-23

Q.19 Please explain how the decision to provide freight-related subsidies for the export of wheat and rice from the Food Corporation of India as announced by Commerce Minister Maran in his speech of March 31 on the 2002-2007 EXIM Policy, would not worsen the government's fiscal balance.

The Food Corporation of India incurs expenses on the purchase of wheat and rice at the MSP, transportation, cleaning, processing, storage and distribution. Huge losses of food grains take place during the entire movement chain of handling food grains. Freight related subsidies for exports will help in reducing the costs of carrying the stocks and losses during storage, transportation and distribution. Saving in costs will offset the increase in burden on the exchequer.

II. Key Developments in Trade and Economic Policy Since the Last Review, (5) Fiscal Consolidation, para. 23

Q.20 Please provide clarifications on the schemes that are being implemented for decontrol and deregulation carried out by States in the agriculture sector.

The State Governments have started removing certain control orders which limits storage within the State as well as movement of food grains outside that state. These measures will result in a near decontrol and deregulation of food grains trade in the country. In addition, Government of India has recently removed restrictions on export of food grains, pulses and other agricultural products, except for onions.

II. Key Developments in Trade and Economic Policy Since the Last Review

(6) Reform in Foreign Investment Regime, paras 24-25; (9) Deregulation of Interest Rates, para. 28; and (10) Other Banking Sector Reforms, para. 29

Q.21 Regarding India's ongoing banking reforms and efforts to attract foreign direct investment, including in the banking sector, why does India not consider a level playing field between domestic and foreign banks and thus profit from competition-induced efficiencies? We understand, for example, that effective 1 April 2002, there is a 7% differential in tax rates charged, with basic rates for foreign banks at 40% versus 33% payable by Indian banks. This effectively lowers after-tax profitability of foreign banks, which would dampen foreign investment in this sector. Does India intend to correct this situation?

All prudential regulations are equally applicable both to domestic and foreign banks, thus ensuring a level playing field to both group of banks. In fact, in certain areas there is positive discrimination in favour of foreign banks, which have been allowed keeping in view their limited geographical presence and core competencies. For example, foreign banks are required to deploy 32% of their net bank credit to priority sectors as against 40% for the domestic banks. Export finance is reckoned for the purpose of priority sector in case of foreign banks only. Further, no specific target is fixed for foreign banks for lending to agriculture sector as against a target of 18% for domestic banks. Unlike domestic banks, there was no compulsion on foreign banks to open branches in rural areas thus allowing them to limit their operations to more lucrative urban and metropolitan centers. These factors, among others, have certainly contributed to their improved performance vis-à-vis domestic banks.

As regards tax rates, the foreign banks were charged at rates as applicable to foreign entities. This differential has been progressively brought down by the Government and all factors considered, foreign banks cannot be said to be at a disadvantage vis-à-vis domestic banks.

Q.22 We understand that foreign banks that are licensed to operate in India are denied the ability to access local debt markets to raise Tier 2 capital in the same manner as the local banks. The capital would be raised against a parent guarantee whose international credit rating would be very high and so this would be a high quality investment for Indian investors. The local Tier 2 Capital raised in this manner would reduce overall cost of capital thereby enabling further rapid expansion of local operations/products. Why are foreign banks not given the same access to the local market as domestic banks?

A decision has been taken that capital funds of foreign banks have to be augmented only by foreign currency funds and not raised locally in Indian market. Therefore, the facility of raising rupee subordinated debt by foreign banks in India as Tier 2 Capital has not been allowed.

Q.23 We understand also that the decision as to location and timing for the set-up of a new branch requires prior Reserve Bank approval. This results in limited ability to prepare and execute expansion plans. Why is the process applicable to local banks, which is much simpler and less time-consuming, not applicable to foreign banks also?

The opening of branches by banks is governed by the provisions of Section 23 of the Banking regulation Act, 1949. In terms of these provisions, banks without the prior approval of the RBI, can not open a new place of business in India or change the location of the existing place of business. Thus, it is mandatory for all banks, foreign or domestic, to seek prior approval/licence from RBI before opening of branches/offices.

Q.24 Moreover, we understand that the maximum loan that the Indian branch of a foreign bank may provide to a customer is calculated as a percentage of its locally available capital only, rather than the global capital of the bank. This restriction limits the growth and expansion opportunities for foreign banks in India. What plans does the Government have to review this restriction?

The norms have been stipulated keeping in view the best international practices as recognized in the Basel Committee on Banking Supervision's paper on "Measuring and Controlling Large Credit exposures". The norm is applied uniformly in respect of both foreign and domestic banks and ensures that the banks have adequate capital funds in India to withstand individual large exposures. Such prudential norms and linkages to capital funds exist in varying forms in all the countries.

II. Key Developments in Trade and Economic Policy Since the Last Review

(11) Liberalization in Insurance Sector, para. 30:

Q.25 Para. 30 indicates that the maximum foreign ownership in a local insurance company, life or non-life, is restricted to 26%, which limits management control and decision-making. Does the Government contemplate raising this threshold in foreign ownership?

Without any commitment to WTO, the insurance sector in India has been opened up to private Indian insurance companies, which can have foreign equity up to 26%. This is as per the provisions of the Insurance Act, 1938. At present, there is no proposal to increase the percentage of foreign equity in Indian insurance companies.

III. India and the WTO, (2) Steps for International Standards in Trade and Industry, para. 49:

Q.26 We are concerned with the fact that a number of market access problems faced by some of India's trading partners stem directly from India's Sanitary and Phytosanitary certification measures, which are seen as unnecessarily and arbitrarily stringent. The practice of not accepting certification from trading partners that are otherwise acceptable to most other countries, and the lack of timely notification of changes in certification requirements, are seen as not being strictly in the spirit of the Agreement on SPS Measures or to improving the transparency of India's SPS measures. Please explain.

India has regularly been notifying various SPS and TBT measures to the respective Committees of the WTO. However, in some cases notifications have been issued by the Government of India whereby sanitary and phytosanitary / technical standards or labeling requirements, already being enforced on domestic manufacturers over a long time, have been extended to the imported products. That step is fully compliant with the national treatment obligations as enshrined in the Art III of GATT 1994. We have notified these standards to the WTO.

As regards the issue of accepting certifications from trading partners, it may be noted that India along with other developing countries has been raising the issue of 'equivalence'. As a part of decision on implementation issues, the Members at the Doha Ministerial Conference have resolved to expeditiously develop the specific programme to further the implementation of Art 4 of the SPS Agreement on equivalence. India is always willing to enter into mutual recognition agreements (MRAs) with its trading partners in accordance with the provisions of the Art 4 of the SPS Agreement.

III. India and the WTO, (3) Intellectual Property, paras 52-53, 57-58

Q.27 Will the new Patent (Second Amendment) Bill see a TRIPs-compatible Act coming into force? Also, given past concerns over the implementation and enforcement of intellectual property rights laws that are otherwise modern and laudable pieces of legislation (e.g. *Copyright Act, Trade Marks Act*), when can we expect strict and transparent enforcement of the laws in the future, including in the pharmaceutical and entertainment industries?

India's Patent Act 1970 was amended in 1999 to make provisions for mailbox and Exclusive Marketing Rights (EMRs) as per provisions of Article 70.8 and 70.9 of TRIPS Agreement. To make it compliant with respect to other provisions of TRIPS Agreement, Patent (Second Amendment) Bill has been passed by the Parliament in the month of May 2002. With this amendment, the Patent Act will now be fully compliant with India's current obligations in the TRIPS Agreement.

India's IPR legislation are transparent. Provisions have been made for action under criminal procedures and penalties and other remedies for infringement of various intellectual property rights.

Government of India gives high priority to enforcement of copyright laws. Government has set up a Copyright Enforcement Advisory Council (CEAC) to advise on matters relating to copyright enforcement. Following the suggestions of the CEAC, State Governments have designated nodal officers to facilitate proper coordination between copyright industry organizations and the enforcement agencies. Copyright enforcement cells or special cells in the Crime Branch have been set up at Police Headquarters in the States/Union Territories to exclusively monitor copyright infringement cases. Government, in cooperation with copyright organizations and educational institutions regularly organizes seminars and workshops in different parts of the country to sensitize the people about copyright matters.

WTO Secretariat Report WT/TPR/S/100

Summary Observations, (3) Trade and Trade-Related Reforms, para. 11

Q.28 We share the Secretariat's concern over the sharp increase in anti-dumping actions being taken by India in recent years. Are some of the increases directly related to the elimination of Quantitative Restrictions?

It is not clear what is meant by the supposed direct relationship between anti-dumping actions and the elimination of Quantitative Restrictions. The domestic industry is in the process of adjusting to a new QR free environment. Anti dumping actions, however, are taken after the investigations are conducted in accordance with the prescribed rules.

I. Economic Environment, (1) Recent Economic Developments, (iii) Structural measures, para. 17

Q.29 Para. 17 states that measures to liberalize and reduce over-regulation in the economy have been pursued but that the pace of liberalization has slowed.

- What system has the Indian government put in place to review the different regulatory measures?

- What are the criteria for the selection of the regulatory measures to be reviewed? What is the time frame to proceed with the selection? What is the time frame for the completion of the review?
- How many regulatory measures did India have on the books at the beginning of the process?
- How many regulatory measures were repealed and/or modified, or are in the process of being repealed and/or modified, as a consequence of the de-regulation effort?
- Why has the pace slowed?

The reference in para.17 about the trend towards reduction of over-regulation and liberalization refers to every aspect of the Indian economy. Regulatory measures both sectoral and otherwise are being reviewed from time to time. Box 1.2 entitled "Regulatory and Structural changes" in WTO/TPR/S/100 itself lists some of the liberalization measures that have been undertaken or are underway. The second generation reforms are also being undertaken covering not just the Central Government but at the State level also. Such reforms relate to issues such as Industrial restructuring, labour reforms, privatization etc. as well as reforms covering major infrastructure sectors such as energy including petroleum, transport, telecommunications etc. Several of the measures have also been documented both in the Secretariat's Report as well as in Paras 13 to 42 of the Report by the Government.

Undertaking de-regulation and bringing about further economic reforms requires building up of a political consensus as also the need for phasing and sequencing of these measures. This is a time consuming and challenging process. Despite this, the Government is committed to undertake these reforms with continued emphasis on fiscal consolidation and financial sector reforms.

II. Trade Policy Regime: Framework and Objectives, (1) Trade and Trade-Related Policy, (ii) Institutional and legal framework, para. 11

Q.30 The Report refers to a number of governance challenges, including in the field of transparency. Regarding international notifications, India stated in a communication to the WTO on 24 September 1998 (G/TBT/W/93) that the Bureau of Indian Standards (BIS) had decided to extend the period of comment from 60 days to 90 days. How do you explain that notification G/TBT/N/IND1 on labelling of packaged products allows for a comment period of only 60 days? Has India changed its policy?

Notification G/TBT/N/IND1 appears to be the first TBT notification from India since 1 January 2001. Has India not adopted any technical regulation that may have a significant effect on trade in the past 18 months?

- What are the domestic requirements for regulatory transparency? What is the typical publication period for a proposed technical regulation?
- Do you have a domestic obligation to prepare/publish a Regulatory Impact Assessment (RIA) document with the proposed regulation?
- If yes, what are the requirements for the preparation of the RIA?
- Are there policy requirements to identify alternatives to regulations when assessing a perceived problem? If yes, where are the policy requirements stated?

As per India's communication to the WTO bearing No. G/TBT/W/93, BIS provides the period of 90 days to enable the member countries to send their comments on a draft technical regulation proposed to be finalized by BIS. The notification referred to above in the question relates to DGFT notification No. 44 of 24 November 2000 which provides for mandatory application of Indian quality standards on import of 131 items annexed to the said notification. Two more items were subsequently added to the list. It may be noted that the labeling requirement imposed by notification No. 44 on imports have been imposed on domestic items dating back from 1977 under various national statutes. Nevertheless, in order to acquaint the members with the measures, we have notified these standards to the WTO.

India has notified various other measures to the WTO so as to acquaint all members with the concerned measures. Technical regulations are finalized by various departments and ministries of the Govt. of India depending on the nature of the proposed regulations. For example regulations on food items are standardized by the Ministry of Health and Family Welfare under Prevention of Food Adulteration Act 1954. The general practice is to publish the proposed regulation in a draft form in the Gazette of India inviting objections and suggestions from all persons likely to be affected within a reasonable period of time. In the light of comments and suggestions received, the regulation is finalized and applied.

II. Trade Policy Regime: Framework and Objectives, (1) Trade and Trade-Related Policy, (iii) Trade policy formulation and implementation, para. 13

Q.31 Para. 13 states that the Department of Commerce (part of the Ministry of Commerce and Industry) formulates, with others, trade policies, and that an entity of that department, the Directorate General of Foreign Trade, is responsible for the execution of the policies.

- Is the Directorate General of Foreign Trade (DGFT) directly involved in regulation-making? If yes, what is the nature of its involvement? What is the process followed?
- Is there any requirement for regulatory agencies to take international agreements (including trade agreements) into account when regulating? If yes, where is the requirement stated?
- In any case, who in the Indian government ensures that international obligations are respected in regulatory measures? Is it the role of the DGFT, or of a central agency of the Government?

The Export and Import (EXIM) Policy of the Government of India is notified by the Central Government in exercise of the powers conferred under Section 5 of the Foreign Trade (Development and Regulation) Act, 1992.

As per Section 6 of the said Act, the Central Government may appoint any person to be the Director General of Foreign Trade for the purposes of the said act. The Director General shall advise the Central Government in the formulation of the EXIM Policy and shall be responsible for carrying out that policy.

Since DGFT is part of the Ministry of Commerce and Industry (Central Government), Ministry of Commerce and Industry through its Trade Policy Division ensures that international obligations are complied with.

III. Trade Policies and Practices by Measure, (2) Measures Directly Affecting Imports, (iv) Tariff Exemptions and Other Concessions, para. 25

Q.32 Para. 25 mention that 415 tariff exemptions are proposed for the 2002-2003 period. Please specify out of the 415, which agricultural products will be listed for exemptions. Also, please provide the applied tariffs that will be implemented under these exemptions and specify who will be entitled to them.

The first 56 entries (barring entry 52) of the 415 entries in the Exemption list (Notification 21/2002 – Customs dated 01.03.2002) refer to agricultural products. These exemptions are applicable to imports by any importer. In certain cases, the imports are subject to meeting certain specified conditions. The details of the products and conditions applied on grant of the exemptions are available at <http://www.cbec.gov.in/cae/customs/cs-act/notifications/notfns-2k2/cs21-2k2.htm>

III. Trade Policies and Practices by Measure, (2) Measures Directly Affecting Imports, (xi) Contingency Measures, Box III.1: Anti-dumping and countervailing procedures, paragraph on provisional duties

Q.33 Box III.1 states that India may impose provisional duties for a period not exceeding six months and may extend this period to nine months upon request by the exporters representing a significant percentage of the trade involved. Please clarify or reconcile these time periods in relation to article 7.4 of the Anti-dumping Agreement, which provides that the normal period for the application of provisional measures should not exceed four months or, upon request by exporters representing a significant percentage of the trade involved, a period not exceeding six months.

Article 7.4 of the WTO Agreement on anti dumping clearly provides that in the case 'lesser duty rule' is followed, the period of provisional duty may be six months which can be extended to nine months upon request by exporters representing significant percentage of trade involved. Since India follows lesser duty rule, these provisions have been incorporated in our legislation. However, the period of provisional duty has never been extended beyond six months in the investigations undertaken so far.

III. Trade Policies and Practices by Measure, (2) Measures Directly Affecting Imports, (xii) Standards, testing, and certification, para. 47

Q.34 Para. 47 states that, in order to ensure the continued relevance of standards, Indian standards are reviewed as and when considered necessary, but at least every five years.

- How many Indian standards were reviewed in 2001 because it was necessary? And how many were reviewed because the five-year deadline had arrived?
- Please answer the same questions for years 2000, 1999, 1998, 1997, and 1996.

Standards are reviewed every five years. Year wise details of the number of standards reviewed are as follows:

95-96 - 3908

96-97 – 3294

97-98 – 3218

98-99 – 3082

99-00 – 3040

2000-2001 – 3803

2001-2002 – 3553

III. Trade Policies and Practices by Measure, (3) Measures Directly Affecting Exports, (ix) State Trading:

Q.35 With reference to India's EXIM Policy for 2002-2007 and Table III.5 of the Report, please describe the conditions under which the Food Corporation of India (FCI) and the Director General of Foreign Trade may grant a license/certificate/permission for the import of food grains, including wheat. Has the Director General of Foreign Trade granted any licenses, certificates, or permissions in the past? If yes, for what specific products and volumes?

As per para. 2.11 of EXIM Policy, 2002-2007, any goods, the import or export of which is governed through exclusive or special privileges granted to State Trading Enterprise(s), may be imported or exported by the State Trading Enterprise(s) as specified in the ITC(HS) Book subject to the conditions specified therein. The Director General of Foreign Trade may, however, grant a licence/certificate/permission to any other person to import or export any of these goods. An application for such imports may be made, in the form given in Appendix 8 of the Handbook of Procedures, Vol. I, to Director General of Foreign Trade. The licence for import may be granted by the Director General of Foreign Trade or any other licensing authority authorized by him in this behalf. The DGFT/Licensing authority may take assistance and advice of a licensing committee. The licensing committee consists of technical authorities and departments/ministries of Government of India.

In respect of goods the import or export of which is governed through exclusive or special privileges granted to State Trading Enterprise(s), the State Trading Enterprise(s) shall make any such purchases or sales involving imports or exports solely in accordance with commercial considerations, including price, quality, availability, marketability, transportation and other conditions of purchase or sale. These enterprises shall act in a non discriminatory manner and shall afford the enterprises of other countries adequate opportunity, in accordance with customary business practices, to compete for participation in such purchases or sales.

As per the ITC (HS) Classification of Export and Import Items 2002-2007, import of wheat is allowed through FCI, which is a State Trading Enterprise, subject to para 2.11 of EXIM Policy. FCI cannot grant any licence. No application for import of wheat has been received by DGFT.

III. Trade Policies and Practices by Measure, (3) Measures Directly Affecting Exports, (x) Free Trade Zones, para. 88

Q.36 What main agricultural products are being targeted by the agricultural export zones (AEZ)? Please specify the extent of services that will be available in the AEZ for these products? According to India's EXIM Policy for 2002-2007, the AEZ will ensure the provision of pre/post harvest treatment and operations, plant protection, processing, packaging, storage, related research & development, and others. What additional services and/or benefits will be provided and at what levels? What are the specific benefits associated to each status levels, i.e., "star trading", "super star trading", etc?

The main agricultural products being targeted for exports by the Agricultural Export Zones (AEZs) include fruit, vegetables and flowers. The services enumerated in the EXIM Policy are now being carried out by various Govt. agencies in different parts of the country. The benefits that will accrue to the enterprises in the AEZs will emanate from the focus and integration of services in the AEZs. The specific benefits available to Star Trading and Super Star Trading Enterprises are provided across the board for all sectors.

III. Trade Policies and Practices by Measure, (4) measures Affecting Production and Trade, (i) Industrial Policy, (a) Industrial licensing, paras 99 and 101

Q.37 According to the Government of India, the rationale for such licensing is to regulate capacity addition and location, based on certain strategic and industrial development considerations.

(i) What are these strategic and industrial development considerations?

The main consideration for industrial licensing are compliance with environmental laws and zoning and land use regulations, besides safety and security point of view.

(ii) What is the nature of these considerations - regulatory or not regulatory? If not regulatory, what are they?

(iii) How are these considerations developed? Is it an objective of India to ensure the process is both open and transparent? If yes, please identify how this is achieved?

(ii) and (iii): All industrial undertakings are exempt from obtaining an industrial license to manufacture, except for (i) industries reserved for the Public sector (Atomic energy and Railway transport); (ii) industries retained under compulsory licensing (distillation and brewing of alcoholic drinks; Cigars and cigarettes of tobacco and manufactured tobacco substitutes; Electronic aerospace and defence equipment; all types; Industrial explosives including detonating fuses, safety fuses, gun powder, nitrocellulose and matches; Hazardous chemicals; and Drugs and Pharmaceuticals (according to modified Drug Policy issued in September, 1994 and subsequently amended in February, 1999); (iii) items of manufacture reserved for the small scale sector and (iv) if the proposal attracts location restrictions. As indicated above there are only six industries, which require compulsory licensing. However, manufacture of SSI reserved items by other industrial undertakings and location of industrial undertakings in relaxation of the notified locational policy will attract compulsory licensing. Licensing is insisted upon because of environment protection and pollution control angles and because of the safety and security points of view, in general. Issues related to the small-scale sector are also an important consideration.

(iv) Are the sectoral policies of the ministry concerned (cf. para. 101) different from the strategic and industrial development considerations of para. 99? If yes, what is their nature?

As far as industrial licensing is concerned, sectoral policies would supplement environmental, safety and strategic considerations, in general.

(v) What are the criteria used by the state governments to recommend location? Where are they stated?

Location of an industrial project depends on the State land laws; zoning and land use regulation and the policies of the concerned State Government in this regard.

- (vi) What is the process? Can the process be appealed? How are the criteria developed? What is their nature?
- (vii) What is the weight of the state government recommendation?
- (viii) Can the whole process be appealed? If yes, to what entity of the government? Or to what tribunal?

(vi), (vii) and (viii): *In accordance with the statutory provisions, reasons for refusal to grant industrial approval are to be intimated to the applicant. State government's recommendations are given due consideration.*

III. Trade Policies and Practices by Measure, (4) Measures affecting production and trade, (iv) Competition policy and regulatory issues, para. 147:

Q.38 Para. 147 states that the Indian Cabinet has introduced a Competition Bill which will replace the Monopolies and Restrictive Trade Practices Act from 1969 and expand the scope and coverage of competition law in India. Please indicate the status of this Bill, and when the legislation and new Competition Commission of India is expected to be in place. Please provide further information about the scope and coverage of the legislation, including any exceptions it may contain.

The Bill is presently before the Indian Parliament for consideration and will become an Act when passed by the Parliament

The objective of the Bill is to provide for the establishment of a Competition Commission to prevent practices having adverse effect on competition, to provide and sustain competition in markets in India, to protect the interests of consumers, and to ensure freedom of trade carried on by participants in market in India and for matters connected therewith or incidental thereto.

The bill is before Parliament. The text of the Bill, as introduced in the Parliament, is available at the web site of the Department of Company Affairs, Government of India, at www.nic.in/dca/

IV. Trade Policy by Selected Sectors, (2) Agriculture, (iv) Internal Policies

Q.39 The Report quotes a Ministry of Finance document that acknowledges the production-distorting nature of minimum support prices which are higher than the market price. The result is that public stocks of grains have increased dramatically in recent years. What measures has the Government taken to ensure that increased freight-related export subsidies for agricultural products will not further increase surplus agricultural production?

A series of initiatives have been taken in the agriculture sector to reduce the existing market distortions and at the same time to safeguard the interest of the farmers. Trade in agricultural commodities has been freed from controls under the Essential Commodities Act 1955. The Government has removed licensing and stocking requirements and movement restrictions enabling free and unrestricted stocking and trading in wheat, rice, coarse grains, edible oils, oil seeds and sugar so as to have an integrated countrywide market for agricultural products. An amendment of the Milk and Milk Products Control Order has been effected w.e.f. 26.3.2002 to remove restrictions on new milk processing capacities while at the same time to continue to regulate health and safety conditions.

With regard to measures taken by the Government to ensure that trade related export subsidies for agriculture do not result in increase in surplus agricultural production, it may be noted that exportable surplus in India is only a recent phenomenon and is not significant. The socio-economic vulnerability of Indian agriculture has to be kept in mind while considering this question. Indian Agriculture is heavily dependent on weather and is susceptible to natural calamity leading to fluctuations in production. The stocks of foodgrains are being used for the purpose of distribution to the families Below the Poverty Line (BPL). In addition, these foodgrains are also used for the generation of employment and creating assets in the rural areas. Schemes have also been devised to provide food security in the rural areas by establishing Grain Banks for which the allocation of foodgrains is made from the public stocks. These measures are expected to reduce the public stock of foodgrains. Considering the substantial contribution agriculture makes to India's GDP, dependence of a huge population on agriculture for their livelihood etc. and increase in domestic consumption, India can ill afford slow down in production.

IV. Trade Policy by Selected Sectors, (2) Agriculture, (iv) Internal Policies

Q.40 How does the Government of India plan to address the issue of growing stocks on a long-term basis to avoid having to resort to their disposal at "heavily subsidized prices" or to avoid encountering unsustainable costs to maintain stocks at levels greater than necessary for the purposes of food security?

To dispose of the surplus stocks the Govt. of India has been using a part of these surplus stocks to create assets in the rural areas through various employment generation programmes and distribute foodgrains to the people Below the Poverty Line at concessional prices. These steps are required to ensure that food security and livelihood concerns of the vulnerable Sections of the population are adequately addressed. The State Governments have been encouraged to procure foodgrains from their States to enable proper utilization of the foodgrains so procured by the States in their respective States. Certain schemes are also being implemented to shift areas from cereals cultivation to pulses and oil seeds cultivation. These efforts are however being thwarted by the heavy subsidies given by the developed countries for the foodgrain production. These subsidies depress prices in the international markets and lead to reduced opportunities for export by the developing countries. It is these trade distorting subsidies that are of more concern to food security concerns of the developing countries. India would propose bringing the export subsidies, export credit, export insurance and export guarantees etc. under discipline in the WTO.

Q.41 Please explain how the freight-related subsidies for agricultural products, especially wheat and rice, are consistent with India's food security objectives as it could be expected that these would potentially reduce availability of stocks for the local population while causing food prices to increase.

The freight related subsidies for agricultural products alone cannot achieve India's food security objective unless the developed countries ensure that the distortions created by them in the agricultural trade through domestic support and export subsidies are done away with. If such distortions are done away with or reduced, Indian agricultural products will be able to compete in the international markets. These freight related subsidies may not be required then. These should also be viewed as a mechanism to stabilize incomes. Otherwise also, the quantity of exports of foodgrains from India are not high in comparison to our requirements as well as in comparison to the internationally traded volumes.

IV. Trade Policy by Selected Sectors, (4) Services, (iv) Banking and Insurance

(a) Banking; Box IV.3: Restructuring weak public-sector banks

Q.42 In 2000 the Government introduced in Parliament an amendment to the Banking Companies (Acquisition and Transfer of Undertakings) and Financial Institutions Laws (Amendment) Bill to reduce the minimum government shareholding in public banks from 51 to 33 percent. However, the WTO Secretariat's Report did not state whether or not this Bill was passed. Please provide an update on the current status of these proceedings.

The Bill was introduced in the Parliament, which has referred it to the Standing Committee on Finance and is under its examination. The Parliamentary Standing Committee reviews/examines the bills referred to them and makes suitable recommendations to the Government. This is an important and integral part of the parliamentary process.

IV. Trade Policy by Selected Sectors; (4) Services, (iv) Banking and Insurance; a) Banking; para. 87

Q.43 In the Budget for 2002/03, changes are proposed to allow foreign banks to establish branches or subsidiaries in India. Would the proposed changes allow full discretion by foreign banks to choose between operating as a branch or subsidiary, or would foreign banks be encouraged to become subsidiaries? Also, please confirm whether as a subsidiary, national treatment would apply – that is, foreign firms would face the same regulatory responsibilities as domestic companies.

As per the budget announcement, it was decided to give an option to foreign banks to either operate as branches of their parent banks or set up subsidiaries. A foreign bank has to choose only one of the two options. Such subsidiaries will have to adhere to all banking regulations, including priority sector lending norms, applicable to other domestic banks.

General Query

Q.44 We understand that there is a discrepancy in tax rates applied to foreign banks operating in India versus their domestic competitors. If this is the case, please provide the rationale for this difference.

Please see answer to Question No.21.

JAPAN

Questions on the Report by the Secretariat (WT/TPR/S/100)

III. TRADE POLICIES AND PRACTICES BY MEASURE

(2) MEASURES DIRECTLY AFFECTING IMPORTS

Tariffs

(p. 27, para. 11; p. 28 paras 12 and 13)

Q.45 Japan notes that the Indian customs tariff is a major source of revenue for the Central Government. However, Japan is concerned that the difference between the bound and applied tariff rates is still significant (i.e. according to the Report, the average applied tariff is 32.3%, while the

overall average bound tariff for 2005 is expected to be 50.6%). In order to improve predictability in tariffs, Japan requests India to reduce its bound rates during the ongoing market access negotiations.

Japan's request has been noted. India would not like to offer any further comments at this stage since this is a matter for consideration at the ongoing negotiations.

Tariff preferences

(p. 36, para. 29)

Q.46 The Report states that India has signed a free-trade agreement with Sri Lanka, which came into force on 1 March 2000. Has this free-trade agreement already been notified to the WTO? If not, when will it be notified?

Yes. The Agreement has been notified on 17 June 2002.

(p. 41, para. 42)

Q.47 Japan is of the view that any abuse of anti-dumping measures for the protection of the domestic industries should not be permitted. What is India's view concerning the use of anti-dumping measures?

India agrees that anti dumping measures should be used only to curb unfair trade practices of dumping and there should not be any abuse of the anti dumping measures for the protection of the domestic industry from fair competition.

Q.48 The Report states that the number of anti-dumping measures in force has risen steadily, especially since 1997, from 19 notified measures in force to 131 in 2001. What is the reason for such a big increase?

There have been progressive removal of quantitative restrictions over the last five years by India and also customs duty on imports have been reduced continuously as a part of the process of liberalization. However the process of liberalization can be sustained only if there is fair trade and level playing field between the imported products and domestic industry. Whenever the domestic industry adversely affected by dumping files fully documented petition, to curb the unfair trade practice, India has to take recourse to anti dumping measures after initiating and conducting investigations in accordance with the procedures of WTO Agreement on Anti Dumping practices.

Q.49 The Report states that the majority of the initiations have been for chemical and related products (47.2%). Japan would like to have India's view on the effect of these AD measures (including investigations) on its domestic industries which use foreign chemical products, as well as on domestic chemical industries themselves.

Empirically chemical and related products account for several of initiations of AD investigations. However, the initiations are done only on receipt of fully documented petition from domestic industry having the standing to file the petition and producing prima facie evidence of dumping, injury and causal link. The user industry is given full opportunity to present their views in the investigations and their interests are taken into account while making recommendations for imposition of anti dumping measures.

Standards, testing, and certification

(p. 44, Box III.2)

Q.50 At which stage does notification by India, pursuant to the TBT Agreement, concerning any new standards or revised standards take place?

India notifies its technical regulation in accordance with Art 2 of the TBT Agreement.

(p. 45, para. 50)

Q.51 By the Notification of 24 November 2000, the BIS (Bureau of Indian Standards) Certification Mark was made mandatory for 133 items. Japan is concerned about this measure in light of the TBT Agreement, as it seems to create unnecessary trade barriers, and the conformity assessment procedures are not clear. Please provide a detailed explanation on the purpose of this measure, its necessity and its consistency with the WTO Agreement, as well as any information on the conformity assessment procedures.

Notification number 44 dated 24.11.2000 has required the importers to comply with two separate requirements. (i) All packaged commodities has been made subject to provisions of the Standards of Weights and Measures (Packaged Commodities) Rules 1977 upon import to India. All prepackaged commodities, imported to India, are required to carry the declarations like name and address of the importers, net quantity in terms of standards units of weights and measures, month and year of packing, maximum retail sale price etc.; (ii) Import of 133 (list of 131 items annexed to the Notification number 44 itself and 2 items added subsequently vide Notification number 7 of 31 March 2001) commodities has been made subject to compliance of mandatory Indian quality standards.

The measures introduced vide Notification 44 dated 24 November 2000 are within the parameters of Article III of GATT and Agreement on Technical Barriers to Trade and have only highlighted applicability of those standards on imported products, which are already mandatorily applicable on domestic products.

Moreover para 4.12 of the then applicable EXIM Policy (1997-2002) and para 2.2 of the current EXIM Policy (2002-2007) explicitly stipulate that all imported goods shall also be subject to domestic laws, rules, order, regulations, technical specifications, environmental and safety norms as applicable on domestically produced goods. Therefore the labeling requirements on imports introduced vide Notification no. 44 are not new. These technical standards or labeling requirements, are already being enforced on domestic manufacturers over a long time. India has already notified the measure to the TBT Committee for the information of the members.

(p. 46, para. 55)

Q.52 The Report states that, by the Notification of 24 November 2000, all packaged products are required to carry the following information: (i) name and address of the importer; (ii) generic or common name of the commodity; (iii) net quantity in terms of standard unit of weights and measures (or its equivalent if given in any other unit); (iv) month and year in which the commodity was manufactured, packed, or imported; and (v) maximum retail sale price. Japan would like to know the purpose and the necessity of this measure.

In India domestic manufacturers have to comply with the provisions of Standards of Weight and Measures Act 1976 regarding packaging of the products. These requirements, inter alia, include indicating month and year of packing, maximum retail price(MRP), net quantity in terms of standard unit of weight and measure etc. All these requirements including MRP is essential from the point of view of consumer interest and protection.

(3) MEASURES DIRECTLY AFFECTING EXPORTS

TRIMs

(p. 62, para. 93)

Q.53 Japan understands that, based on the results of the panel and the Appellate Body, India will eliminate the performance requirements on automobile parts. Please indicate India's current situation on the scheduling of such elimination?

India is in the process of consulting with EU and US for arriving at a Reasonable Period of Time (RPT) for implementing the decision of the DSU on the dispute 'India-Measures affecting the Automobile Sector'.

(4) MEASURES AFFECTING PRODUCTION AND TRADE

Competition policies

(p. 85, para. 144)

Q.54 The Report states that, from April-December 2000, the MRTP Commission received 1,554 enquiries related to restrictive trade practices, of which 102 cases were settled, and 1,424 enquiries regarding unfair trade practices, of which 92 cases were dealt with, and that these cases involved only Indian companies. It seems that the action by the MRTP Commission against anti-competitive activities by foreign companies is rather weak. Please provide information on cases which involved foreign companies.

The law should, and does, deal with anti-competitive behaviour in the Indian market, whosoever, whether Indian, or of foreign origin, indulges in such anti-competitive behaviour. The MRTPC is dealing with cases pertaining to multinationals such as American Natural Soda Ash Corporation (ANSAC), Coca Cola, Pepsi, Whirlpool, and LG Electronics.

Q.55 Japan believes that cases which involve foreign companies shall be on the increase in India. Please provide India's view on the need to cooperate with foreign competition authorities.

It is quite possible that cases involving foreign companies may rise. Appropriate ways will need to be considered with due regard for their effectiveness, and keeping in view India's needs and development objectives.

(p. 86, para. 147)

Q.56 The Report states that a Competition Bill was introduced by the Indian Cabinet in Parliament on 6 August 2001, and is aimed at checking the abuse of anti-competitive agreements and dominant market position, and regulating procedures related to mergers and acquisitions. Have definitions concerning "abuse of anti competitive agreements and dominant market position", "cartel",

"collusion", "price fixing", "bid rigging", "boycott" "refusal to deal" and "predatory pricing", which were not defined in the MRTP Act, have been clearly defined in the Bill?

In the Bill now before the Indian Parliament anti-competitive agreements, dominant position, cartel, bid rigging, refusal to deal, predatory pricing etc. have been defined

Q.57 Please provide a detailed explanation on the points which have been improved from the MRTP Act.

Under the Competition bill, dominance per se is not bad but only the abuse of dominance is considered bad, whereas under the MRTP Law, dominance itself is bad;

MRTP Act is based on the size as a factor whereas the new Bill will be based on the structure as a factor;

MRTP Act provides for Registration of agreements as compulsory whereas in the new Law there is no requirement of registration of agreements;

Combination Regulations mentioned in the Bill ensure that Competition is not reduced. Combinations are not regulated by MRTP Act;

MRTP Act has powers only to pass "Cease and Desist" orders and did not have any other powers to prevent or punish, whereas the Competition Law aims at deterrent and preventive measures apart from having punitive provisions;

Q.58 According to the Report, if this Bill is enacted, the Competition Commission of India (CCI) would replace the MRTP Commission. Please explain the difference between the CCI and the MRTP Commission, which is an independent semi-judicial organization, with regard to the position in the Government, the structure and other differing aspects. Japan would like to know the number of members making up the CCI. It would also like to know the problems recognized by India concerning MRTP Commission.

The proposed competition commission shall consist of a Chairperson and not less than two and not more than ten other Members. The reasons for having a new law in place of MRTP are indicated in the reply to Q. 57.

Q.59 Japan appreciates India's efforts towards strengthening its competition legislation (e.g. by making a new Competition Bill). In this regard, Japan believes that a well-balanced pursuit of industry policies, development policies and competition policies is important. Please provide India's comment on this point.

India agrees with Japan's views. However, India strongly feels that developing countries should have freedom to build in flexibility as required by their development needs. Also, depending on their experience in the implementation of their competition policies and other policies they should have the flexibility to make such changes as may be considered to be in their national interest and consistent with their level of development.

Intellectual property rights

(p. 89, para. 156)

Q.60 The Report states that in India the protection of intellectual property rights is on the basis of reciprocity as stipulated in various laws. Please explain the consistency of this statement with Article 4 of the TRIPS Agreement, which provides for a most-favoured-nation treatment.

India provides protection to IPRs on MFN basis to the nationals of all the Members countries of WTO and also provides national treatment to them. The Geographical Indications(Registration and Protection) Act, the Trade Mark Act, Patent Act, Designs Act, Semiconductor Integrated Circuits Layout-Designs Act and Protection of Plant Varieties and Farmers' Rights Act provide that any person can apply for IPR protection under these Acts.

Reciprocity has been extended to the member states or signatory states of all international agreements like TRIPS, Paris Convention and PCT which require that such reciprocity should be provided. Therefore the provisions of the Indian law in that respect are consistent with Article 4 of TRIPS Agreement.

Works of other WTO members get "national treatment" as provided in sections 40 and 40 A of the Indian Copyright Act, 1957 read with para 3 of International Copyright Order, 1999. Copyright of works first made or published in a country or the author of which was, at the date of such publication, a national of a country who is Member of the World Trade Organization are protected in India as if they are Indian works, based on section 40 of the Indian Copyright Act, 1957 read with International Copyright Order, 1999. Accordingly all provisions of the Indian Copyright Act, 1957 will apply as if they are Indian works.

(p. 93, para. 175)

Q.61 The Report states that the additional protection for geographical indications under Article 23 of the TRIPS Agreement should be extended to products other than wines and spirits (e.g. Basmati rice, among others). What, in India's view, is the purpose of protection for geographical indications? In addition to the products described the above mentioned paragraph, what products, according to India, should be protected and for what purpose?

The significance of geographical indications is growing as increasing quality awareness and higher quality requirements promote the demand for products of a specific geographical origin. Article 24.1 requires that members enter into negotiations aimed at increasing the protection of individual geographical indications under Article 23. This sentence, in our understanding, inter alia, forms the basis for negotiations to extend the additional protection under Article 23 to products other than wines and spirits such as Basmati rice, Alphonso mangoes, Darjeeling tea, Kolhapuri chappals, etc.

As regards higher level of protection for geographical indications (other than wines and spirits) section 22(2) of the Geographical Indications (Registration and Protection) ACT (GI Act) provides for additional protection to notified goods. As India has a vast agro-industrial base it is possible that some geographical indications (other than wine and spirits) such as for Basmati rice and tea could be subject matter for additional protection. India's concerns in the field of Intellectual Property Protection to geographical indications flow from the vast variety of agricultural and non-agricultural products which are unique to specific regions involving both natural and human elements that are the typical features of such indications. The purpose of protection of geographical indications of natural

and manufactured goods is to ensure the quality and the genuineness of such products and to protect the consumer from deception.

Q.62 Please explain India's position on the creation of a multilateral system of notification and registration.

India's position on this issue is being stated in the TRIPS Council.

(p. 95, para. 183 and Table III.18)

Q.63 Although the piracy rates of motion pictures and business software have been declining, they still remain high. Furthermore, the piracy rates for sound recording and entertainment software rates are increasing. What is the reason for this? And what measures does India intend to take to solve this?

Government of India gives high priority to enforcement of copyright laws. Government has set up a Copyright Enforcement Advisory Council (CEAC) to advise on matters relating to copyright enforcement. Following the suggestions of the CEAC, State Governments have designated nodal officers to facilitate proper coordination between copyright industry organizations and the enforcement agencies. Copyright infringement is a criminal offence. The prime responsibility to nab the culprits rests with the Police. Copyright enforcement cells or special cells in the Crime Branch have been set up at Police Headquarters in the States/Union Territories to exclusively monitor copyright infringement cases. Government, in cooperation with copyright organizations and educational institutions regularly organizes seminars and workshops in different parts of the country to sensitise the people about copyright matters.

(p. 96, para. 184 and p. 95, Table III.18)

Q.64 Japan appreciates India's efforts towards enforcing the protection of intellectual property rights. However, as seen in Table III.18, the current situation in piracy is still serious. How effective are expected to be the measures taken by India to reduce piracy? On what basis does India estimate such effectiveness?

As per the reports received from National Crime Records Bureau(NCRB) which is responsible for monitoring copyright infringement cases, the total number of cases registered increased from 1,980 in year 1999 to 2,354 in year 2000. The cases convicted increased from 184 to 374 during this period. This shows that rate of conviction has increased from 10.6% in 1999 to 16.75% in the year 2000.

IV. TRADE POLICIES BY SELECTED SECTOR

(2) AGRICULTURE

Export restrictions

(p. 103, para. 19)

Q.65 The Report states that the Ministry of Commerce, through the Director General of Foreign trade, notifies the imposition or elimination of the restrictions on the exports of agricultural goods when pertinent. The Report also states that these measures are put in place (or removed) with a view to maximizing agricultural exports earnings. Please explain how such export restrictions have been imposed on what kind of products. Currently, on which products are such export restrictions being

imposed? Please indicate in detail the conditions for imposing, as well as eliminating, such export restrictions.

During the last three years there has been progressive and continuous liberalization in so far as agricultural commodities are concerned. No additional restrictions have been imposed on agricultural commodities during the last three years, i.e. 1999-2002.

Major items which have been made free for exports during the three years period as above are pulses (made freely exportable with effect from 5.3.2002), tea (made freely exportable with effect from 10.9.2001), wheat and wheat products (made freely exportable with effect from 5.3.2002, the condition of registration with APEDA removed on 31.03.2002), coarse grains, rice (non-basmati- the condition of registration with APEDA removed on 5.03.2002), sugar (made freely exportable on 16.05.2001 without any condition), raw cotton (made freely exportable on 2.7.2001 without any condition) and 10 varieties of agricultural seeds and planting material.

Currently, no export restrictions exist on agricultural commodities. However, onions, niger seeds and gum karaya are allowed only through designated State Trading Enterprises which function in accordance with Article XVII of GATT.

Q.66 Japan is of the view that, in order to ensure the food security of the net food importing countries, it is important to establish a stable international agricultural market by strengthening the rules concerning the exports of agricultural goods, including giving improved predictability through the binding of export duties. What is India's view on this?

India in its proposal to Committee on Agriculture (G/AG/NG/W/102 15 January 2001) had proposed that:

(i) Export subsidies on all agricultural products should be eliminated in the first 2 years of implementation, both in terms of export subsidy outlays and subsidized volumes. As a down payment, the subsidy outlays and subsidized volumes should be reduced by 50% from the level maintained in the year 2000 by the developed countries by the end of 2001. (ii) During the transition period also, no 'rolling over' of unused export subsidies should be allowed. (iii) All forms of export subsidization including export credit, guarantees, price discounts and insurance programmes etc. in developed countries should be added to the export subsidies and should be subjected to the overall disciplines applicable to export subsidies. (iv) Taking into account the needs and special conditions of developing countries the existing special and differential treatment for developing countries under Article 9.4 of the AoA should continue; and Special dispensation for developing countries provided under Article 27 read with Annex VII of the Agreement on Subsidies and Countervailing Measures should prevail over Article 8 of AoA. Article 13 (c), which gives protection to export subsidies that conform to the provisions of part (v) of AoA, should be abolished forthwith. After the abolition of the peace clause (Article 13 of AoA), the provisions under Article 9.1 (d) & (e) permitted to be used by developing countries without any reduction commitments under Article 9.4 of AoA should be retained as such and should be exempt from countervailing duties and actions based on Article XVI of GATT 1994 and the Agreement on Subsidies and Countervailing Measures.

(4) SERVICES

Financial services

(p. 121, para. 83)

Q.67 According to the Report, India announced that it would be permitting overseas banking units in the special economic zones, and that these banks would be exempt from prudential requirements, such as minimum capital asset ratios and statutory lending requirements. What are considered as "the special economic zones"? When will this permission take effect?

Special Economic Zone (SEZ) is a specifically delineated duty free enclave and is deemed to be foreign territory for the purposes of trade operations and duties and tariffs.

The Government has announced that Overseas Banking Units (OBUs) will be permitted to be set up in Special Economic Zones. Detailed guidelines are being worked by the Reserve Bank of India. Proposals for establishment of Overseas Banking Units will be considered after issue of the detailed guidelines by the Reserve Bank of India.

Telecommunications

(p. 128, para. 98)

Q.68 Does India have any plans of further relaxation on the restrictions on foreign ownership?

Foreign Direct Investment Policy is reviewed from time to time depending upon the need and security considerations.

Rail transportation

(p. 134, para. 110)

Q.69 Concerning market access to private railway companies in India, do there exist any non-discriminative conditions on their market access? If so, please provide details of such conditions.

As per Industrial Policy Declaration of 1991, Rail Transportation has been reserved for public sector.

Accounting services

Q.70 Japan has heard that India disposes of a mutual recognition system with Italy with regard to the qualifications for accountants. Is this information correct? If so, please explain the details of this system.

There is no mutual recognition system in place with Italy as on date.

A Cooperation Agreement was entered into between The Institute of Chartered Accountants of India and the Joint International Committee of the CNDC (Consiglio Nazionale Del Dottori Commercialisti) Italy on December 7, 1998 with the aim of promoting and strengthening the relations between the two Institutes. This Cooperation Agreement has led to sharing of information on accountancy profession by both the institutes and setting up of country desks to disseminate information on the profession.

Horizontal issues

Q.71 Concerning the acquisition of land or real estate, is non-discriminatory treatment ensured in India? If not, please indicate what kind of discriminatory treatment exists.

As per the provisions of Foreign Exchange Management (Acquisition & Transfer of Immovable Properties in India) Regulations 2000, a person resident outside India who has established in India in accordance with the Foreign Exchange Management (Establishment in India of Branch or Office or Other Place of Business) Regulations 2000, a branch, office or other place of business for carrying on in India any activity, excluding a liaison office, may acquire any immovable property in India which is necessary for or incidental to carrying on such activity. It would be incumbent on such person to comply with all applicable laws, rules, regulations or directions that are in force at the time. He is also required to file with the Reserve Bank a declaration on acquisition of immovable property not later than 90 days from the date of such acquisition. Such person can transfer by way of mortgage to an authorized dealer the immovable property as a security for any borrowing. There are some restrictions on repatriation of sale proceeds in respect of the immovable property. Citizens of certain countries (Pakistan, Bangladesh, Sri Lanka, Afghanistan, China, Iran, Nepal) cannot acquire or transfer immovable property in India, other than lease not exceeding five years, without the prior permission of the Reserve Bank.

HONG KONG CHINA

Tariffs

(WT/TPR/S/100, P. 32, Para. 21, P. 35, Para. 25)

Q.72 We are concerned that India still exercises tariff exemptions widely. The exemptions introduce unnecessary complexity to the tariff system and increase uncertainty to the trade. However, we are glad to note that India intends to simplify its tariff structure to a two-tier one by 2004/05, with a significant reduction in tariff rates (10% for raw materials, intermediates and components; 20% for final products). We would like to know the status of the simplification plan.

India has been progressively rationalizing and simplifying the tariff structure. In the Union Budget for 2002-03 a road map has been announced that by the year 2004-05, the objective would be to have only two basic rates of customs duties, namely, 10% covering generally raw materials, intermediates and components and 20% covering generally final products. The existing rates are expected to be adjusted and subsumed in these two basic rates. Some exceptions on account of WTO bindings or higher tariffs for agricultural products may also be made.

Similarly, there is also a steady progress towards a simple, stable single rated ad-valorem based duty structure for central excise (Additional duty on imports is in lieu of Central excise on domestic products) with a CENVAT rate of 16%.

In the Indian tariff there are 101 exemption notifications. Out of these, 20 exemption notifications relate to international agreement and bilateral agreements. 49 notifications pertain to export related schemes. 3 notifications relate to exemptions on account of IT related commitments. 1 notification implements the textile agreement commitments. 9 notifications have been issued to allow exemption for reimport of goods of Indian origin. 18 notifications grant exemption in respect of imports for donations, relief work etc. There is one notification which contains 415 entries.

Thus it would be seem that quite a few exemptions are not really product specific exemptions. It is also important to note that several of the entries in the exemption notifications are only to fix the effective level of tariff for particular product or products. This is necessary on account of the fact that

six digit classification covers group of products. If a lower rate of tariff is to be fixed for an individual product, it has to be done only by the so called exemption. If India had followed 8-digit or 10-digit classification code in the Customs Tariff, such exigencies would have been taken care of by the tariff itself. The exemptions are also being phased out gradually.

India is preparing to introduce 8-digit classification in the course of this financial year.

Anti-dumping (AD)

(WT/TPR/S/100, P. 41; Para. 42; & P. 42, Box III.1)

Q.73 We note that there has been a significant increase in the number of AD measures taken by India in recent years, notably from 19 notified measures in force in 1997 to 131 measures in 2001. And a total of 250 AD actions have been initiated since 1995. While we recognize the right of Members to resort to AD measures consistent with GATT Article VI, we are mindful that the frequent use of such measures has, to a certain extent, nullified the benefits of trade liberalization. We are interested to know the background and reasons for the sharp increase in the use of AD measures in the past few years. Has India considered other alternatives before initiating AD measures to address problems facing its domestic industries, and if so, what are these alternatives? Apart from the existing appeal mechanism for reviewing the decisions taken by the Director General of Anti-Dumping and Allied Duties, are there any other measures taken by the Indian Government to prevent the abusive use of AD measures?

Over the last five years, there has been progressive removal of quantitative restrictions and also the customs duty on imports have been reduced continuously as a part of the process of liberalization. The process of liberalization can only be sustained if there is a fair trade and level playing field between the imported products and domestic industry. Whenever the domestic industry adversely affected by dumping files fully documented petition, to curb the unfair trade practice, India has to take recourse to anti dumping measures after initiating and conducting investigations in accordance with the procedures of WTO Agreement on Anti Dumping practices. The Agreement stipulates that no specific action against dumping of exports from another member can be taken except in accordance with the Agreement. In the Indian legislation, the appeal against the findings of the Designated Authority lie with the Custom, Excise & Gold Control Appellate Tribunal(CEGAT).

Labelling and Marking

(WT/TPR/S/100, P. 46, Para. 55)

Q.74 We note that for imports, all packaged products should carry a number of information in accordance with the Standards of Weights and Measures (Packaged Commodities) Rules. We would like to know if similar requirements are imposed on the same or like products produced domestically. Similarly, India imposes a valid shelf life requirement on imports of edible products to ensure that expired food products are not sold in market. We are interested to know what measures are in place on domestically produced edible products to attain the same objective.

The requirement in accordance with the Standards of Weights and Measures (Packaged Commodities) Rules is equally applicable on domestically manufactured items. As regards the issue of valid shelf life, the requirement to have at least 60% of the valid shelf life at the time of import clearance has been imposed for consumer safety. This would allow reasonable time for the products to be marketed in the country before the expiry/best before date is over. Prevention of Food Adulteration Rules, 1954 requires domestic producers also to indicate best before date and in case of

expired food articles are marketed, action can be taken under PFA Rules. This measure has been adopted based on factual survey report indicating that date expired imported products were being sold in the domestic market.

Electricity

(WT/TPR/S/100, P. 120-121, Para. 81)

Q.75 It is noted that India has put forth a number of reforms in the power supply sector in order to rationalize tariffs, encourage foreign investment, and address problems such as cross-subsidization. We would like to know if India has any measures to deal with the problem of theft and to restructure the State Electricity Boards (SEBs).

STEPS TAKEN/PROPOSED TO BE TAKEN TO DEAL WITH THE PROBLEMS OF THEFT AND TO RESTRUCTURE STATE ELECTRICITY BOARDS (SEBs) THEFT The Electricity Bill 2001 which has been introduced in Lok Sabha in August 2001 seeks to make the penal provisions regarding theft of electricity more stringent. The salient features of the Bill in regard to theft of electricity are as under :

- *Focus on revenue realization rather than criminal proceedings.*
- *Provision for compounding of offences.*
- *On the spot assessment of electricity charges for unauthorized use of electricity by the assessing officer designated by the State Government.*
- *Theft punishable with imprisonment. Punishment provision for abetment of theft.*
- *Penalties linked to the connected load and quantum of energy and financial gain involved in theft.*

RESTRUCTURING OF BOARDS

The Electricity Bill, 2001 introduced in Parliament in August, 2001 makes an enabling provision for unbundling of State Electricity Boards (SEBs). Adequate flexibility has been given to the States to undertake reforms by adopting the model that best suits them. The Bill empowers the State Government to continue with their SEBs, if they so desire. The SEBs would, however, be treated as deemed State Transmission Utility (STU) and a licensee in terms of the proposed legislation. Several States (Orissa, Haryana, Andhra Pradesh, Uttar Pradesh, Karnataka, Rajasthan and Delhi) have passed their own Reform Laws and unbundled and corporatized their State Electricity Board. In Orissa and Delhi distribution has been privatized.

Banking

(WT/TPR/S/100, P. 121, Para. 83; & P. 123, Para. 87)

Q.76 It is noted that the public sector controls about 80% of India's total bank assets. Would India consider encouraging more foreign participation, for example, by relaxing the cap for FDI in a bank to more than 49%; and by extending the exemption of overseas banking units from minimum capital asset ratio and statutory lending requirements beyond the special economic zones?

Permitting FDI up to 49% in banking sector under automatic route subject to certain stipulations was only recently announced in February 2002. India has also announced intention to allow subsidiaries

of foreign banks guidelines for which are under preparation. The foreign bank would thus get the option of going for FDI investment in Indian banks or float their own subsidiaries. Prescription of minimum capital adequacy ratio in relation to risk weighted assets ensures a level playing field for both Indian banks and foreign banks operating in India and to ensure that the banks operating in India possess adequate capital funds to cope with exposure norms and growth in risk weighted assets. Such linkages exist in varying forms in all the countries where Indian banks have their presence. The priority sector lending requirements have been tailored taking into account the geographic spread and other functional differences between foreign banks and Indian banks. For instance, while foreign banks are not required to lend 18% of their credit to agriculture, their performance towards export credit is reckoned for the purpose of compliance with priority sector lending.

EUROPEAN UNION

Report by the Government (WT/TPR/G/100)

I. INTRODUCTION

(1) INDIA'S ECONOMIC PERFORMANCE AT A GLANCE

Q.77 (para. 4) There is a feeling that there are problems with India's statistical data. For instance, earlier the growth for 2000-01 was given at 5.8% (as well as in the Government report). Suddenly, the contribution originating from non-bank financial institutions was lowered and the Economic Survey 2001-02, has revised the growth for 2000-01 to 4%. How reliable is, therefore, the information given by the Government and are any steps being taken to prevent such drastic revision in the future?

The estimates of national income are released by Central Statistical Organization for every financial year during January/February months of the corresponding financial year. These advance estimates are further revised as updated data keeps on flowing from source agencies. For the year 2000-01, the figures for annual income had to be scaled down substantially on account of downward revision in respect of agricultural production of several products, steep fall in the growth of business of non-banking financial institutions, due to tightening of prudential norms by RBI and introduction of RBI registration process for acceptance of public deposits by NBFCs.

Efforts are being made to improve the data availability position as well as the quality of the data presently available for compiling the national accounts from various data sources. It may be mentioned that India has subscribed to the Standard Data Dissemination System (SDDS) of the IMF and is one of the few developing countries that have complied fully with all the data requirements under SDDS.

(3) INDIA'S FOREIGN TRADE PERFORMANCE DURING LAST FOUR YEARS

Q.78 (para. 8) We note that India still has a tiny share of 0.7% in world exports. What domestic policy choices and factors has India identified as lying behind this low level of participation? What lessons have been drawn from this and what steps are being taken to increase its share in world trade?

India's merchandise export share in world export has increased from 0.41 in 1992-93 to 0.6% in 1998-99 and to 0.7% in 2001. Our aim is to achieve 1% share in world export by 2006-07. Towards this end, a Medium Term Export Strategy(MTES), for the period 2002-2007, has been announced. The Medium Term Export Strategy (MTES) gives a road map for the export sector by giving macro &

sector-wise strategies to increase India's share of merchandise exports to 1% of World exports by 2006-07. MTES is available at the website of the Department of Commerce at www.commin.nic.in

II. KEY DEVELOPMENTS IN TRADE AND ECONOMIC POLICY SINCE THE LAST REVIEW

(4) REFORM IN TAX ADMINISTRATION

Q.79 (para. 18) The report states that as for customs duties, India has progressively reduced the peak rates to 30% in 2002. We believe that the notion of the "peak duty" is a misnomer as the peak in 2001-02 was 210% and has now become 182% in 2002-03. There are indeed a number of rates in the 2002-03 budget (from 182% to 5%, with 30% being the moderate rate). The term for the so-called "peak duty" of 30% should rather be "most common rate" as about 70% of items are concerned. Can India please confirm that the announced general reduction in customs tariffs to 30% has taken place?

Yes, the reduction in peak rate to 30% has taken place.

Q.80 The stated goal by the government is to move towards a two basic rate duty regime of 20% and 10% by the year 2004-05 for non-agricultural products. What further efforts in cutting down the number of rates as well as lowering the number of exemptions from import duties does India intend to make in order to meet this objective?

Please see answer to Q.72.

Q.81 (para. 21) We understand that India has postponed the much awaited VAT regime to 2003. However, the original deadline to introduce VAT was 1st April 2001. Will India be able to meet its deadline of 1 April 2003?

An Empowered Committee of State Finance Ministers has been constituted for deliberating upon all aspects of domestic trade tax reforms including implementation of VAT. The Committee has decided that all States will replace the present Sales Tax regime with a VAT regime with effect from 1 April 2003. Pursuant to this, time-bound milestones have been fixed for drafting of legislation, finalization of rules and regulations, framing of common guidelines, training of dealers/traders, computerization, strategy/design and publicity so that the deadline is met. The Union Government is acting as a facilitator and co-ordinator in this endeavour and is providing all necessary assistance to the State Governments.

(8) EXCHANGE MARKET REFORMS

Q.82 (para. 27) There has been considerable debate in India on the RBI's decision to allow a more "market-determined exchange rate" of the Indian Rupee, by holding on to "excessive foreign exchange reserves". This has also had the effect of making imports costlier vis-à-vis exports. Experts are of the view that in adopting an extremely cautious monetary policy stance, economic growth is likely to be a major casualty. What is the Government's view on this? Will not a greater market-determined exchange rate lead to greater exports as well, as import-led export growth too is getting affected?

The exchange rate management policy continues its focus on smoothening excessive volatility in the exchange rate with no fixed rate target, while allowing the underlying demand and supply conditions to determine the exchange rate movements over a period in an orderly way. Towards this end, the RBI monitors closely the developments in the financial markets at home and abroad and carefully

coordinates its market operations with suitable monetary, regulatory and other measures, as considered necessary from time to time.

(11) LIBERALIZATION IN INSURANCE SECTOR

Q.83 (para. 30) Given the Insurance Act of 1999, what kind of cross-border provision of insurance services is currently allowed? Is there any plan to increase the current 26% limitation on foreign shareholding?

The insurance sector in India has been opened up to private Indian insurance companies, which can have foreign equity up to 26%. At present, there is no proposal to increase the percentage of foreign equity in Indian insurance companies. Please also see answer to Q.25.

(14) REFORM OF CONTROL SYSTEMS

(v) Petroleum sector

Q.84 (para. 33) Though the administered price mechanism has been dismantled from 1 April 2002, the recent price hike of petro-products gives the impression that prices of these products are still dependent on government decrees and are still not “market-determined”? Consequently, is the government still subsidizing this sector?

With the dismantling of Administered Pricing Mechanism (APM), the pricing of all petroleum products, except for Kerosene for Public Distribution and packed LPG for domestic consumption, has become market-determined with effect from 1st April 2002. However, with a view to facilitate a smooth transition from the APM regime to free market scenario, the oil PSUs had agreed to maintain the prices of petrol and diesel for a period of three months beyond 1 March 2002, when the prices were last revised. As the period of three months was over on 31 May 2002, the oil companies hiked the prices with effect from 4th June 2002 in line with the international prices. With a view to contain the hike, the Government simultaneously effected 2% excise duty reduction on petrol and diesel with effect from 4 June 2002. The prices of petrol and diesel are likely to be revised by the oil companies in future on a regular basis in line with the international prices. As per the Government decision, Kerosene for Public Distribution and packed LPG for domestic consumption are being subsidized through the Government budget. This subsidy would be phased out in the next three to five years.

(17) PRIVATIZATION OF PUBLIC SECTOR UNITS

Q.85 (para. 42) The recent interference by senior Government Ministers and ruling party leaders with regard to VSNL, a recently disinvested PSU, on investment of Rs 1,200 crores (280 million Euro approx.) in a group company, may discourage potential investors in the disinvestments process. How does the Government intend to tackle this problem?

The Government has a well-defined and transparent policy of disinvestment of its equity stake in Public Sector Undertakings (PSUs). The main idea behind disinvestment of equity stake in PSUs is to bring down Government equity stake to the level of 26% or less and transferring management control to the Strategic Partner. This is done in order to allow sufficient freedom to the company to run professionally under overall guidance of the Board of Directors.

Government typically, however, has to address certain concerns, which can be summarized as under:

- *Protection against asset stripping by the Strategic Partner.*

- *Protection of employees, post-disinvestment.*
- *Exit options for the balance shares held by government of India.*
- *A reasonable Lock-in period for the Strategic Partner.*

In order to address the above concerns, government retains certain affirmative veto rights in the agreement which ensures that decision on such items are taken only if the Government nominee Director gives his affirmative vote. It is the intention of Government clearly, however, to allow the new management to function freely under the overall superintendence, guidance and control of Board of Directors. Therefore, normal business decisions including investment decisions are taken by the Board of Directors keeping in view the overall objective and interests of the company. Government is represented by its nominee Directors in the Board of Directors. Exchange of views and especially in important investment decisions can and do take place in the normal course of business but ultimately the decisions making process strictly has to follow the provisions of company law and the provisions of the Shareholders/Share Purchase Agreement.

In over 30 disinvestment cases, management post-disinvestment is going on smoothly. Considering the volume of response from the bidders in recent cases where Expression of interest (EOI) have been invited for acquisition of equity stake in PSUs, it is clear that potential investors have felt very much encouraged to participate in the disinvestment process.

(18) IMPEDIMENTS TO THE GROWTH OF INDIA'S INTERNATIONAL TRADE

Q.86 (para. 43) The Government Procurement Regime is declared to be a trade barrier faced by Indian products and suppliers in foreign procurement. Would India consider to join the WTO plurilateral agreement on government procurement (GPA) as a way to eliminate these barriers? Is India ready to explore the preferential treatment foreseen in Art. V of the GPA to developing countries?

No, there is no proposal at present for India to join the WTO Plurilateral Agreement on Government Procurement (GPA).

III. INDIA AND THE WTO

(4) SERVICES

Q.87 Neither the report by the government nor the one produced by the Secretariat contain a section or chapter on professional services. Taking into account the low level of commitments undertaken by India in this sector, the EC would appreciate information on this sector, where the level of market access currently provided to WTO Members is clearly indicated and special consideration is given to any recent policy changes that could have taken place.

As per W/120, Professional services cover a number of sub-sectors. India has taken specific commitments in Engineering Services (CPC 8672) which can be delivered under Mode 3 through incorporation with a foreign equity ceiling of 51%. Under Mode 4, the professionals are allowed to provide service as per the Horizontal Commitments taken by India. They are allowed entry and stay for a maximum period of one year extendable with permission for a maximum of three months.

Report by the Secretariat (WT/TPR/S/100)

III. TRADE POLICIES AND PRACTICES BY MEASURE

(2) MEASURES DIRECTLY AFFECTING IMPORTS

Q.88 The EU continues to have concerns with India's taxation system on a number of products that are subject to GATT Article XX and XXI import restrictions. We would welcome an indication of when India plans to bring justification of these measures as regards their WTO commitments.

India has already removed all the import restrictions being maintained on account of balance-of-payment (BoP) reasons. The list of products which are restricted for imports under Article XX-XXI exceptions were notified to WTO in 1997. This list is being reviewed from time to time. 83 items were removed from this list prior to 31 March 2002 and restrictions on 63 more items have been removed on 31 March 2002.

(ii) Customs valuation and clearance

Q.89 (para. 9) In spite of the efforts to speed up customs procedures detrimental delays in customs clearance for foodstuffs have been reported, in particular due to customs inspection and testing procedures. Could India please indicate what kind of measures it intends to take in order to speed up inspection procedures and to facilitate customs clearance for perishable goods?

In terms of DGFT's notification No. 3(RE-2001)/1997-2002, dated 31 March 2001, Customs has to ensure compliance of the provisions of the Prevention of Food Adulteration Act, 1954 before clearance of a consignment of food items. Department of Revenue had issued a circular prescribing testing of all the consignments of food items. However, considering the difficulties faced by importers such as hotels, restaurants etc. importing perishables for self consumption, such imports have been allowed to be cleared without any testing.

Under the existing procedure, consignment of imported food item is being referred to Port Health Officer for his no objection. He inspects the sample and draws the sample. Such samples are sent to Central Food Laboratories or other laboratories authorized by the Directorate General of Health Services for testing for compliance of the conditions of PFA. As regards measures to speed up inspection procedures, Ministry of Health has been considering to nominate some more laboratories for testing of food items under the PFA Act.

Q.90 The Community has welcomed Indian Customs' "Vision and Strategy" plan for customs modernization and simplification. We would be grateful to learn what concrete simplification measures based on that strategy are now in the pipeline and with what timeframes.

Indian Customs has taken a number of measures to simplify procedures. Computerization of Customs formations has been taken in a very big way. EDI has been installed in all the major ports, major airports and some of the ICDs for processing of declaration of import and export declarations. Introduction of EDI has helped in reducing the paperwork associated with the clearance of export and imported goods and transaction time for clearance of goods has been reduced considerably. A number of new ICDs/Container freight stations have been set up in the hinterland and at the port towns to reduce congestion at the ports and to allow importers/exporters to take clearance of goods at their doorsteps.

The procedure for transshipment of imported cargo from the gateway ports to other ports/ICDs/CFSs has been simplified. For issuance of permission for transshipment from gateway port, a single window system has been introduced, where applications for transshipment are processed expeditiously with the help of computer. All Central as well as State Public Sector Undertakings and custodians of ICDs/CFSs, have been exempted from the requirement of bank guarantee for undertaking transshipment of imported cargo from the gateway ports of ICDs/CFSs. Further, the compulsory sealing of containers by Customs before transshipment has been dispensed with.

To reduce the transaction cost, a procedure has been prescribed for consolidation of Less than container load(LCL) cargo at the gateway ports. Under the scheme, the LCL cargo cleared at the ICDs/CFSs are stuffed in a container irrespective of destination or shipping line. After stuffing, containers are taken to gateway port, where containers are opened and segregated and re-stuffed shipping line and destination wise. Containers carrying imported LCL cargo are allowed to be de-stuffed at the gateway ports. Thereafter, goods are segregated and stuffed destination-wise for onward movement to ports/ICDs/CFSs.

A procedure for movement of export cargo from ICDs/CFSs/factories to gateway ports/airports by trucks has been introduced for faster movement of cargo. A procedure has been introduced for carriage of imported cargo from one port to another port by vessels as also by rail.

The working hours for Customs at the Aircargo Complexes has been increased to allow clearance of imported/export cargo from 8.00 A.M. to 10.00 P.M. on working days and from 10.00 A.M. to 5.00 P.M. on holidays.

Regulations have been framed to allow import and export through the courier mode. The Customs clearance facility for items imported and exported through courier mode is presently available at Delhi, Chennai, Kolkata, Mumbai, Ahmedabad, Jaipur, Bangalore & Hyderabad airports and to land customs stations at Petrapole and Gojadanga in West Bengal. As soon as goods arrive, these are cleared by Customs on observance of simple formalities by the courier companies. The importer/exporter or his representation need not come to Customs for taking clearance.

(iii) Tariffs

Q.91 We would like to receive an indication if India intends to increase the share of bound tariff lines for non-agricultural products and reduce at the same time the gap between bound and applied tariffs?

The issue regarding increase in the number of bound tariff lines is a subject matter for the ongoing negotiations on Market Access for non-agricultural Products. India would not like to offer any comments on this issue at this stage. Reply to Q.159 is also relevant.

As for applied tariffs, reference may be made to the reply given to Q.4 posed by Switzerland.

Q.92 The Indian tariff structure is composed of many tariff exemptions and additional or special tariffs. Does India see any possibility to simplify the tariff structure thus contributing to more transparency?

Please see answer to Q.72.

(vii) Additional and special additional duties

Q.93 (para. 31) It is stated in the report that it is not clear whether the additional duty actually imposed on each imported item corresponds to the excise tax levied on that item. In particular, with regard to wines and spirits, imported spirits are subject to higher levels of taxation than the domestic product, and we would welcome an indication of when this discrimination will be removed and how India intends to bring its import regime for spirits into conformity with its international obligations. Is there any fixed time schedule for those changes?

The additional duty on wines and spirits, has been prescribed after taking into account the various levies imposed by State governments on manufacture of liquor in their territories. It will not be correct to state that the present rate imposed on all imported liquor is higher than the excise duty applicable on domestic liquor in different States.

Q.94 (para. 32) The SAD is purportedly applied to imported spirits in lieu of Sales Tax. However, in practice, imported products are also liable to Sales Taxes at the appropriate rates in most Indian States. Does India have any intention or time-table to remove the Special Additional Duty (SAD)? Could India please comment on this?

The objective behind the imposition of Special additional duty of customs (SAD) @ 4% on imported goods is to neutralise the impact of local levies such as sales tax, turnover tax etc. leviable on domestically produced goods and to provide a level playing field to the domestically produced goods vis-à-vis imported goods. The floor rates of sales tax levied by the States are 4%, 8%, 12% and 20% for various types of goods. The rate of Central Sales Tax applicable to inter-State sales is also 4%. Thus the levy of SAD does not completely neutralise the effect of local sales tax applicable to domestically produced goods but only partially does so. There is no plan at present to phase out or remove SAD.

At the time of the imposition of the levy in 1998, traders were kept out of the purview of the levy since goods imported for trading (i.e subsequent sale) would have been levied sales tax at the time of the sale. However it was noticed that goods were imported for trading, but from areas which had a sales tax exemption, so as to avoid both sales tax and SAD. There were also instances of companies resorting to high seas sales in order to avoid the levy. Further, there were some instances of duty anomalies wherein the final product when imported for sale, was cheaper than the inputs when imported for manufacture of the final product, on account of SAD. Keeping all these factors in mind, the imposition of this levy was made across the board in 2000.

(viii) Import prohibitions, restrictions, and licensing

Q.95 (para. 36) Could India explain why it requests more stringent standards on imported second-hand cars than imposed on domestic cars?"

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

(ix) Minimum import prices

Q.96 (para. 38) We have been reported that 'de-facto' minimum prices on the imports of ceramic tiles exist. Could India please inform if and when it does intend to eliminate this practice?

Ceramic tiles as classified under code no. 69.08 of ITC(HS) Classifications of Export and Import Items 2002-2007 are freely importable. No minimum prices exist on imports of such tiles.

Q.97 (para. 38) Could India please explain the system of minimum import prices (including product coverage) applied for the imports of primary steel products?

By Ministry of Commerce (DGFT) Notification No. 35 (RE-98) dated 11.12.1998, floor prices were fixed on import of prime steel items. However, Government of India decided to remove minimum floor price restriction on import of prime steel items and accordingly, vide Notification No. 31 dated 1.11.99, price restrictions on prime items were withdrawn with effect from 1.1.2000.

But this withdrawal Notification has been challenged before Hon'ble High Court of Kolkata and the matter is sub judice.

Q.98 In addition, minimum import prices, so-called floor prices are applied for the imports of marble. Could India please indicate whether there is any time schedule for the elimination of this measure?

Marble blocks as classified under code no. 68.02 of ITC (HS) Classifications of Export and Import Items 2002-2007 are freely importable. No minimum prices exist on imports of such items.

(xi) Contingency measures

Q.99 (para. 41) Can India please explain how the independence of the Appellate Tribunal (also known as the Customs, Excise and Gold (Control) Appellate Tribunal) from the Directorate General of Anti-Dumping and Allied Duties is ensured?

Customs, Excise & Gold (Control) Appellate Tribunal (CEGAT) constituted under Section 129 of the Customs Act, 1962, consists of judicial and technical members who exercise the powers to discharge the functions conferred on the Appellate Tribunal by the Act. The Tribunal is independent of Dept. of Commerce and has no administrative interaction with the Directorate General of Anti Dumping and Allied Duties.

Designated Authority is appointed under Customs Tariff Act, 1975 as amended in 1995 and the Customs Tariff (Identification, Assessment and Collection of Anti Dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995. At present, an officer of the rank of Additional Secretary in the Department of Commerce, functions as Designated Authority and is assisted by Directorate General of Anti Dumping & Allied Duties(DGAD) for conducting investigations. Please also see answer to Q.175.

Q.100 (Box III.1) Can India please explain what are the criteria used to initiate an anti-dumping investigation by the Directorate General of Anti-Dumping and Allied Duties, in particular with regard to the acceptance of complaints? When does the Directorate General of Anti-Dumping and Allied Duties consider there is evidence regarding dumping or injury? What are the consequences of preliminary findings not being made within the applicable deadline? Final findings must be notified to the Central Government within a period of one year from initiation of the investigation, although this

period may be extended by the Central Government for a period of six months. Can India please explain on what grounds such an extension would occur? Regarding definitive anti-dumping duties, could India explain when and on what basis the Directorate can extend the applicable five-year period for periods of five years?

Investigations into complaints of dumping are initiated by the Designated Authority only on receipt of adequate and sufficient evidence of dumping, injury and causal link. This is prescribed under Rules.

As per Rules, the deadline for completion of investigation is one year extendable by the Central Government for a period of 6 months. The extension is normally sought in case the investigation is not completed within a period of 12 months which may be on account of certain legal complications or other conditions arising in the course of investigations necessitating seeking of extension of time. In case the investigations is not completed within stipulated deadline, the initiation notification lapses automatically. The applicable five year period as per the Customs Tariff Act, for the anti dumping duties can extend for another period of five years in case the Designated Authority determines after due investigation that discontinuation of the duties will lead to recurrence of dumping and injury to the domestic industry and accordingly, recommends continuation of the duties for another period of five years.

Q.101 (para. 42) Since India passed its legislation on Anti-dumping, it has become a major user of this instrument. Can India please explain the increase on AD measures since 1997. Nearly 40% of the new AD cases relate to China and the European Union. Could India provide any explanations for this situation?

There have been progressive removal of quantitative restrictions over the last five years by India and also customs duties on imports have been reduced continuously as a part of the process of liberalization. However the process of liberalization can be sustained only if there is fair trade and level playing field between the imported products and domestic industry. When the domestic industry adversely affected by dumping files fully documented petition, investigations are conducted in accordance with the procedures of WTO Agreement on Anti Dumping practices and measures are taken accordingly.

Q.102 (para. 44) Can India please explain the criteria on basis of which a finding of "serious injury from increased imports" would be determined by Indian authorities?

The determination of serious injury or threat thereof has been defined in Section 8 B of the Customs Tariff Act, 1975 as an injury causing significant overall impairment in the position of a domestic industry and threat of serious injury means a clear and imminent danger of serious injury. The determination of serious injury or threat thereof is made by the Director General (Safeguards) in accordance with the provisions of the Customs Tariff (Identification and Assessment of Safeguard Duty) Rules 1997.

The Director General (Safeguards) evaluates all relevant factors of an objective and quantifiable nature having a bearing on the situation of the domestic industry, in particular the rate and amount of the increase in imports of the article concerned in absolute or relative terms, the share of the domestic market taken by increased imports, changes in the level of sales, production, productivity, capacity utilization, profits and losses and employment.

The above determination shall not be made unless the investigation demonstrates, on the basis of objective evidence, the existence of the causal link between increased imports of the articles concerned and serious injury or threat thereof. When factors other than increased imports are

causing injury to the domestic industry at the same time, such injury shall not be attributed to increased imports.

Q.103 (para. 45) The final findings of the Director General (Safeguards) for Methylene Chloride recommended the imposition of safeguard duties. However, this is yet to be notified. Can India please indicate within which timeframe this notification will occur?

The final findings of the DG(Safeguards) has already been notified to the WTO. The Government has not yet taken a decision for implementing the recommendations of DG (Safeguards) in this case. If a decision is taken to impose a safeguard measure this would be notified to the WTO immediately.

(xii) Standards, testing and certification

Q.104 (paras 47–49) It is our understanding that the Bureau of Indian Standards (BIS) is responsible for drafting and ensuring the implementation of Indian standards as well as assessing their conformity. The TBT Agreement makes a difference between technical regulations that are mandatory and standards that are voluntary. The EU would like to seek clarification on whether the BIS is also involved in drafting mandatory technical regulations?

Various standards are made mandatorily applicable on consumer items by the Government i.e Ministries and Departments through various statutes like Prevention of Food Adulteration(PFA) Act. As per the TBT Agreement, measures, which are mandatory in application, are known as “technical regulations”. BIS being the national standardizing body formulating these standards is therefore directly or indirectly involved in these regulations.

Q.105 (para. 50) The EU is aware that for a group of 133 products conformity assessment and certification by the BIS is mandatory. Does India consider that for these 133 products, a difference between technical regulations and standards in the meaning of the TBT Agreement has been made? Furthermore, the EU would like to seek clarification on to what degree these standards, for which mandatory conformity assessment is required, are based on international standards? The EU would also like to hear whether equivalent foreign standards are accepted?

The regulations imposed vide DGFT Notification Nos 44 and 7 dated 24 November 2000 and 31 March 2001 respectively has made the application of Indian quality standards mandatory on import into India in respect of 133 items. These are, therefore, technical regulations as per the Agreement on TBT. These requirements are equally applicable to domestic goods and thus compliant with national treatment requirement. The possibility of accepting certification according to equivalent foreign standards in future would depend on any mutual agreement between Governments/national standardizing bodies.

Q.106 It is our understanding that for these 133 products the BIS is responsible for both drafting the standards and assessing conformity with them. The EU would like to seek clarification on how the division between these different tasks within the BIS is secured? Is there a clear division of responsibility between the drafting and assessing conformity of standards? The EU would also like to seek clarification on how the costs for the conformity assessment are defined?

The standards formulation and certification are two different activities headed by two different Additional Director Generals in the BIS and therefore there is a clear division between responsibilities of standards formulation and conformity assessment. BIS is not for profit organization and the costs are decided accordingly.

(xv) Government Procurement

Q.107 (para. 57) The Directorate General of Supplies and Disposals (DGS&D) procures goods and services required on a recurring basis by central government entities. What entities are authorized to make their own purchases without passing through the DGS&D? Does the DGS&D charge any fee for procurement launched on behalf of other entities? Could India transmit to the WTO the 367 recurrent items usually procured by the DGS&D?

DGS&D concludes rate contracts for common user items to avoid repetitive tendering saving time and efforts required in the tendering process at different user locations, besides getting economic rates. All ad hoc purchases can be made by individual entities. The DGS&D charges a 0.5% fees for purchase and 0.5% for inspection of the stores being procured. List of items under rate contract is available at <http://dgsnd.nic.in/dgsm.htm>

Q.108 (para. 59) Limited tenders should include contractors that have been granted contracts in the past: is this condition limited to purchases of the same good or service or is it extended to any supplier which may have supplied any good or service to public entities in the past?

For invitation to tender all prospective suppliers are considered including contractors previously granted contracts. However, the tenderers meeting the eligibility criterion of a particular procurement are considered for award of the contract.

Q.109 (para. 59) The last phrase refers to limited and single tenders used for important works. Is this an obligation for awarded suppliers to sub-contract or purchase from the DGS&D list of approved contractors?

DGS&D does not deal with works contracts.

Q.110 (para. 60) What are in detail the obligations imposed to foreign suppliers to be registered with DGS&D through local agents? What is the legal form of these provisions? Are registrations accepted at any time? What is the complaint mechanism in case of refusing registration?

The registration criteria followed by DGS&D are the same for domestic manufacturers or foreign manufacturers. In the case of foreign manufacturers, however, the agreement between the manufacturers and their local agent is examined in detail to ensure availability of after sale service, validity of the agreement for the required period etc. There is no specific or exclusive law for DGS&D contracts. All Indian laws apply. Registrations are accepted at any time and the complaint mechanism is the same for domestic or foreign manufacturers including legal remedies through courts and recourse to the Central Vigilance Commission. Details of the grievance redressal mechanism is available at <http://dgsnd.nic.in/pgdmdgsd.htm>

Q.111 (para. 62) Could India explain the offset policy applied to foreign bidders in government procurement?

The Foreign Bidders registered with DGS&D as per prescribed procedures are eligible for award of rate contract. Registration details are provided at <http://dgsnd.nic.in/dgs6.htm>

(3) MEASURES DIRECTLY AFFECTING EXPORTS

(iii) Export taxes

Q.112 (para. 71) We note that India maintains export taxes of 60% on hides, skins, and leathers. The measure artificially inflates the world prices of these products and distorts internal competition. Could India please indicate when it intends to eliminate these taxes?

India has lifted all export restrictions on exports of hides, skins and leathers. There is no tax on export of finished leather. However raw hides & skins and semi-finished leather are taxed at varying rates for export purposes. These taxes are WTO compatible.

(viii) Duty and tax concessions

Q.113 (para. 82) Does India intend to abolish the DEPB Scheme and if yes by when? Is this scheme WTO compatible?

The DEPB scheme constitutes a permissible drawback scheme in accordance with item (i) Annex I to the Agreement on Subsidies and Countervailing Measures which permits remission or drawback of import charges levied on inputs that are consumed in the production of the exported product. At present, DEPB is part of five year EXIM Policy, 2002-2007.

(x) Free trade zones

Q.114 The creation of free trade zones and export processing zones as a means of mitigating the adverse impact of import restrictions on exporters' competitiveness could be considered as being trade distortive. This is because such zones divert investment away from other regions in India and potentially from other WTO Members which are unable to set up such zones. It also belies the effectiveness of import restrictions for balance-of-payments reasons. Would India agree that instead of relying on special zones, lifting its remaining restrictions on imports (except for goods that are covered by the Article XX exemption) and reduce tariffs could be a better option?

India has removed all QRs, which were being maintained on account of BOP reasons (Art. XVIII of GATT) w.e.f. 1.4.2001 and no such restrictions are in place. Hence it is not correct to say that FTZ/EPZ is a means of mitigating the adverse impact of import restrictions. Restrictions are being maintained on account of Art. XX and XXI of GATT only.

Such zones are set up to address issues of quality infrastructure, most efficient regulatory movement and as laboratories for testing changes in macro economic policies. Such zones have been set up in USA, Canada, Europe and many East European countries. Hence, it is an accepted strategy for promoting investment. India does not agree with the comment that it leads to diversion of investment from other regions of India and from other WTO member countries.

(4) MEASURES AFFECTING PRODUCTION AND TRADE

(ii) Tax measures and other incentives/subsidies

Q.115 (footnote 157) It is mentioned that an additional 5% surcharge is currently levied on the income tax of resident companies, so that the full rate of corporate tax is 36.75%. The tax rate on branches of foreign companies is for the time being 40%. We would like to know whether the Government has any plans to bring the corporate tax rate for foreign companies further down to the same level with the resident ones.

An additional 5% surcharge is levied on both domestic and foreign companies. This raises the applicable corporate tax rate to 36.75% for domestic companies and 42% for foreign companies and their branches. This rate on foreign companies was till recently 48% and has been brought down by the Finance Act, 2002. The differential between the corporate tax rate on foreign companies vis-à-vis the domestic companies does not effectively exist, since the shareholders of foreign companies are generally not taxed in India or are taxed as per the beneficial provisions of the bilateral tax treaty, whereas the shareholders of domestic companies are liable to pay tax on dividend income at the applicable tax rates. At present, the maximum marginal personal income-tax rate is 30% grossed up by 5% surcharge. In any case, the rates have been recently brought down and are reasonable in comparison to tax rates on foreign companies applicable in other countries.

(v) Intellectual Property Rights

(a) Patents

Q.116 Please inform when the Patent (Second Amendment) Bill, 1999 is expected to enter into force.

Patent (Second Amendment) Bill 1999 has been passed by the Parliament in the month of May 2002. It is expected to be brought into force shortly after it receives the assent of the President and on finalization of the subordinate legislation. The work in this regard is going on.

(b) Trade Marks

Q.117 Under the new Trade Marks Bill 1999, a trade mark is defined as being represented graphically and capable of distinguishing goods and services of one person from those of others and as including the shape of goods, their packaging and the combination of colours (section 2(1)). Please explain whether the new Trade Marks Bill allow the registration of single colour marks, of smell marks and of sound marks. Can the applicant, in order to overcome the absence of inherent distinctiveness, invoke acquired distinctiveness through use? If so, what burden will he have to bring in order to prove acquired distinctiveness?

According to Section 2(zb) of the Trade Marks Act, a trade mark means a mark capable of being represented graphically and which is capable of distinguishing the goods or services of one person from those of others and may include shape of goods, their packaging and combination colours. Sound and Smell trademarks are not expressly mentioned in the definition of the trade mark but the definition of trademark is exhaustive. However, sound or smell trademark, if it is capable of being represented graphically and is capable of distinguishing the goods or services of one undertaking from those of the others, may qualify to be considered as a trademark and consequently qualify for registration.

As regards the issue whether lack of inherent distinctiveness in a trademark can be overcome by use of the mark, the broad answer is yes. But the burden of evidence would vary from case to case. The thumb rule is, the weaker a mark the heavier the burden of evidence. Also the Registrar under the provisions of section 18(4) has the power of refusal of trademark even though it may qualify for registration under section 9.

Q.118 The new Trade Marks Bill introduces, besides certification marks, collective marks. Please explain briefly the difference between these two concepts under the Indian law.

The distinction between certification and collective trademark is that the proprietary rights in a certified trademark can be acquired by an individual whereas the proprietary rights in a collective trademark vests with association of persons using the collective mark. Secondly, in case of certification of trademark the proprietor cannot carry on trade in the goods or services certified by him. However, there is no such restriction is placed in the case of collective trademark.

Q.119 Section 11(6) and (7) defines a well-known mark quoting the WIPO recommendations. Please explain whether, in order to benefit of an enlarged protection, a well-known trade mark should be i) registered in India and ii) used in India.

As per the provisions of section 11 (a)(i) and (ii) of the Trade Marks Act, 1999 it is not necessary that either the mark should be registered in India or used in India as a condition to determine whether a trade mark is well-known.

Q.120 (para. 166) The report mentions that the application will undergo an *ex officio* examination on absolute and relative grounds for refusal before the trade mark is advertised for opposition means. Section 11(5) is however unclear whether and to what extent examination on relative grounds for refusal is maintained before advertisement. Please clarify.

It may be seen from section 11(5) of the Trade Marks Act, 1999 that objection under section 11(2) and 11(3) of the Act cannot be raised at the Examination stage. It should be raised in opposition proceedings only.

Q.121 The new Trade Marks Bill foresees that a trade mark is liable for cancellation due to non-use for a continuous period of five years and three months from the date it was entered on the registry. Please clarify what precisely is the starting date for the calculation of the period of non-use (application date or registration date). Please explain why the term of non-use was brought on a period of five years and three months. Please make clear whether a resumed used after a non-challenged period of five years (and three months) of non-use, will lead to a revival of the exclusive right.

The date for counting period of non use of 5 years and 3 months will be from the date of actual entry of the mark in the Register and not the date of application. Please see section 47(1)(b) of the Trade Marks Act, 1999.

The period of 5 years and 3 months has been set as a ground for refusal in order to ascertain that the registered trademark has in fact not been used during that period. The 3 months margin is provided for such contingencies as bringing goods bearing the trade mark into the market place, etc.

As regards resumed use after the non challenged period of 5 years and 3 months of non use, this would save the registered trademark from rectification as the mark cannot then be regarded as a non used mark for a continuous period of 5 years and 3 months. However, delay in use of the mark beyond 5 years and 3 months would make the registered trademark vulnerable to rectification proceedings.

(c) Geographical Indications

Q.122 (para. 172) The report refers to Article 9 of the Geographical Indications of Goods (Registration and Protection) Act, 1999 (the "Act") which states that a geographical indication the use of which would be contrary to any law cannot be registered. Please clarify this provision and illustrate with examples (even if hypothetical).

Section 9(b) of the GI Act provides for this. For example, Amritsar is a religious place in Punjab worshipped by the Sikh community and smoking of cigarettes or consuming of alcohol in that area hurts the religious feeling of the Sikh community. If somebody wants to use the name of this place as a geographical indication for Cigars, for instance, it would be prohibited as being contrary to the Act.

Q.123 (para. 172) The report states that goods cannot be registered as geographical indications if they are determined to be generic names (...) in their country of origin (Article 9 of the Act). Article 26(2) of the Act reads that nothing in the Act shall apply in respect of a geographical indication with respect to goods for which such geographical indication is identical with the term customary in common language as the common name of such goods in any part of India on or before January 1995. While Article 26(2) mirrors the language of 24(6) of the TRIPs Agreement, this is not the case for Article 9. Please explain the difference between Article 9 and Article 26(2) as regards their scope and applicability.

Section 9(f) of the GI Act provides that the Registrar has to determine whether a geographical indication has become generic based on the evidence produced before him if an issue to that effect is agitated before him. Section 26(2) has been incorporated in order to meet India's obligation under Article 24(6) of the TRIPS.

Q.124 (para. 174) Please explain why a renewable term of protection of ten years was chosen despite the fact that the TRIPs Agreement does not prescribe a specific period of protection. Please also give details of any fees payable with respect to the renewal of the registration.

It is quite possible that a registered geographical indication may have become generic or have ceased to be protected in the country of origin. Therefore, provisions for renewal and rectification have been incorporated. The renewal fee is payable as indicated in the Notified Rules.

(d) Copyright

Q.125 (para. 183) The report states that regarding pirated goods enforcement at the border seems to be weak. Please state what border control measures are currently in place and what steps are being taken to prevent the exporting of pirated goods.

Section 11 of the Customs Act, 1962 empowers the Government to prohibit importation and exportation of goods for the protection of patents, trademarks and copyrights. Under this section, the government has issued Nofn. No. 1/Cus/dated 18 January 1964 prohibiting import of goods having applied thereto false trademarks within the meaning of Section 77 of the Trade and Merchandise Marks Act, 1958 and Indian Patent & Design Act, 1911. Similarly, a notification No. 135 dated 31 December 1960 has been issued prohibiting export of good in violation of Trade and Merchandise Marks Act, 1958 under section 11(2)(n) of Customs Act, 1962. Customs Department is taking a number of measures to effectively implement these provisions.

IV. TRADE POLICIES BY SELECTED SECTOR

(3) MANUFACTURING

(ii) Textiles and clothing

Q.126 The Secretariat made calculations on the basis of *ad valorem* duties only, and writes: "The average level of tariff protection *may* be underestimated" (emphasis added). Could India give a detailed list of additional duties to which it subjects textiles and clothing, including the full content of

the alternate rates, of which specific duties? Could then a new calculation be made to reflect the real level of import protection maintained by India on the textile and clothing sector?

The average level of tariffs overall and in textiles and clothing sector has substantially come down compared to what it was during the time of last trade policy review. A number of additional textiles tariff lines have been bound. India levies additional duty and special additional duty on imported goods to neutralise the impact of excise duty (parallel to VAT in certain other countries) and of local levies such as sales tax, which are levied on domestically produced goods and to provide a level playing field to the domestic manufactures vis-à-vis imported goods. The additional duty and special additional duty are applicable to imported goods in various sectors including textiles. In India's view it may not be appropriate to include the additional duty and special additional duty for reflecting the real level of import protection as such additional duties are also levied on domestic production.

Q.127 Could India please inform about the schedule for future further tariff reduction by India? Does it have the intention to proceed with such dismantling only within the new negotiations?

As regards the schedule of future tariff reductions India is ready to discuss the issue bilaterally as well as at the multilateral framework of the WTO. Please also see answer to Q.159.

NEW ZEALAND

Agriculture

Q.128 New Zealand welcome's the major development in India's trade related reforms in the removal of all import restrictions maintained for balance-of-payments reasons. However the Secretariat report (Chapter IV, para. 11) notes that tariff protection for agricultural products remains substantially higher than other products and that the average applied tariff has increased from 35 percent in 1997/98 to 41 percent in 2001/05. India's tariff structure also reveals a high level of tariff escalation and a high level of separation between bound and applied tariff rates. New Zealand hopes that improvements in these areas will be possible.

How does India justify the relatively high level of protection afforded to the agricultural sector especially in light of the low productivity in that sector?

Though the bound rates for primary and processed agricultural products are 100 and 150 per cent, the applied rates are lower for most of the products. Agriculture is a way of life for the developing countries like India having nearly two third of the population dependent on it. Majority of this population are resource poor and having small farms. The tariff modulation in consonance with international price fluctuations at times becomes necessary for their food and livelihood security.

The low productivity is due to application of inadequate resources and technology in farming. The highly subsidized agriculture of developed countries impacts the import competitiveness of domestic production enhancing the vulnerability of food and livelihood security of domestic farmers.

Q.129 New Zealand is concerned about the extent of high tariff barriers that are faced by agricultural and forestry commodities and in particular by processed agricultural and forestry products. We believe that these barriers are import inhibitors, have a negative impact on higher-value-added exports from developing and developed countries, and create the potential for trade diversion.

- In view of India's commitment to a more open market economy, what steps is India taking to reduce applied and bound tariffs for agricultural and forestry commodities and processed products?

India has maintained applied tariffs at levels much lower than the bound levels. India has also removed the regime of QR on imports of agricultural commodities. Removal of QR regime also enables provision of market access to agricultural products, processed food products and forestry products of developed countries. This exhibits our commitments to open the markets. At the same time, since agriculture is the major source of income for a vast majority of India's population, India is careful in ensuring that their incomes are not adversely affected. Erosion of income of our farmers can take place, on account of depressed prices of agricultural commodities in the international markets and due to high domestic support and export subsidies being provided by the OECD countries.

Q.130 The Secretariat notes that India's agriculture policy has been largely driven by the need to eradicate hunger and ensure that domestic supplies are sufficient to meet this demand (i.e. self-sufficiency). However, as noted in the Secretariat Report (Chapter IV, para. 7 the distortions created by higher support prices and input subsidies (which have led to increased output) are only now becoming evident; subsidies have continued to grow and are considered to be fiscally unsustainable; food stocks have increased because of high support prices for producers and now pose problems of storage and higher food subsidy costs; and misuse of inputs have led to environmental problems. New Zealand agrees that food security is important, but we also believe that true food security can only be obtained through an open international market rather than striving for self-sufficiency, and that isolating markets leads to greater climatic and input risks, and an inefficient global market.

- In view of India's commitment to a more open market economy and the current problems India faces due to its current policy of striving to achieve self sufficiency in food stuffs, what steps is India taking to rectify these problems?

The Indian agriculture is largely dependent on weather and its variability cause fluctuations in production of food grains and their availability. Hence, India cannot afford to be complacent about the food self-sufficiency. Moreover, the gap between the domestic supply and demand is not substantial considering the issue of food security that India has to address for its large population. Further, India has to address the issue of micro food security besides macro food security.

In the international markets, prices of agricultural commodities are depressed, on account of heavy domestic support and export subsidies being provided by the OECD countries. If distortions in the international markets and non tariff measures against Indian exporters of agricultural products are removed, Indian agricultural products can find export markets and relying on market signals, can produce those products for which India has a comparative advantage. At the domestic level a number of steps have been taken recently to develop market based instruments to stabilize farmers' income. These include liberalization of domestic and external trade and introduction of futures in agricultural trade.

Q.131 The Secretariat Report, (Chapter IV, para. 29), comments that India's agricultural policy has focused on securing increased production through subsidies of inputs rather than through increasing investment. New Zealand believes that there are superior means of providing support to producers than through the use of trade distorting support measures such as infrastructural and other green box policies.

- Has India considered moving towards such policies?

The investment for infrastructure in agriculture is essential for improving the farming efficiencies and post harvest management. Due to low resource base, the magnitude of capital formation in agriculture has not picked up. The economic condition of farmers is also not that strong to accelerate their private investment. Hence, the focus on infrastructure development is necessary for overall development of the agriculture sector. It may be mentioned here that such supports covered in the Green Box are less trade distorting than the direct payments and production limiting subsidies.

Tariffs

Q.132 The Secretariat Report (Chapter III, para. 11) notes that, although the average tariff rates have declined from 35% to 32.3% since the last Review of India, the applied MFN tariff continues to provide a high level of protection for Indian industry. With its numerous exemptions, the tariff is also a complex and consequently opaque instrument.

- (i) What criteria are used by India to assess whether tariffs, including specific duties, are set at appropriate levels?

The criteria used to set tariffs take into account a number of parameters including inter alia bindings, the need for a phased duty reduction as part of the process of fiscal reforms and the level of protection needed by the domestic industry from time to time.

- (ii) Are tariffs, including specific duties, subject to regular review? If so, at what intervals?

An annual comprehensive review of tariffs takes place prior to the presentation of the Union Budget. Reviews are also undertaken at other time depending on the national and international situation with respect to any particular commodity or sector.

Q.133 The Secretariat Report notes (Chapter III, para. 11) that the average tariff rate is expected to decline further to 29%, if current budgetary proposals are approved by Parliament. We note, however, that tariffs on dairy products were reduced in the 28 February 2002 budget from 35% to 30%, only to be increased to 40% on 26 April 2002.

- (i) What procedures are in place to ensure that transparency and objectivity is carried out with tariff increases?

The tariffs in India are generally taking a downward trend. Increases, if any, are considered after examining in detail the situation necessitating the change including through consultations as necessary with interested groups.

- (ii) Does India have any programmes in place to reduce tariff peaks and/or tariff escalation? Is India following a programme of tariff simplification?

Tariff peaks in India, if taken as three times the average tariff, exists in about one per cent of the tariff lines. Yes, India is following a programme of tariff simplification in line with the road map for a regime based on two rates by the year 2004-05. Please also refer to the answer to Q.72.

- (iii) Would India please clarify the domestic process for other governments and private businesses to raise questions and concerns regarding tariff setting and apparent tariff anomalies?

The tariffs in India are generally being progressively reduced. Increases, if any, are considered after examining the situation necessitating the change. Any entity that wishes to represent about tariff

levels or anomalies are free to correspond with the relevant wing of the Government. Any representation received is examined and considered suitably.

(iv) Is the Indian Government on track to reduce the average tariff rate to 29%?

India has reduced the peak tariff from 35% to 30% this year.

Sanitary and phytosanitary measures

Q.134 The Secretariat Report notes (Chapter III, para. 45) India's Sanitary and Phytosanitary measures affecting imports. In the past, New Zealand has had some problems contacting India's designated SPS Contact Point and obtaining all the information on India's SPS requirements for forestry and plant exports.

- Could India please clarify the correct SPS Contact Point and confirm that it can assist in the provision of current phytosanitary requirements for plant and forestry products.

New Zealand also notes that a notification was received in 2001 indicating that India was considering the obligation for all commodities to require an import permit.

Plant Protection Division, Department of Agriculture and Cooperation, Government of India is the enquiry point for India with regard to Agreement on SPS. As regards the issue of import permits, it may be noted that import of all primary agricultural products has been made subject to a Bio Security & Sanitary-Phyto Sanitary import permit, to be issued by Department of Agriculture and Co-operation, as per conditions of Plants, Fruits and Seeds (Regulation of Import into India) Order, 1989. The permit is issued based on Import Risk Analysis of the product, conducted on scientific principles, in accordance with the Agreement on the Application of Sanitary and Phyto-Sanitary measures. The Import Risk Analysis is based on various scientific principles, including inter alia,

- (a) *the type of pests etc. known to be associated with the particular product in the exporting country;*
- (b) *the organisms already established in India; and*
- (c) *the potential impact of such organisms on India's international trade.*

Q.135 We would be grateful if India could clarify whether any decision has been taken in this context. In particular, could India clarify what products require an import permit and what the process is for obtaining an import permit?

Import of all primary agricultural products are subject to a Bio Security & Sanitary-Phyto Sanitary import permit, to be issued by Department of Agriculture and Co-operation, as per conditions of Plants, Fruits and Seeds (Regulation of Import into India) Order, 1989. The permit will be based on Import Risk Analysis of the product, to be conducted on scientific principles, in accordance with the Agreement on the Application of Sanitary and Phyto-Sanitary measures. The Import Risk Analysis will be conducted based on various scientific principles, including inter alia,

- (a) *the type of pests etc. known to be associated with the particular product in the exporting country;*
- (b) *the organisms already established in India; and*

(c) *the potential impact of such organisms on India's international trade.*

The measure is as per the Agreement on the Application of Sanitary and Phytosanitary Measures. An application has to be made to the Ministry of Agriculture for obtaining an import permit.

Additional/special additional duties

Q.136 The Secretariat Report (Chapter III paras 31-32) notes that the complexity of the excise tax structure is such that there is ample scope for the misclassification of items. Nor is it clear that the special additional duties designed to ensure imports are taxed at the same level as domestic products do indeed achieve equity.

How does India propose to minimize such discrepancies?

The schedule to the Central Excise tariff is based on the harmonized system of nomenclature of WCO. Hence classification of goods is done on an internationally accepted basis of classification and rules of interpretation. Further with a single CENVAT rate of 16% accounting for more than 85% of the total revenue from ad valorem duties, and a single special excise duty of 16% there is very little scope for classification dispute or differential taxation between imported and domestic products.

Geographical Indications

Q.137 The Secretariat report (chapter III, para. 175) notes that India considers the additional protection for geographical indicators under Article 23 of the TRIPS Agreement should be extended to products other than wines and spirits.

India has indicated an interest in terms such as Darjeeling tea, Alphonso mangoes and Kholapuri slippers. We would be interested to know, what, if any, specific problems has India encountered in implementing the current level of protection (article 22) given to these products?

There have been several instances of use of these geographical indications in conjunction with terms such as 'kind', 'type', 'superior' or in translation even where true source of origin is indicated. In such cases, it is found that the protection available in Article 22 is not adequate.

Customs Valuation and Clearance

Q.138 The Secretariat Report (Chapter III, para. 9) notes that delays continue to be experienced in customs clearances due to the complexity of the tariff and exemptions, which may vary according to product, user, or specific export-promotion programme. We note from the Report that India has taken a number of steps to address these delays.

- (i) How effective have these steps been in addressing delays in customs clearance?
- (ii) What steps are India taking to address consistency and transparency in customs rulings in clearance procedures?
- (iii) What other areas has India identified as causing delays in customs clearance?

In the past few years, a number of steps has been taken to simplify the tariff structure. Some of these measures include (i) reduction in number of slabs of duty rates, (ii) reduction in number of exemption notifications, and (iii) uniformity in rates of duty in chapters etc. These measures have considerably reduced disputes in classification and delays in Customs clearance.

The Government is in the process of establishing the EDI connectivity among Customs formations, which would not only bring about transparency in Customs clearance procedures, but also uniformity in assessment practice. However, a number of Customs formations in India are still not under EDI and efforts are under way to implement EDI at all places.

To eliminate delays in various activities undertaken by Customs, a number of procedures has been simplified. Some of the simplification measures undertaken in the recent past are given in our reply to Q.90.

State Trading

Q.139 The Report (Chapter III, paras 63-64) notes that India continues to control imports and exports by, *inter alia*, the use of state trading monopolies.

- (i) Could India please further elaborate on the role of these monopolies?
- (ii) What mechanisms exist to ensure that these bodies import or export solely according to commercial considerations?

Article XVII of GATT allows members to establish or maintain State Trading Enterprises (STEs) and grant special privilege to such enterprises in matters of imports or exports. STEs can be maintained for either exports or imports.

In accordance with Article XVII of GATT, such State Trading Enterprises must:

- *function on commercial principles and*
- *be notified to the WTO (which allows trading partners to exercise surveillance over such STEs, to ensure that the STEs thus notified function in accordance with commercial considerations).*

Accordingly, the above requirement has been specifically incorporated for implementation as para. 2.11 of the EXIM Policy (2002-2007). As per the said para any goods, the import and export of which is governed through exclusive or special privileges granted to State Trading Enterprise(s), may be imported or exported by the State Trading Enterprise(s) as mentioned in the ITC(HS) Book. This paragraph of EXIM Policy specifically prescribes that in respect of goods the import or export of which is governed through exclusive or special privileges granted to STEs, the STEs shall make any purchases or sales involving imports or exports solely in accordance with commercial considerations, including price, quality, availability, marketability, transportation and other conditions of purchase or sale. These enterprises shall act in a non discriminatory manner and shall afford the enterprises of other countries adequate opportunity, in accordance with customary business practices, to compete for participation in such purchases or sales. The role of STEs is given in India's notification G/STQ/N/7/IND dated 8 October 2001.

KOREA

Anti-dumping and Safeguard Measures

Report by the Government of India: para. 13 (page 8)

Report by the WTO Secretariat: para. 42 (page 41)

Q.140 The Indian Government states in its Report that India has progressively liberalized its import market by removing quantitative restrictions. However, India has initiated many anti-dumping and safeguards measures instead. In comparison to other countries, India has initiated the largest number of anti dumping measures during the period of July to December 2001, with a total of 51 cases; when those of the US, Argentina and EU were 35, 16 and 15 cases respectively. We ask the Indian Government to be more prudent in taking anti dumping and safeguard measures.

Please see answer to Q.101.

Q.141 The Ministry of Commerce and Industry of India determined in June of 2001 that compound rubber products (SBR 1500, 1700 Series) from Korea were not causing injury to the Indian domestic industry in that sector. However, the Ministry of Finance of India has not withdrawn its anti-dumping duty yet. Please present us with a definite time period for the withdrawal of this tariff.

Anti dumping duties on 1500 & 1700 series of SBR have been withdrawn since 31 May 2002.

The Tariff System of India

Report by the WTO Secretariat: para. 11 (pages 27-28), paras 31-32 (page 37)

Q.142 The report by the WTO Secretariat states that India still maintains relatively high MFN tariff rates. In addition, India often applies an 'Additional Duty' of 16% or a 'Special Additional Duty' of 4% on imported goods. We ask the Indian Government to consider lowering the level of its tariff rates and phasing out the imposition of the additional duties mentioned above. Please elaborate on the Indian Government's views regarding this matter.

The Additional Duty and the Special Additional Duty are levied in lieu of domestic taxes namely, excise duty and sales tax which are imposed on all domestic products. Thus, these duties only attempt to bring on the same level of tax incidences on imported products as faced by domestic products in India. Therefore, phasing out these duties is not required or feasible.

Customs Procedures and Postal Services

Report by the Government of India: para. 13, 17 (page 8)

Report by the WTO Secretariat: para. 5 (page 26), para 9 (page 27), paras 33-36 (pages 37-39)

Q.143 The report by the Indian Government states that to speed up customs clearance procedures, the Electronic Data Interchange (EDI) system has been installed in most major ports and air cargo complexes. However, our understanding is that exporters abroad are still required to produce complex documentations and are experiencing excessive delays in customs procedures. We urge the Indian Government to further reform the customs procedures that work as non-tariff barriers.

For clearance of imported goods, normally, three documents namely invoice, packing list and Bill of Lading/Airway Bill are required to be furnished by the importers. All other certificates/documents such as health certificate, plant certificates, phytosanitary certificates, country of origin certificate etc are required for import/export of certain categories of goods. Certain additional documents are required if import/export is being made under one of the export incentive schemes.

To reduce the paper work for clearance of imported/export goods, the Government has introduced EDI at almost all the major ports and Air cargo complexes. A number of measures to simplify the Customs procedures have already been taken.

Q.144 It is also our understanding that the public postal service institution in India does not operate express mail services. Therefore, many trading companies use private express mail services, such as DHL, when the need arises. This means increased costs in trading with India. Please tell us if and when traders in India will be able to utilize express mail services via the public postal service system.

India Post operates International Express Mail Service under its brand 'Speed Post'. The service is highly economical and efficient. International Speed Post service is available for 97 countries across the globe from not only 120 National Speed Post Centres but also from 717 State Speed Centres located in India. Besides International Speed Post service for individual customers, for bulk EMS consignments, India Post offers following value-added services:

- *Single window booking.*
- *Duty draw back documentation Service.*
- *Special customs facilitation at foreign Post Offices.*
- *Tracking of consignments through internet.*

Preference Policies for Public Sector Enterprises

Report by the Government of India: pages 13-14

Q.145 With regard to infrastructure reforms in the Indian Government Report, it states that India grants a Purchase Price Preference (PPP) of 10% to public sector enterprises in its bidding process when selecting a plant project builder. This policy was initially adopted in January 1992 with a limited term of three years, but the policy has been prolonged four times and will be subject to termination at the end of April 2004. We believe that this policy is very harmful to fair competition. Please explain to us the Indian Government's views on this matter.

Purchase Price Preference to public sector enterprises has been important in building up the enterprises, some of which have substantial social commitments. Extension of the preference is to help these enterprises transition to the liberalized and competitive environment.

Double Guarantee System and Branch Office in Construction Services

Report by the Government of India: pages 19-20

Q.146 Regarding the GATS-related issues in the Indian report, India requires foreign construction companies receiving plant orders in India to submit a 'Counter Banks Guarantee' to a local bank and then receive a 'Bank Guarantee' by the local bank in order to pursue the construction orders. Please confirm whether this double guarantee requirement is also applied to local companies. If this

requirement is applied only to foreign companies, it appears to be a violation of the national treatment principle of the WTO. Please let us know the Indian Government's views on this matter.

Regarding India requiring foreign construction companies receiving plant orders in India to submit a counter bank guarantee to a local bank and then a local bank issuing a guarantee to pursue construction orders, it is advised that under Foreign Exchange Management Act, in terms of Regulation 4 (2) of Notification No. FEMA 8/2000 - RB dated May 3, 2000, an authorized dealer in India has general permission to give guarantee in respect of any debt, obligation or any other liability of a person resident outside India, subject, inter alia, to the condition that the guarantee given is covered by a counter guarantee of a bank of International repute resident abroad.

This provision of FEMA is not applicable to resident companies and hence, guarantees provided by local companies are not required to be counter guaranteed by a bank abroad. Thus in accordance with India's commitment, there is national treatment for both Indian and foreign companies incorporated in India.

Q.147 Foreign construction companies operating two or more projects in India are having difficulties in managing their funds because foreign construction companies are only allowed to establish a liaison office and an individual project office but not a branch office. Please clarify whether the Indian Government has plans to permit the establishment of branch offices by foreign construction companies.

In terms of policy framed in consultation with the Government of India, India's commitments under GATT for corporate presence are by way of equity participation up to 51%. It is felt that corporate presence by way of equity participation has distinct advantage over branch presence. Therefore, branch offices are restricted only for trading activities. For manufacturing and construction activities, corporate presence is preferred. However, for executing specific projects, a project office is considered sufficient. Further, Liaison Offices are allowed to monitor such projects.

Telecommunications

Report by the WTO Secretariat: footnote 173 of para. 98 (page 26)

Q.148 With regard to footnote 173 of para. 98, India categorizes radio paging as value-added telecom services. This is a different classification from most other members who categorize it as basic telecom services. Please provide us with the reasons or background for such a classification. In addition, as far as Korea understands, India did not include radio paging in either the commitments for value-added telecom services or in the commitments for basic telecom services. What is India's plan on the liberalization of the radio paging services market?

Radio Paging services in India have been defined as Value Added services. Each country is free to define what are value added services. Radio Paging service is already liberalized. The existing operators are private operators and FDI is allowed in the sector.

Q.149 In dealing with applications for a new license on domestic long distance services, is it regarded as a legitimate government action by the Indian regulatory authority to restrict or change the service areas proposed by the applicant on the grounds of government policy objectives or economic needs?

The service area for Domestic Long Distance Services is the whole of India.

MFN Tariff Rates on Fish and Fishery Products

Report by the WTO Secretariat: Table III.2 (page 32)

Q.150 According to table III.2 of the Secretariat Report, the MFN tariff rates on fish and fishery products were increased to 35.0% in 2001/02 from 20.3% in 1997/98. Please explain to us why this increase in tariff rate took place.

The process of rationalization of rates and the tariff structure is an ongoing process. The goal of this process is to establish a two tier tariff structure by the year 2004-05. Changes at any point in time during this process does not detract from the overall policy mentioned above.

BANGLADESH

Q151 Despite global economic slowdown, the Indian Economy has remained one of the fast growing major economies, and is increasing its participation in world trade. The spirit of WTO agreements is to encourage the growth of world trade and reduce barriers that stand in the way. The report by the Secretariat stipulates that the Government of India is concerned with inequities and imbalances in some of the WTO agreements like anti-dumping. Despite this the Government of India has resorted to antidumping measures. In fact the Secretariat report indicates that it has initiated some 250 cases since 1995. Could the Government of India inform us how many antidumping actions have been initiated against developing countries? Of the measures against developing countries how many are still in place? Of the Antidumping cases initiated how many are against LDCs, and in which periods?

Details of anti-dumping cases initiated by India have been regularly notified to the WTO. The last semi-annual report of anti-dumping cases for the period 1 July to 31 December 2001 is contained in document No.G/ADP/N/85/IND of 5 April 2002.

Q.152 In general, India has protected its textile and clothing industry through tariff and quantitative restrictions. The average tariff protection is 31%. In addition, imports are subjected to additional duties. What measures are being taken to liberalize its imports of textiles and clothing?

The quantitative restrictions on imports have been removed. A number of additional textile items have been bound after the last TPR in 1998 and some of these bindings are around 20%. The average applied tariff is also now lower as the peak tariff has been brought down to 30%.

Additional duties on imports, however, are in lieu of excise duty imposed on domestic products. These do not, therefore, give any additional protection for local products.

Q.153 Despite India's commitment to RTA, the main regional destinations for India's exports are the European Union and East Asia. The concessions granted by India under SAPTA (concessions on 2,565 tariff lines with special concessions to LDCs) have not been able to substantially increase imports from neighbouring countries like Bangladesh despite its exports having increased to the neighbouring countries? Does the Government of India have any plan to extend duty free concessions on products of export interest to neighbouring countries like Bangladesh? Does the Government of India have any plan to strengthen RTAs under SAARC, BIMST-EC?

India has taken a number of steps towards free trade with its neighbouring countries. It has bilateral trade agreements with Nepal and Bhutan, which seek to give substantial market access to the products originating from these countries. A Free Trade Agreement signed between India and Sri

Lanka entered into force on 15 December 2001 under which duty concession are being exchanged on a bilateral basis. SAPTA is the framework available for exchange of tariff concessions with other neighbouring countries in the South Asian region, and as a major partner in the SAPTA India has extended the maximum tariff preferences i.e. on 2,565 tariff lines, with tariff reductions ranging from the 10 to 50 percent for non LDCs and up to 100% in some cases for LDCs. India lifted all Quantitative Restrictions maintained for balance of payment reasons for SAPTA member countries on 1 August, 1998. Fourth Round Negotiations on further deepening of tariff concessions under the SAPTA framework have already been launched in March 2002 and will be concluded in the second and final session of this Round, which was earlier scheduled for May 2002, but has been postponed.

The Prime Minister of India has already indicated in the 10 SAARC Summit held in Colombo in July 1998 that India would be willing to consider entering into bilateral Free Trade Agreement with SAARC countries which are interested in moving faster towards trade liberalization.

It is true that India has a positive trade balance with some of its neighbouring countries. Around 90% of its exports to these countries, especially Bangladesh, however, are not based on any tariff concession by the importing countries, but on normal MFN rates of duty applicable to any other country. India serves as a convenient and relatively inexpensive source of imports to these countries. While India's exports to these countries have increased, its imports from these countries also have increased over the years.

India is fully committed to freeing trade in South Asia under SAARC. India also supports having a PTA leading to FTA in the BIMST-EC region. However, Government of India cannot take a unilateral approach on these arrangements and decisions to strengthen RTAs under SAARC and BIMST-EC have to be taken jointly by all participating member States concerned.

Q.154 In addition to standard tariff, most imports into India face additional and special additional rates of duty. The Secretariat Report in its section (vii) of chapter III stated that it is not clear whether the additional duty actually imposed on each imported item corresponds to the excise tax levied on that item. Moreover, from the report it appears that there is lack of uniformity with regard to imposition of Additional and Special Additional rates of duty between countries. It has also been observed that the State Governments impose special duties; for instance a luxury tax is being imposed by State Governments on imports. If sales tax is levied at point of sale, how does the Government ensure that imported goods are not subject to double jeopardy, i.e. taxes on imported products are imposed both at import stage and at point of sale? Could the Government of India clarify as to whether the State Government can impose taxes on imported goods and that such action does not violate Article 3 (National treatment clause) of GATT?

India adheres to all its commitments under international treaties. In India the taxation rights of the Central Government and the State Governments are provided by the Constitution and as such are clearly defined and separate. In case there are any instances of double taxation or any taxation not in conformity with any international obligation of India the same is taken up through various mechanisms for suitable remedy.

Q.155 Tariffs in India are still relatively high. The average applied MFN rate is around 32%. There is escalation in sectors like paper and printing, textiles and clothing, food, beverages and tobacco. The average bound rate is 50% higher than the applied MFN rate. Given this scenario, when does the Government plan to streamline its tariff structure?

Please refer to reply to Q.72.

BRAZIL

Trade Policy Regime: Framework and Objectives

Q.156 In the Report by the Secretariat, page 21, it is stated that SAPTA member countries are not affected by Indian balance of payment import restrictions. How is this exemption compatible with GATT 1994?

India does not maintain any restrictions on BOP grounds either for SAPTA members or for other WTO Members now.

Trade Policies and Practices by Measure

Measures Directly Affecting Imports

Q.157 Is there any sort of governmental support to the production and export of Indian sugar? Should the answer be in the affirmative, how does this system work? Is there any timetable for the reduction and the elimination of this program?

Support is provided by the government for R&D towards varietal improvement in sugarcane. It is covered under domestic support notifications. On export of sugar no subsidy is provided.

Q.158 In the Report by the Secretariat, page 27, it is stated that the import tax revenue represents 30% of India's tax revenue. Is this dependence on the import tax revenue the reason why the Indian average import tariff is so high (around 32.3%)?

The dependence on Customs revenue has been progressively coming down as is reflected in the Report itself. The Government has announced the road map to move towards a two level import duty structure by 2004-05. The Government is also emphasising on revenue collections from direct taxes and service taxes.

Q.159 The Reports show that, besides the fact that only 72.4% of tariff lines had been bound by 2001, the average of bound tariffs is very high (115.7% for agricultural products and 37.7% for non-agricultural products). Under these circumstances, what are India's intentions and expectations for the new round of tariff negotiations on non-agricultural products launched in Doha?

The new round of tariff negotiation on non-agricultural products will take place in accordance with the Doha Declaration. India's future tariff structure will have to reflect its domestic imperatives including its developmental, fiscal and other requirements. Full consideration of these imperatives would be expected during the negotiations.

Q.160 The Report by the Secretariat identifies tariff peaks and tariff escalation in the Indian tariff system. How does India think these themes should be dealt with in this round of negotiations?

India would be seeking to address the issues of tariff peaks and tariff escalation in the market access negotiation as provided for in the Doha Ministerial Declaration as per the mandate. The DMD, it may be noted seeks the reduction or elimination of tariff peaks and tariff escalation, in particular on products of export interest to developing countries.

Q.161 Besides high tariffs, does India also impose additional duties on imported products and does it also forbid or restrict imports? If this is the case, how are such measures compatible with GATT 1994,

i.e., do those additional duties respect the ceiling consolidated tax rate? In the case of imports forbidden, are those measures compatible with GATT 1994?

The additional duties are levied in lieu of domestic taxes imposed on domestically manufactured products. They are imposed at the same rate on imported products as on like domestic products. These are in accordance with Article III:2 of GATT 1994. These are imposed in addition to the customs duty. The bound rate is applicable only to the rate of customs duty and not to the additional duty.

Import restrictions are maintained by India on some products, these restrictions are compatible with the provisions of GATT 1994. India has removed all import restrictions maintained for BOP reasons.

Q.162 In the Report by the Secretariat, page 27, it is stated that when it is not possible to determine the customs value of a product by the usually applied rules India uses a certain percentage of FOB value. What are the reasons for using the FOB value and what percentage is that?

Para. 2 to Article 8 of the Agreement on Implementation of Article VII of the GATT allows for the contracting parties, to provide for the inclusion in or the exclusion of certain amounts from the Customs value. The value of the imported goods in India shall be the value of such goods for delivery at the time and place of importation, i.e, the valuation will be based on CIF value instead of FOB value. Therefore, where the actual cost of transport is not ascertainable, such cost shall be 20% of the FOB value of goods, and where the actual cost of insurance is not ascertainable such cost shall be 1.125% of the FOB value of the goods. This provision is, however, used rarely. The loading, unloading and handling charges associated with the delivery of the imported goods at the place of importation shall be 1% of the FOB value.

Q.163 The Report by the Secretariat, pages 28 and 35, states that there are many exceptions to the import tariff, which renders it more complex and less transparent. The Indian Finance Ministry has announced its intention to create two standard tariffs and to reduce those exceptions in order to minimize such consequences. Is there already a program or a timetable for that?

India is following a programme of tariff simplification whereby by the year 2004-05, there would be only two basic rates of customs duties. The existing rates would be adjusted and subsumed in these two basic rates. Some exceptions on account of WTO bindings or higher tariffs for agricultural products may be made.

Please also refer to answer to Q.72.

Q.164 How are the tariff quotas mentioned in page 35 administered and distributed? Please indicate the relevant legislation.

The relevant legislation for administering TRQs is Foreign Trade (Development and Regulation) Act, 1992. Applications for availment of TRQ are invited by Directorate General of Foreign Trade by way of a Public Notice. Public Notice lays down the procedure for making the application and also includes the format of application. Such applications are considered by an Inter ministerial Export Import Facilitation Committee chaired by Director General of Foreign Trade. The composition of the Export Import Facilitation Committee is also clearly given in the Public Notice itself.

Q.165 In the Report by the Secretariat, page 39, it is stated that India monitors a list of 300 sensitive products, such as fruits, coffee, cereals and vegetable oils. What does that monitoring consist of? Are there any measures restricting the import of such products?

India monitors the import of 300 items which are mainly agricultural items. This import is monitored to see whether there is any surge in the import of these items.

Agriculture

Q.166 It is stated many times in the Report by the Secretariat, in its section on agriculture, that India is currently undergoing a process of structural economic reforms, and that a high level of protectionism still persists. It is stated that instruments such as price support measures, tariff escalation, tariff peaks and quantitative import and export restrictions are frequently used. How can one characterize, in general terms, the state of the reforms being implemented by the Indian Government? Specifically, what are the perspectives for further liberalization in the area of agricultural products, such as sugar, soybeans, meat and tobacco?

India's integration of agriculture with the global markets will be consistent with our developmental needs and food security. However, tariff rates applied are much lower than the bound rates in respect of a large number of agricultural commodities. QRs have been removed for all agricultural items. Export restrictions have been removed on all agricultural products except onion. Sugar decontrol has been accelerated in the recent years and there are no restrictions in meat and tobacco for trade.

Q.167 As for tariff escalation, India's import tariffs for some products can be of over 300%. Does the current reform program that Indian agriculture is undergoing foresee any means of eliminating or attenuating this problem?

The applied tariffs for agricultural products vary from 5% to 100% adv. and they are well below the WTO bound rates. The only exception is in the case of alcoholic liquors where the applied rate is 182% adv. which is also the binding for this product for the current year.

Q.168 It is stated in the Report by the Secretariat that state-owned trading enterprises play an important role in the import, export and distribution of agricultural products in India. In some cases, this results in trade distortions. What are the goals sought by the Indian Government in restructuring these state trading enterprises?

No trade distortions ensue as a result of maintaining State Trading Enterprises. Article XVII of GATT allows members to establish or maintain State Trading Enterprises (STEs) and grant special privilege to such enterprises in matters of imports or exports. STEs can be maintained for either exports or imports.

In accordance with Article XVII of GATT, such State Trading Enterprises must:

- *function on commercial principles and*
- *be notified to the WTO (which allows trading partners to exercise surveillance over such STEs, to ensure that the STEs thus notified function in accordance with commercial considerations).*

As per para 2.11 of the EXIM Policy, 2002-2007, any goods, the import and export of which is governed through exclusive or special privileges granted to State Trading Enterprise(s), may be imported or exported by the State Trading Enterprise(s) as mentioned in the ITC(HS) Book. This para specifically provides that in respect of goods the import or export of which is governed through exclusive or special privileges granted to STEs, the STEs shall make any purchases or sales involving imports or exports solely in accordance with commercial considerations, including price, quality,

availability, marketability, transportation and other conditions of purchase or sale. These enterprises shall act in a non discriminatory manner and shall afford the enterprises of other countries adequate opportunity, in accordance with customary business practices, to compete for participation in such purchases or sales.

Q.169 In analyzing Graph IV.1 in the Report by the Secretariat, one can notice that the import tariffs for some products (animal products, coffee, sugar, fruits, grains and tobacco) have been raised in the period from 1997/1998 to 2001/2002. It must be conceded that the new tariffs, except those for grains, are much lower than those consolidated for 2004. But does the Indian government have any intention of reducing them in the current WTO negotiations?

India would not like to commit at this stage regarding the ongoing negotiations at the WTO on AoA.

Government Procurement

Q.170 With reference to para. 57 of the Report by the Secretariat, what are the criteria used to exempt the Directorate General of Supplies and Disposals (DGS&D) from undertaking recurrent public tenders? Should the need of recurrent purchase of goods and services arise, how is the supply, payment and distribution of such goods and services carried out? Is this system which exempts the DSG&D from public tenders applied to all modalities of government purchasing (public tender, calling of bids, single tendering)?

Please refer to reply to question no. 107.

Q.171 With reference to para. 59 of the Report by the Secretariat, is there any exception for purchases of a value over Rs. 200,000.00, which allows procurement to be carried out through limited and single tenders? What are those exceptions?

No, there are no specific exceptions.

Q.172 With reference to para. 60 of the Report by the Secretariat, what arrangements for after-sales services should non-Indian suppliers make in order to register with the DGS&D?

The requirement for after sales service for non-Indian suppliers is to ensure that any machinery procured can be maintained. Any reasonable system of after sales service would be acceptable.

Q.173 Is there any article in the Indian law on government procurement that deals with the transfer of technology in government procurement? What is the existing provision? Which law establishes that?

Government procurement is not governed by any particular law in India. All Indian laws, applicable to commercial purchases apply.

Q.174 What kind of guarantees do Indian governmental entities request foreign companies to present in government procurement procedures?

There is no difference in the procedure for registration of foreign companies as compared to those for domestic companies. However, for foreign companies, it is important that reasonable after sales service is arranged for. In this regard, any contract between a foreign supplier and its local agent is called for to ensure that post procurement requirements would be adequately addressed.

Contingency Measures

Q.175 In the Report by the Secretariat, para. 41, it is stated that "a Committee was established in August 2001 (...) to examine, inter alia, the adequacy of laws and procedures governing anti-dumping investigations and consistency between the rules and statutes of the Directorate and the rules of the Central Excise and Gold (Control) Appellate Tribunal". Could India provide additional information on the work conducted by this Committee? Considering that the Appellate Tribunal "is independent from the Directorate General of Anti-Dumping and Allied Duties", how can its decisions be evaluated by the head of that Directorate General?

The committee is examining various issues within the broad terms of reference. The committee is yet to come out with final report. The decisions of CEGAT would not be evaluated by the DGAD. If the Designated Authority or the interested parties are not satisfied with the order of the CEGAT, the same can be appealed in the Supreme Court, either by the Designated Authority or any of the interested parties, as the case may be. There have been cases where the interested parties have also gone to the High Courts in writ jurisdiction.

Q.176 How many anti-dumping measures have been adopted by the Directorate General of Anti-Dumping and Allied Duties based on best information available?

Anti Dumping investigations are country and exporter specific. In a particular case there could be more than one country and further in respect of each country more than one exporter may respond. In a case there could be both cooperating and non-cooperating exporters. There would also be situation where names of exporters may not be known. Thus in a case there would be various permutations and combinations of co-operative and non-cooperative exporters. Thus, such analysis of percentage of cases where best available information has been resorted to is not appropriate. However, the definitive findings / semi annual reports available with WTO Secretariat may be perused for such micro details. On a broad basis in about 50% of the cases, best available information had to be resorted to on account of no response at all from exporters. Incidence of rejection of exporter's response and thereby resorting to best available information is however quite low.

Q.177 It is stated in the questionnaire for exporters, published by the Directorate General of Anti-Dumping and Allied Duties, that "[a]n interested party supplying information must ensure that all the information supplied is clearly marked either 'Confidential' or 'Non-Confidential' at the top of each page. Information supplied without any mark shall be treated as non-confidential and the Designated shall be at liberty to allow the other interested parties to inspect any such non-confidential information. Confidential information must be accompanied by non-confidential summary, if it is not conducive to summarization. However, if the designated authority is satisfied that the request for confidentiality is not warranted, the said information may be regarded as non-confidential." Based on this instruction, is it correct to infer that the investigating authority may allow the other interested parties to have access to information submitted as confidential by one interested party? Could India explain that procedure? Is it compatible with article 6.5 of the Anti-Dumping Agreement, which establishes that "such information shall not be disclosed without specific permission of the party submitting it"?

The procedure regarding confidential information has been more explicitly spelt out in the standard forwarding letter being sent along-with every Initiation Notification. The relevant extracts are as under:

“Confidential Information: An interested party supplying information must ensure that all the information supplied is clearly marked either “confidential” or “non-confidential” at the top of each page. Information supplied without any mark shall be treated as non-confidential and the Designated Authority shall be at liberty to allow the other interested parties to inspect any such non-confidential information. Confidential information must be accompanied by a non-confidential summary or, if it is not susceptible to summarization, a statement of the reasons why summarization is not possible. However, if the Designated Authority is satisfied that the request for confidentiality is not warranted, or the supplier of the information is either unwilling to make the information public or to authorize its disclosure in a generalized or summary form, the Designated Authority may disregard such information. A copy of all non-confidential submissions shall be placed in a public file, open for inspection by an interested party participating in the investigation, on request.”

Therefore information claimed as confidential but not so treated by the Authority can at best be disregarded by the Authority if the party furnishing such information is not willing to give non-confidential summary of such confidential information. The confidential information so furnished is not being treated as non-confidential and is also not being shared with any other interested party.

Q.178 In the Report by the Secretariat, it is stated that “[f]inal findings must be notified to the Central Government within a period of one year from initiation of the investigation, although this period may be extended by the Central Government for a period of six months (Section 17 (1) (a)). Definite anti-dumping duties not exceeding the margin of dumping would be imposed within three months of the publication of the final findings (...).” Does this mean the investigation may be concluded, and anti-dumping duties adopted, 18 months after its beginning? Should a final finding be notified within the period of one year after the beginning of the investigation, does India believe that it is necessary to demonstrate that special circumstances prevail? Are these terms consistent with article 5.10 of the Anti-Dumping Agreement and article 11.11 of the Agreement on Subsidies and Countervailing Measures, which establishes that “investigations shall, except in special circumstances, be concluded within one year, and in no case more than 18 months, after their initiation”?

As per article 5.10 of the Anti-Dumping Agreement and article 11.11 of the Agreement on Subsidies and Countervailing Measures, “investigations shall, except in special circumstances, be concluded within one year, and in no case more than 18 months, after their initiation.”

As per the legislation and practice in India the investigations are to be conducted and completed by the Designated Authority within a period of one year from the date of initiation of investigation and this period may be extended for a period of 6 months by the Central Government. However, after issue of final findings the Central Government may impose definitive duty within 3 months from the date of publication of final findings. Central Government does not conduct any investigation and this period of 3 months is not to be counted as a part of investigation period.

Q.179 India has frequently taken resort to anti-dumping measures. Since 1995, it has started 250 such actions, and those measures effectively adopted have increased from 19 to 131, in the period of 1997 to 2000, as stated in the Report by the Secretariat, page 41. Does this mean the Indian market is particularly prone to dumping practices by foreign exporters? Should the answer be in the affirmative, what are the reasons for that? Has any of the anti-dumping measures adopted been halted after a revision?

Please reply to question no. 73.

Q.180 According to para. 45 of the Report by the Secretariat, India has adopted safeguards against eight products. Is it the intention of the Indian government to extend the measures adopted in 1998?

Presently safeguard measures on imports of three products viz. phenol, acetone and gamma ferric oxide are in force in India. The safeguard measures adopted in 1998 have lapsed.

Trade Policies by Sector

Services

Software

Q.181 India has partially made specific commitments on market access and national treatment for computer and related services. In India's view, does the W/120 and CPC classification scheme cover all kinds of software (i.e., customized and packaged)? If not, what does it cover?

Software implementation services relating to Customized and Packaged Software are covered under W/120 read with CPC 842.

Electronic Commerce

Q.182 The classification of "digital products" as goods or services and, consequently, the definition of what rules apply to the international trade in those contents (GATT or GATS), has been the main focus of the debate on the cross-cutting issues of the WTO Work Programme on Electronic Commerce. What is India's position on this issue?

The issue of classification of 'digital products' as goods or services is a complex one, and the WTO membership including India is still deliberating it.

COLOMBIA

Q.183 Regarding the taxes levied on imports, our government has interest in the implementation by India of a single central excise duty rate of 16% and of an additional duty at the same rate for some products. The report mentions the existence of other taxes, such as the Special Additional Duty (SAD) of 4%. The government of Colombia would greatly appreciate further information about how and when the India's authorities will simplify the additional and special additional duties to eliminate the complexity of the excise tax structure.

Please see reply to Question 94 and Question 161.

Q.184 The Secretariat's report indicates that there have been difficulties in the administration of tariffs, given the number of "exemptions" which are targeted at particular industries or end users. Has the Indian government devised any plans towards clarifying the administration of these exemptions in the tariff regime?

Please see reply to question no. 92.

Q.185 Whereas Colombia's private sector is interested to export audiovisual services to new markets, we would like to know with which countries India has signed Co-production Agreements. Is India interested in signing new agreements of this type? If it is so, which are the requirements to subscribe these agreements?

India has taken MFN exemption under Audio-visual services sector for co-production agreements, which is applicable to all countries. So far India has co-production agreement only with France which was signed in 1985. India would be interested in signing agreements of this type. The broad requirements for these agreements are as follows:

- (a) Since the entertainment industry in India is largely in private hands, the Government would act as a facilitator without interfering in the actual implementation of the agreement, which will be between the private producer in India and the co-production partner in the other country.*
- (b) The country interested in entering into co-production agreement with India may start the process by providing to Ministry of Information Broadcasting the status paper on the entertainment industry in that country. Thereafter, draft agreements may be exchanged and discussed.*

URUGUAY

Report by the Secretariat (WT/TPR/S/100)

II. SUMMARY OBSERVATIONS, TRADE AND TRADE-RELATED REFORMS, PARA. 10

Q.186 Para. 10 states that "as a result of additional bindings taken by India in the WTO, the share of tariff lines that are bound has increased since the previous Review, from 67% to 72%; new bindings were made primarily in textiles and clothing; India also renegotiated bindings in some agricultural items".

- (i) Uruguay has special export interest in products such as leather, wool tops and wines, among others. Regarding wool tops: 1) Uruguay would like to know if India could provide some information about the possibility to reduce the current bound and applied tariff for this product.

The details are given below:

- | | | | |
|----|--------------------------------------|---------------------|--------------------------------------|
| 1. | <i>Hides (4101; 4102; 4103) -</i> | <i>Applied Free</i> | <i>Bound 25%</i> |
| 2. | <i>Wool tops (510521 & 29) -</i> | <i>Applied 20%</i> | <i>Bound 40%</i> |
| 3. | <i>Wines (2204)</i> | <i>Applied 100%</i> | <i>Bound 182% (Final bound 150%)</i> |

As for reduction in respect of bound tariffs, this is an issue for the ongoing negotiations.

- (ii) Uruguay would very much appreciate if India could also provide information about the application of the additional duty (Ads) of 16% and the special additional duty (SAD) of 4% imposed on imports of this product?

Please refer to reply to Q.94, Q.142 and Q.161.

UNITED STATES – Part I

Customs Procedures

Rules of Origin

Q.187 Please confirm our understanding that imported merchandise must be labeled with the country of origin. We also note that India has notified to the WTO that it does not have non-preferential rules of origin.

- (i) If India does not have non-preferential rules of origin, how does India determine the validity of labels indicating a particular origin of imported manufactured products?
- (ii) How does India ensure that the implementation of its origin labeling regime without rules of origin does not discriminate between WTO Members, since there is no way for traders to what would be the basis for the origin determinations under India's labeling requirement applicable to imported goods (e.g., whether a particular origin label was mis-leading or fraudulent)?
- (iii) What is the method by which India meets its obligations under the WTO Agreement on Rules of Origin for issuing assessments of origin under its labeling regime, within 150 days of requests by exporters and importers, as provided under Article 2(d) of the Agreement on Rules of Origin.
- (iv) What is the method by which India meets its obligations under the WTO Agreement on Rules of Origin for providing traders the ability to appeal determinations made by the government of India under the origin labeling regime applicable to imported goods?

As of now, India does not have non-preferential rules of origin. India is however looking forward to an early finalization of the Non-Preferential Rules of Origin which is currently being negotiated in the CRO of WTO.

In case of certain products, such as food and textiles, the name and address of the manufacturer are required to be stipulated on the label of the imported product. Mis-declaration and/or fraudulent declarations are dealt with in accordance with normal customs enforcement practices across WTO Members.

Notifications on India's trade remedy measures make reference to goods "originating in, or exported from" certain countries. Examples of such articulation include notification 55-2002 (22 May 2002), pertaining to "the matter of lead acid batteries falling under heading No.85.07 of the First Schedule to the Customs tariff Act, 1976, originating in, or exported from, Taiwan, Singapore and Hong Kong" (underscore added). Another example is notification 53-2002 (21 May 2002), pertaining to "the matter of import of Vitamin AD3 500/100 falling under Chapter 23 or 29 of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975), originating in, or exported from, the European Union and Singapore" (underscore added).

Q.188 Noting that India has notified to the WTO that it does not have non-preferential rules of origin, how does India determine if a good is "originating" in a country of export? If a good is determined not to be originating in the country of export, how does it determine the country of origin for such a good?

Q.189 What is the method by which a trader can obtain a determination of whether a product imported into India is determined to be 'originating in, or exported from' a particular country?

Whenever anti-dumping duties are imposed on the basis of the phrase 'originating in or exporting from' a particular country, then anti-dumping duties are leviable on all goods exported from a country irrespective of their origin except in case of mere transshipment. The investigating authorities, as a part of the investigation process, also request the exporters that in the event they are not producing the goods themselves, they should pass on the exporters' questionnaire to the producers of the goods under investigation.

The dutiability of the goods subject to anti-dumping duties is determined on the basis of evidence prescribed before the authorities at the time of clearance of goods. Generally, the 'Certificate of Origin' by the authorities of the exporting countries is considered to be a valid and satisfactory documentary evidence.

For Q.188 and Q.189: India does not presently have non-preferential rules of origin. Presently importers declare the country of origin and the country of export on the goods declaration as well as produce a country of origin certificate from the authorised agencies in the country of export/origin. Normally such declarations and certificates are accepted. In case of doubt, references are made for verification to the authorities issuing such certificates. However, such cases of referral are very few.

Customs Valuation

Q.190 On 7 September 2001, India announced a change in its methodology for conducting customs valuation, allowing customs officers the discretion to arbitrarily reject a transaction value on imported goods if the price is judged to be too low. As stated – according to press reports – by the Confederation of Indian Industries, these amendments appear to "contravene the basic concept of valuation under GATT." Specifically, the amendments appear to place additional conditions on acceptability of a declared transaction value, including the condition that "the sale does not involve any abnormal discount or reduction from the ordinary competitive price."

- (i) How does India justify the introduction of a customs valuation methodology for determining 'transaction value' that is inconsistent with Article 1 of the WTO Agreement on Customs Valuation?

No doubt, the 'transaction value' will be the primary method of valuation in India. However, for tackling the problem of under valuation, the decision taken by Ministers at the Marrakesh meeting in April 1994 to deal with the issue of under valuation ('Decision regarding cases where Customs administration have reasons to doubt the truth or accuracy of the declared value' taken by the WTO Committee on Customs Valuation at its first meeting held on 12 May 1995 pursuant to the Marrakesh decision) provides for rejection of transaction value in doubtful cases.

The amendments made in the rules bring out in much clearer terms, the situations in which a custom officer can reject a declared transaction value. There is no unfettered discretion available to the custom officers to reject a transaction value. Therefore, the amended provisions are in conformity with the provisions of Article VII of the GATT and Agreement on Implementation of Article VII of GATT 1994.

- (ii) What is the specific criteria under which a customs officer in India will determine whether a declared transaction value is a 'reduction from the ordinary competitive price'?

- (iii) Is the 'ordinary competitive price' a reference to the India market, or the competitive market of the exporting country?
- (iv) If the 'competitive price' refers to the Indian market, how is such a calculation relevant to making a determination of the transaction value – which is defined in the Agreement on Customs Valuation as "price actually paid or payable when sold for export to the country of importation"?
- (v) If the 'competitive price' refers to sales in the exporting country, how do Indian customs officials make such a determination?

For (ii), (iii), (iv)& (v): The 'ordinary competitive price' refers to the international or export price in the country of export at or about the same time as the goods being valued, taking due account of demonstrated differences in commercial levels, quantity levels and other elements set out in the Agreement on Implementation of Article VII of the GATT 1994. Published price lists of international repute, made available to the Directorate of Customs Valuation, are also used for this purpose. The selling price in the country of importation, that is in the Indian market, of goods produced in such country is not used to determine customs value.

- (vi) Please confirm that India continues the use of minimum import prices for customs valuation purposes on certain steel products, and please identify those products to which such a regime is applicable. Please identify any other products that such a regime is applicable to.

India does not use minimum import prices for customs valuation purposes on steel products. This is without prejudice to our well known position on the right of use of minimum value by India for customs valuation purposes.

Market Access

Q.191 Para 16 - S/100 notes that India has committed to eliminate duties on 163 tariff lines at the 6-digit level by the end of 2004. Will those duties be phased down over the next two and one half years or will India eliminate all of the affected duties at the end of 2004?

The 163 tariff lines mentioned in para. 16 refer to India's commitments under the Information Technology Agreement. These are being phased out as per the schedule agreed to by ITA Participants.

Q.192 Para 21 - S/100 notes that India's Finance Minister stated that by 2004/2005 India would have two standard rates of tariff, 10% and 20%. What does "standard rates" mean in this context?

The relevant extract of the Finance Minister's statement from the budget speech for 2002-03 is reproduced below :

"The House may recall that, in my last budget, I had announced that I would move progressively to reduce the peak rate of customs duty to 20% within three years. I had also said that the modalities for this would be worked out in time for the next budget. I had accordingly set up an Inter-Ministerial Working Group to recommend the modalities. The Group has suggested a road map for this starting with this year's budget. After careful consideration of the Group's report, I have decided that, by the year 2004-2005, there would be only two basic rates of customs duties, namely 10% covering generally raw materials, intermediates and components and 20% covering generally final products. The existing rates would be adjusted and subsumed in these two basic rates with some exceptions on

account of WTO bindings or higher tariffs for agricultural products. In accordance with the road map I propose to reduce the peak rate from 35% to 30% this year."

Q.193 Will all duties be at one or the other of these rates or will these merely be the most common rates in the schedule, with numerous items assessed duties higher than 20%?

Please see reply to question no. 192.

Q.194 III.(iv) Tariff Exemptions, Para 25 - We note that 415 entries for tariff exemptions are proposed for 2002/03. S/100 states that these exemptions are made for various reasons but that their use increases the complexity of the tariff, reduces transparency and contributes to inefficiency of the customs service.

(i) Is the proposed move to two "standard" rates of duty designed to significantly reduce the complexity of the tariff exemptions as well as the tariff itself?

Please see reply to 192.

(ii) Please indicate the textile and apparel tariff lines that are exempted.

The Schedules incorporating the MOUs signed with the US and the EU may kindly be referred to. The exemption on Textiles and Clothing items is available at <http://www.cbec.gov.in/cae/customs/cs-act/notifications/notfns-2k2/cs21-2k2.htm>

(iii) What are the criteria for granting exemptions?

The criteria used to set tariffs take into account a number of parameters including inter alia, bindings, the need for a phased duty reduction as part of the process of fiscal reform, the level of protection needed by domestic industry from time to time etc. While an annual comprehensive review is undertaken at the time of the presentation of the Union Budget, reviews are also undertaken at other times depending on the national and international scenario with respect to a particular commodity/sector.

(iv) How do importers locate notifications pertaining to published tariff exemptions?

Generally speaking, barring exemptions notifications relating to commitments under international agreements (bilateral, regional and multilateral) or export promotion schemes, all other exemptions have been consolidated into a single notification. The entries in this notification have been arranged serially, in ascending order of Chapter and within a Chapter, in ascending order of heading /sub-heading. The concessional rate of duty and the conditions, if any, governing the exemption are indicated in the notification itself. This ensures simplicity and transparency. All notifications are available at <http://www.cbec.gov.in/cae/customs/cs-notfns-main.htm>

Q.195 Will India simplify its tariff system, making it more transparent and lowering tariff bindings to eliminate uncertainty for importers and foreign exporters?

Please see answers to Q.5, Q.72 & Q.192.

Q.196 Tariff quotas (para 28) - India's administrative procedures for tariff rate quotas (TRQs) in agriculture are not clear. Could India please provide an explanation of the administration of its TRQ regime for agriculture? For example, how are shares allocated for specific agricultural TRQs? Are

there differences in allocation procedures depending on the product? What are the fill rates of these TRQs?

India is administering Tariff Rate Quota for Skimmed and Whole milk powder, Milk food for babies, maize(corn), Rape, colza or mustard oil, other (refined), sunflower seed or safflower oil or fractions thereof (crude). Applications for allocation of TRQ are invited by DGFT by way of public notice. This public notice also clearly prescribes the procedure for making the application. Application pro-forma, date of making the application, authority to whom the application is to be made etc. are also given clearly in this public notice. Applications so received are considered by Export Import Facilitation Committee, which is an Inter-Ministerial committee chaired by DGFT. The composition of this Committee is also given in this public notice. The procedures adopted for receiving and consideration of application of TRQ are the same for all products.

Section vii, Additional and Special Additional Duties, Paras 31 and 32

Q.197 We understand India has a complex system of central excise duties.

- (i) The current system, which includes multiple schedules of additional duties, is very confusing making it difficult to project which taxes will be levied. If it is also difficult to ascertain whether the identical duty is also applied to domestic goods on the same basis. Please explain.

Additional duties are levied on imported goods at the same rates as applicable to domestic goods. It is incorrect to state that there are multiple schedules. There is only one schedule for CENVAT, one for the special duty of excise and one schedule for the special additional duty, which is in lieu of a number of local levies. Additional duties of excise on goods of special importance and textile and textile articles are levied on some items only and the respective schedules with respect to these items need to be referred to only in those cases.

- (ii) American textiles industry has found that additional and special additional duties increase the cost of imports between 35 and 55 percent. Do domestic goods also incur a commensurable cost?

Additional and special additional duties, are meant to neutralize similar duties levied on domestic goods.

Please see answer to Q.94 also.

Q.198 III.(vii) Additional and Special Additional Duties, Para 32 - S/100 states that a special additional duty of 4% is assessed on most imports to tax imports "similarly" to state sales taxes. Are imported goods otherwise not subject to state sales taxes? How are state sales taxes assessed that results in the exemption of imported goods from such taxes? Usually sales taxes are assessed on the final sale of a good to its consumer or user. Is this not the case with Indian state sales taxes? By what process do the states collect sales taxes on domestic goods and allow imported goods to avoid the sales tax?

Under the Constitution of India, State Governments cannot impose sales tax on imports. Under the Central Sales Tax Act, 1956, imports and exports have been defined in such a manner that a privity of contract needs to be established between the seller and buyer. This means that if it can be proved that a sale has been executed for the purpose of import or export or a sale has been executed in the course of imports and exports, then sales tax cannot be levied by State Governments. The Supreme Court of

India has prescribed stringent guidelines on this issue. Under the existing laws, sales tax can be assessed on first point of sale or on the last point of sale. Taxes on domestic goods are levied and collected by the State Government through prescribed authorities and different goods are taxed at prescribed rates under the Uniform Floor Rates regime, which has been agreed to by all the State Governments. Please also refer to answer to Q.94.

- (i) Since India is moving toward a single central excise duty of 16 percent, does this mean it will be eliminating other additional duties, such as the Goods of Special Importance Tax, Cess taxes and Textile and Textiles Articles taxes?

No. The movement towards a single uniform rate of 16% applies only to the duties leviable under the First (Basic excise duty) and Second Schedule (Special excise duty) to the Central Excise Tariff Act. The additional duties are levied under various other enactments and the rationale underlying each of these levies is different. The former is levied in lieu of sales tax on fabrics. There is no sales tax on goods covered by the Additional Duties of Excise (Goods of Special Importance) Act. Concomitantly there is also no special additional duty on these goods when imported. Cesses are levied on goods like crude oil, coal etc in order to generate funds for the development of this sector. Since all these duties are not excise duties, they do not come under the purview of the single rate of excise duty.

Please also see reply to Question 94.

Q.199 (III) Trade Policies Regime: Framework and Objectives (3) Foreign Investment Regime (para. 34)

- (i) As stated in this section, various tax and non-tax incentives are available to foreign investors. Please explain what type of tax and non-tax incentives are provided, what is the eligibility criteria, and are these incentives limited to specific sectors (if so, which ones)?
- (ii) Are the investment incentives available equally in all regions or areas of India? Or are some investment incentives available only to specific regions? If so, what are these regions?
- (iii) Also, the report notes that the incentives "appear" to be offered to domestic and foreign investor. Could India please clarify if the same or similar incentives are being offered to both domestic and foreign investors?

General/sector or region specific tax and non-tax incentives apply to both domestic and foreign investors without any discrimination provided the foreign investment is in the form of an incorporated entity in India. In other words, all companies incorporated in India are entitled to avail themselves of such incentives subject to fulfilment of the eligibility criteria as laid down under the relevant scheme.

There are various types of tax and non-tax incentives, some of which are sector specific such as tax holiday for infrastructure projects, tax holiday under software technology parks scheme and some others are region/ zone specific such as tax concession for investment in backward areas, tax and other incentives for SEZ units, transport subsidy scheme for hilly regions, etc. the eligibility criteria and nature of incentives are specified in the relevant schemes.

Q.200 (III) Trade Policies and Practices by Measure (2) Measures Directly Affecting Imports (viii) Import Prohibitions, Restrictions, and Licensing (para. 36)

- (i) India's import restrictions on imported used automobiles have caused "more stringent (i.e. prohibitive) standards that are applied to imported used cars...than to domestic used cars of the same age." What measures are being taken to rectify this situation?

DGFT has prescribed certain regulations on the import of new and second hand or used vehicles on 31.03.2001, in order to ensure consumer protection, road safety and pollution control. These conditions have been imposed for complying with the provisions of the Central Motor Vehicles Act, 1988 and the Rules made there under, which are equally applicable on domestically produced vehicles. The condition of used/second hand vehicles more than 3 years old not being allowed for import has been imposed because of non-availability of spare parts and lack of service chain for these old vehicles, which would jeopardize consumer protection and road safety.

- (ix) Minimum import prices

Q.201 Para 38: When will India dismantle its minimum import price regime for certain steel products?

By Ministry of Commerce (DGFT) Notification No. 34 (RE-98) dated 10.12.1998, minimum c.i.f. value/ floor prices were fixed on import of seconds and defectives of certain iron/steel items. Vide Notification No. 35 (RE-98) dated 11.12.1998, similarly, floor prices were fixed on import of prime items. However, Government of India decided to remove minimum floor price restriction on import of prime steel items and accordingly, vide Notification No. 31 dated 1.11.99, price restrictions on prime items were withdrawn with effect from 1.1.2000.

But this withdrawal notification has been challenged before Hon'ble High Court of Kolkata and the matter is sub judice.

Section xii, Standards, Testing and Certification, c) Labelling and Marking, Para. 55

Q.202 We understand India recently notified requirements for all packaged products subject to the provisions of the Standards Weights and Measures Rules, 1977, when produced, packed or sold in India.

- (i) Why does India require the maximum retail sales price on packaged goods?

Import of all packaged commodities has been made subject to compliance of all the conditions of the Standards of Weights and Measures (Packaged Commodity) Order, 1977, as applicable on the domestic producers. In India, the domestic industry is subject to the provisions of Standards of Weights and Measures Act, 1976 regarding packaging of the product. As per Section 39 of the Standards of Weights and Measures Act, 1976, domestic manufacturers, packers, sellers, distributors etc. have to adhere to the requirement of declaring the unit sale price of a commodity in a package and the sale price of a package which shall also bear thereon the name of the manufacturer and also of the packer or distributor. Accordingly, the said requirement under question being applicable on domestic packaged goods has been extended as per national treatment to imported goods as well. MRP is crucial information from the point of view of consumer interest.

- (ii) The U.S. textile industry has raised concerns regarding the marking and labeling requirements for textile and apparel products imported into India. The USG has been unable to obtain an official copy of India's textile and apparel labeling and marking requirements. Could you provide a copy of the requirements currently applied to imported, as well as to domestic

textile and apparel products? Also, are these labeling and marking requirements available to the public?

- (iii) There has been no WTO notification of these measures. Would India please clarify the new labeling procedures and the scope and purpose of their application?

Certain textile products irrespective of whether these have been manufactured indigenously or imported are required to contain all the statutory markings as envisaged vide Clause 3 (e) of the Textiles (Consumer Protection) Regulations, 1988. The main objective behind prescribing the marking regulations is to ensure that the consumer has the information regarding specifications of cloth/material, which he is intending to purchase. The Regulations do not discriminate against imported products vis-a-vis indigenous products.

These Regulations are notified in the official Gazette of India and are freely available to the public. A copy of the Textiles (Consumer Protection) Regulations, 1988, is being provided to the US delegation. It is also available on the website of the office of the Textile Commissioner, Government of India at <http://ermiul1.bom.nic.in>

Subsidies

Q.203 With respect to the programs/incentives identified below, we remind India that under Article 25 of the Agreement on Subsidies and Countervailing Measures, all Members to the WTO have agreed to notify all subsidy programs meeting the definition of a subsidy, as provided in the Agreement, to the WTO Committee on Subsidies and Countervailing Measures. The notification should be specific enough to enable other Members to evaluate the trade effects and to understand the subsidy program. Members shall ensure that the notification contain the following information:

- (i) form of the subsidy (grant, loan, tax)
 - (ii) subsidy per unit or total amount or annual budgeted for that year
 - (iii) purpose of the subsidy
 - (iv) duration of the subsidy
 - (v) statistical data providing assessment of the trade effects of the subsidy.
- (i) Please indicate whether these, or any of India's other subsidy programs have been duly notified.
 - (ii) If not, please indicate whether India plans on notifying these and any other subsidy programs to the Committee.

India has vide Notification No. G/SCM/N/71/IND notified certain benefits availed of by its exporters under Sections 10A, 10B and 80 HHC of the Income Tax Act 1961.

(III) Trade Policies and Practices by Measure (2) Measures Directly Affecting Imports (xi) Contingency Measures (para. 45)

Q.204 When does India plan to notify the imposition of safeguard duties for methylene chloride to the WTO?

India has already notified to the WTO the final findings of DG(Safeguards) in respect of safeguard action on imports of Methylene Chloride. The Government has not yet taken a decision for implementing the recommendations of DG(Safeguards) in this case. If a decision is taken to impose a safeguard measure this would be notified to the WTO immediately.

**(III) Trade Policies and Practices by Measure (2) Measures Directly Affecting Imports
(xvi) State-Trading (para. 63)**

Q.205 It is noted that India does not maintain any direct subsidies. However, the State-trading companies offer domestic subsidization for fertilizers and petroleum products. Can you please clarify what type of subsidization is being provided?

Q.206 What measures are being taken to notify these subsidies under state-trading companies?

Answers to Q.205 & 206: The role of State Trading Enterprises in respect of fertilizers has been given in document No.G/STQ/N/7/IND dated 8 October 2001.

**(III) Trade Policies and Practices by Measure (3) Measures Directly Affecting Exports
(iv) Minimum Export Prices (para. 72)**

Q.207 Under India's Export-Import policy, are the minimum export prices equal to or lower than the domestic prices for similar or "like" products?

Under Export and Import Policy the Minimum Export Price (MEP) requirement is not applicable on any export product. In the ITC(HS) Classification of Export and Import Items 2002-2007, announced on 31.03.2002, in the Export Policy no MEP requirement is applicable on export of any product. India was maintaining MEP on export of stone boulders and coir products, however, the same have been discontinued. The export of onion is permitted through State Trading Enterprise. ITC(HS) Classification of Export and Import Items 2002-2007 does not prescribe any MEP on export of onion also. However, STEs prescribe MEP on export of onion.

Q.208 Are onions the only product subject to minimum export prices?

The export of onion is permitted through State Trading Enterprise. ITC(HS) Classifications of Export and Import Items 2002-2007 does not prescribe any MEP on export of onion also. However, STEs prescribe MEP on export of onion.

**(III) Trade Policies and Practices by Measure (3) Measures Directly Affecting Exports
(viii) Duty and Tax Concessions (General)**

Q.209 Please explain whether the duty drawback program is operated in accordance with Annex II of the SCM Agreement.

In India's view the duty drawback programme is operated in accordance with Annex II of the Subsidies Agreement as there is a system in place to confirm which inputs are consumed in the production of the exported product and in what amounts. Furthermore the actual incidence of duty are verified on the basis of relevant records of the manufacturers and the duty documents.

**(III) Trade Policies and Practices by Measure (3) Measures Directly Affecting Exports
(viii) Duty and Tax Concessions (para. 81)**

Q.210 Under India's duty drawback scheme, the refund rates vary depending on whether the goods are being exported "without being used" or "exported after use". Please explain how, in India's view, this is consistent with Annex II of the SCM Agreement?

Q.211 Could India please explain what qualifies as a good being exported "without being used" versus goods being exported "after use".

Answers to Q.210 and 211: Under Section 74 of the Customs Act, when any goods capable of being easily identifiable which has been imported into India and upon which any duty has been paid on importation are exported out of India, the Central Government by virtue of Notification 19-CUS dated 6.2.1965, as amended up to date pays drawback at the specified rate. These are the rates at which drawback of import duty is allowed in respect of goods used after their importation. In addition, Section 74 of the Customs Act 1962, also permits drawback of 98% of customs duty in respect of any imported goods which are entered for export by post under Section 65 of the Customs Act and the proper officer makes an order permitting clearance of the goods for exportation.

**(III) Trade Policies and Practices by Measure (3) Measures Directly Affecting Exports
(viii) Duty and Tax Concessions (Table III.7)**

Q.212 Please provide an explanation of the eligibility criteria and who receives the benefits under the Brand Rate Fixation.

Q.213 Could India please explain what the differences are between the Duty Drawback Scheme and the Brand Rate Fixation Scheme?

Answers for Q.212 and 213:

Fixation of All Industry Rate of Drawback

The drawback division annually fixes and notifies the all industry rates of duty drawback within 90 days of the announcement of the Union Budget for providing input stage duty relief of the duties of Customs and Central Excise in respect of more than 800 export products. These rates are formulated after taking into account inputs used in the export product, quantity of inputs consumed in export product and incidence of duty on these inputs, verified on the basis of relevant records of the manufacturer users and the duty documents.

Fixation of Brand Rates of Duty Drawback

Brand Rates are fixed for those products for which no rate has been fixed or All industry rate provided is considered inadequate by the exporter as they have incurred higher duty incidence on the inputs used in the manufacture of export products.

Brand Rate of duty drawback is determined on the actual input utilization basis depending on the data furnished by an exporter manufacturer, which is subject to verification. These rates are determined on a case to case basis and can be considered to be exporter specific. Since the duty drawback is based on the actual utilization data provided by the exporter and as this data is subject to verification the scheme is in accordance with the requirement.

**(III) Trade Policies and Practices by Measure (3) Measures Directly Affecting Exports
(x) Free-Trade Zones (Para. 87-91)**

Q.214 Can you please provide further details with regards to specific tax exemptions or incentives that companies receive if they locate in the free zones (EPZ's), export oriented units (EOU's), or special economic zones (SEZ's)?

Export Processing Zones and Export Oriented Units are entitled for tax exemption up to 90% on export earnings for a block of 10 years on sliding scale up to 2010 under Section 10-A and 10-B of the Income Tax Act. SEZ units are entitled for 100% tax exemption on export earnings for five years and 50% tax exemption for subsequent two years under Section 10-A of the Income Tax Act.

Vide Finance Act, 2002-2003, an amendment has been made in Central Sales Tax Act, 1958 by which sales from Domestic Tariff Area (DTA) to EPZs/EOUs are exempt from sales tax.

Q.215 Are there any special employee benefits offered to companies which locate in the free zones (EPZ's), export oriented units (EOU's) or special economic zones (SEZ's) such as reduction or financing of employee training etc?

Q.216 If there are benefits that are paid to the company for employment or employee purposes, are those benefits the same for both small-and-medium size companies as well as larger companies?

Q.217 Are any of the incentives provided to companies located in EPZ or EOU's contingent upon the use of locally produced goods?

Answers to Qs.215, 216 and 217: No such benefits are being given.

Q.218 Are all enterprises from all sectors eligible to receive benefits under the EPZ's, EOU's and SEZ's?

Yes

Q.219 Other than the incentives listed in Table III.8, can India please state what the "more attractive incentives than those accorded to the EPZ's"?

Incentives listed in Table III.8 are comprehensive.

Q.220 Could India please provide further details on the process of an EPZ converting into a SEZ?

Existing Export Processing Zones are converted into Special Economic Zone in consultation with the zone enterprises already located in the Zone. On conversion, all the units are governed by the policy applicable to units in Special Economic Zones. The existing EPZ units not desiring to opt for SEZ scheme can either convert into an Export Oriented Unit or debond. In both the cases, the unit shall physically move out of the SEZ.

**(III) Trade Policies and Practices by Measure (4) Measures Affecting Production and Trade
(i) Industrial policy (b) Small scale industries (SSI)**

Q.221 Please provide information on when additional items will be de-reserved from the SSI list. Are there plans to remove additional items beyond those identified in the 2002 Ministry of Finance Budget?

Government of India has dereserved 51 items on 20/5/2002 and changed the nomenclature of 2 items. The issue of reservation/de-reservation of items for exclusive manufacture in the small scale sector is a continuous process and is reviewed continuously by the Advisory Committee constituted under the Industries Development and Regulation Act, 1951. In addition, the Ministry of Small Scale Industries also consults various stakeholders before taking any decision for dereservation of items.

Q.222 Please provide clarification whether public sector purchasing preferences such as non-mandatory government purchase (for 356 items) and price preferences (up to 15%) constitute import substitution subsidies as defined under Article 3.1(b) of the Subsidies Agreement.

The purchasing preference is granted for governmental purchases and is a part of the government procurement system. Preferences to domestic supplies and suppliers for governmental procurement is out side the ambit of the WTO regime. In India, as mentioned in the question, such preferences are non-mandatory, i.e., it is up to the procuring entity to provide the preference or otherwise.

**(III) Trade Policies and Practices by Measure (4) Measures Affecting Production and Trade
(ii) Tax measures and other incentives/subsidies (b) Other incentives/subsidies
(Paras 130 and 148)**

Q.223 Could India please provide information concerning the provision of subsidies (such as the Retention Price and Subsidy Scheme) with respect to the production, importation, sale and/or distribution of Diammonium Phosphate (DAP) fertilizer? Specifically, please provide information on the following:

- (i) Background, authority, form of subsidies, and policy objective or purpose, including a copy of the implementing legislation;
- (ii) Procedures for determining the subsidy payments for both domestically-produced DAP and imported DAP and the actual subsidy payments made for both categories in each of the past three years;
- (iii) An explanation of why the subsidy payments differ between domestically-produced DAP and imported DAP and why the size of the difference has increased over time.
- (iv) The subsidy payments per unit for both domestically-produced DAP and imported DAP or, if this is not possible, the total annual amount budgeted for the subsidy for domestically-produced DAP and imported DAP, and;

Please refer to answer to Q.226

Q.224 Statistical data permitting an assessment of the trade effects of the subsidy program, including Indian import levels of DAP during each of the past three years.

Please refer to answer to Q.226.

Q.225 In addition, please provide information concerning the recipient of benefits under this program with respect to the production, importation, sale or distribution of DAP.

Please refer to answer to Q.226.

Q.226 Finally, please confirm whether the Retention Price Subsidy scheme has been notified to the Subsidies Committee in accordance with Article 25 of the Agreement on Subsidies and

Countervailing Measures. If this assistance program has not yet been notified, please indicate when it will be notified.

Answers for Q.223 to 226:

- (a) There is no retention price cum subsidy scheme for DAP and complex fertilizers. However, there is an arrangement for sale of DAP and other complex fertilizers to the farmers on the principle of affordable cost to them, as majority of the farmers are resource poor. There is a Scheme of Concession for DAP which primarily takes into account the variable cost on account of feed-stock etc. There is also an arrangement to extend concession on imported DAP which is basically to sell the fertilizers at the uniform price to farmers through the country.*
- (b) The Maximum Retail price for DAP and complex fertilizers are generally announced by the Ministry of Finance in the Annual Budget after consultation with the Department of Agriculture & Cooperation, Agriculture Prices Commission and other farmer bodies.*
- (c) The Concession differs between indigenous DAP and imported DAP to ensure uniform price to the farmers through out India on account of reasons given at (a) above.*
- (d) There is no unit-wise or importer-wise subsidy payment recognized under the Concession Scheme. During 1998-99 around US\$ 773 million was benefited by the farmers under the concession scheme through the marketing mechanism.*

Over 90% of the land holding in the country are with the small, marginal and semi-medium formers who do not have adequate resources. The usage of N.P.K. fertilizer in soil is also not balanced. In order to make the DAP and complex fertilizers available at an affordable price for both indigenous and imported fertilizers, the uniform price is determined by the Government.

The recipient of benefit under this programme with respect to sale and distribution of DAP are the farmers and most of them are resource poor.

The scheme on concessions for DAP fertilizers has not been notified to the Subsidies Committee. Full information is being obtained from the relevant authorities within the Government.

(III) Trade Policies and Practices by Measure (4) Measures Affecting Production and Trade
(iii) State-owned enterprises

Q.227 Please provide a definition of “strategic investor” as it relates to the Government of India’s disinvestment strategy and list any restrictions related to who may participate in the privatization process under these new requirements.

The term “Strategic Investor” refers to the investor who is the purchaser (also referred as Strategic Partner) of the block of shares sold by government in the case of strategic sale of a Public Sector Undertaking (PSU). In the strategic sale of a PSU, the transaction has two elements:

- Transfer of a block of shares to a Strategic Partner and*
- Transfer of management control to the Strategic partner*

There are no restrictions on who may participate in the disinvestment process except certain eligibility criteria to ensure that only such investors come in who have the capability to take over the management and enhance enterprise value post sale.

The eligibility criteria are in the form of minimum networth / turnover criteria that the bidder must satisfy, for qualification. Certain other criteria to ensure the clean track record of bidders is enshrined in the guidelines for qualification of Strategic Investor Bidders seeking to acquire stakes in Public Sector Enterprises through the process of disinvestment. There is absolute level playing field vis-à-vis foreign and domestic bidders.

Q.228 Please indicate whether the steel industry is considered a “strategic” public sector enterprise (related to defense, railways, or atomic energy). Please provide details on whether a decision has been made about whether to disinvest from the steel industry and any available information on a time line for the privatization of any state owned steel companies.

Steel is considered to be one of the high priority sectors but the industry is not reserved for the public sector. Since the announcement of the new industrial policy in 1991 the iron & steel industry has not only been removed from the list of industries reserved for the public sector but also exempted from the provisions of compulsory licensing under Industries (Development & Regulation) Act, 1951. Further with effect from 24.5.92 iron and steel industry has been included in the list of "high priority" industries for automatic approval for foreign equity investment up to 51% which has since been subsequently raised to 74%. Steel sector is not classified as "strategic" for purposes of disinvestment.

No final decision regarding disinvestment of steel units in the public sector has been taken so far and no time frame has been decided upon in this regard.

Section ii, Tax Measures and Other Incentives/Subsidies (a) Taxation and Tax Measures, para. 119, Central Taxes

India has announced that it is gradually moving towards replacing excise duties with a full-fledged value-added tax (VAT) on manufactured goods:

Q.229 When will anticipate the VAT will be fully implemented? Aren't some states trying to delay introduction of the VAT?

An Empowered Committee of State Finance Ministers has been constituted for deliberating upon all aspects of domestic trade tax reforms including implementation of VAT. The Committee has decided that all States will replace the present Sales Tax regime with the VAT regime with effect from 1.4.2003.

Q.230 Do you anticipate that the items previously exempt from the excise duties, now being charged between 4%-8%, will be charged at the full 16% rate? If so, when?

Yes. The 4% duty will be increased to 16% in four equal annual instalments.

Q.231 What 8 items are subject to a supplementary special duty rate of 16%?

These items are polyester filament yarn, motor cars, multi utility vehicles, tyres for replacement purposes, aerated soft drinks and soft drink concentrates, air conditioners, pan masala and chewing tobacco and miscellaneous tobacco preparations.

Q.232 How will you ensure that imports are not taxed twice?

Extant Laws are clear in this regard.

Section ii, Tax Measures and Other Incentives/Subsidies (a) Taxation and Tax Measures, para. 120, Central Taxes

Q.233 In an attempt to further broaden the indirect tax base, a tax on services was introduced. We understand that 41 services are subject to the tax.

Q.234 What 41 services are subject to the tax?

Answers for Q.233 & 234: The list of 41 services subject to tax are as below:

SERVICE TAX

S. No.	Taxable Services	Date of imposition	Remarks
1.	Telephone services	1.7.94	
2.	General Insurance Services	1.7.94	
3.	Stock broking services	1.7.94	
4.	Advertising Services	1.11.96	
5.	Courier services	1.11.96	
6.	Radio paging services	1.11.96	
7.	Customs House Agent Services	15.6.97	
8.	Steamer Agent Services	15.6.97	
9.	Air Travel Agent Services	1.7.97	
10.	Mandap Keeper Services	1.7.97	
11.	Clearing and Forwarding Agent Services	16.7.97	
12.	Rent A cap scheme Operator Services	16.7.97	
13.	Consulting Engineer Services	7.7.97	
14.	Man Power Recruitment Services	7.7.97	
15.	Tour Operator Services	1.9.97	
16.	Architect Services	16.10.98	
17.	Interior Decoration/Designer Services	16.10.98	
18.	Underwriter Services	16.10.98	
19.	Credit Rating Agency Services	16.10.98	
20.	Chartered Accountant Services	16.10.98	
21.	Cost Accountant Services	16.10.98	
22.	Company Secretary Services	16.10.98	
23.	Real Estate Agent/Consultant Services	16.10.98	
24.	Security/Detective Agency Services	16.10.98	
25.	Market Research Agency Services	16.10.98	
26.	Management consultant Services	16.10.98	
27.	Scientific and technical consultancy services	16.7.2001	
28.	Photography Service	16.7.2001	
29.	Convention Service	16.7.2001	
30.	Leased circuits	16.7.2001	
31.	Telegraph service	16.7.2001	
32.	Telex Service	16.7.2001	

S. No.	Taxable Services	Date of imposition	Remarks
33.	Facsimile Service	16.7.2001	
34.	On-line information and database access and/or retrieval services	16.7.2001	
35.	Video tape production services	16.7.2001	
36.	Sound recording services	16.7.2001	
37.	Broadcasting Service	16.7.2001	
38.	Insurance auxiliary services	16.7.2001	
39.	Specified Banking and other financial services	16.7.2001	
40.	Port services	16.7.2001	
41.	Authorized service station for servicing of motor car and two wheeled motor vehicle	16.7.2001	

Competition policy

Para 147

Q.235 What is the status of Competition Bill, 2000? When might passage be expected?

The Competition Bill is at present under consideration of the Parliament.

Intellectual Property (paras 153-194)

Q.236 The report indicated that new amendments to the Patent Act of 1970 have been introduced in Parliament. Please indicate the status of the amendments in the legislative process and the likely date of enactment.

The amendments to the Patents Act have been passed by both Houses of Parliament and is expected to be brought into force shortly after it receives the assent of the President and on finalization of the Subordinate Legislation. The work in this regard is going on.

Q.237 As you know we have concerns regarding the substantial backlog of patent applications in the Indian Patent Office. The report indicates that India is in the process of modernizing its patent office and increasing the number of patent examiners. Please provide detail on India's efforts to improve this situation.

Government has taken up modernization of Patent Offices. The project has several components including computerization of operations, re-engineering of work procedures, human resource development, infrastructural development, and clearance of backlog of pending applications. Two modernized offices in Delhi and Chennai were made operational in July and August, 2001 respectively while work is going on in Mumbai and Kolkata. Initial level computerization has already been completed; comprehensive computerization is being done by a specialized agency. The issue of clearance of backlog of pending patent applications is also being addressed through improved productivity and induction of additional examiners.

Q.238 According to the report, the Central Government may, in the public interest, decide that a compulsory license should be granted at any time. The Report also notes that compulsory licensing may also be applied in respect of exclusive marketing rights. Please describe in detail the situations in which such use can occur.

As per the amendments to the Patents Act recently passed by both the Houses of Parliament, the provisions relating to erstwhile Section 97 of the Patents Act have been modified. According to Section 92 of the modified provision, if the Central Government is satisfied, in respect of any patent in force, in circumstances of national emergency or in circumstances of extreme urgency or in place of public non-commercial use, that it is necessary that compulsory licences should be granted at any time after the sealing thereof to work the invention, it may make a declaration to that effect, by notification in the Official Gazette. Thereupon, the Controller shall on application grant a compulsory license in accordance with the provisions of Section 92. An elaborate procedure has been prescribed for this. Provisions for grant of compulsory license on patent with suitable modifications, shall also be applicable on EMR

Q.239 You indicated that trademark regulations have not been put in place yet. Please indicate the time-frame for enactment.

The Trade Marks Rules, 2002 have since been notified in the gazette of India and the Trade Marks Act, 1999 is expected to be brought into force shortly.

Q.240 The Reports notes the establishment of a Copyright Enforcement Advisory Council (CEAC) to address copyright piracy problems. Please describe in detail the current and proposed actions taken by the CEAC. Has the CEAC drafted an action plan to tackle the piracy issues? Are counterfeiting problems also addressed by this Council?

Following the suggestions of the CEAC, State Governments have designated nodal officers to facilitate proper coordination between copyright industry organizations and the enforcement agencies. Copyright infringement is a criminal offence. The prime responsibility to nab the culprits rests with the Police. Copyright enforcement cells or special cells in the Crime Branch have been set up at Police Headquarters in the States/Union Territories to exclusively monitor copyright infringement cases. Government, in cooperation with copyright organizations and educational institutions regularly organizes seminars and workshops in different parts of the country to sensitize the people about copyright matters.

Section xii, Standards, Testing and Certification, a) Standards, Para. 46.

Q.241 We understand that India has notified the WTO that the Bureau of Indian Standards (BIS), the national standards body of India had been designated as the WTO-TBT Enquiry Point.

- (i) We appreciate receiving India's recent notification on labeling and we look forward to providing comments, which we hope India will take into consideration.
- (ii) Prior to 2002, India only notified two proposed regulations since becoming a WTO member – one in 1996 and the other in 1999. This lack of transparency makes doing business difficult and discourages investment in India.

India has regularly been notifying various SPS and TBT measures to the respective Committees of the WTO. However, in some cases notifications have been issued by the Government of India whereby technical standards or labeling requirements, already being enforced on domestic manufacturers over a long time, have been extended to the imported products. We have notified these standards to the WTO.

Section xii, Standards, Testing and Certification, a) Standards, Box III.2 Development of Indian Standards

Q.242 We understand that Indian draft standards are issued and circulated for a period of at least three months amongst the various interest groups concerned and that the technical committee may also decide not to circulate the standard, if necessary, including when the standard is considered urgent or non-controversial.

- (i) Please describe the circumstances under which a standard is implemented in an “urgent” situation.

Bureau of Indian Standards (BIS) which is the national standardizing body and also the enquiry point under the WTO agreement on TBT provides a period of 90 days to enable the member countries to send their comments on a draft technical regulation proposed to be finalized by BIS. Various standards are made mandatorily applicable on consumer items in the form of ‘technical regulation’ by the various departments and ministries of the Govt. of India depending on the nature of the proposed regulations. The general practice is to publish the proposed regulation in a draft form in the Gazette of India inviting objections and suggestions from all persons likely to be affected thereby within a reasonable period of time. In the light of comments and suggestions, the regulation is finalized and applied. Standards may also be enforced without circulating the proposed measure in draft form to members for comments on ‘urgency’ grounds in accordance with Art 2.10 of the Agreement on TBT.

Section xii, Standards, Testing and Certification, b) Certification, Para. 50

Q.243 We understand Indian and foreign manufacturers who meet a BIS standard may carry the BIS Certification Mark.

- (i) Please provide further details on how to get products certified by BIS?
- (ii) Can third party conformity assessment bodies get accredited by BIS?
- (i) *information on BIS certification procedure is available on BIS website (<http://www.bis.org.in>)*
- (ii) *BIS does not act as an accreditor. The Quality council of India is the national accreditor.*

Q.244 **Paras 51-53- Sanitary and phytosanitary measures** - The Secretariat report does not mention India’s Customs Circular No. 36/2001 dated June 15, 2001 which provides for procedures for sampling and testing of agricultural products upon importation. In accordance with this notification, imports have been subject to 100 percent sampling and testing procedures, which slows the process of importation and which serves as a non-tariff barrier to imports. The procedures are onerous, placing undue burden on importers and it appears that the procedures are not based on scientific risk assessments. What is the justification for the 100 percent rate of sampling and testing? When does India plan to revise its testing and sampling procedures so as not to treat imported agricultural products less favorably than those products produced domestically?

Please see answer to Q.135.

MALAYSIA

Q.245 Para 2 of Che.1 of the Secretariat Report noted that the Government of India intends to increase its share of world trade from the present 0.67%, requiring an annual growth of 12%. In what areas does India envisage the increases in trade will stem from?

India has formulated a Medium Term Export Strategy for 2002-07 which envisages a CAGR of 12% in the next five years to achieve a share of 1% in World Trade. 220 focus items have been identified in the sectors like Engineering/Electrical/Electronics, Textiles, Chemical and allied products, Leather, Agricultural and allied products etc. Many macro policies and sector-specific policies are being implemented as suggested in the Medium Term Export Strategies. These measures are expected to help India in achieving the stated target.

Q.246 India maintains a high tariff regime, although this has been gradually reduced. Its stated objective is to simplify and reduce the tariff regime to two tiers by 2004/2005, with tariffs on 10% for raw materials, intermediates and components and 20% for final products. Does India intend to implement this in a single stage or will it be implemented gradually?

This will be done in a phased manner by 2004-05.

Q.247 India continues to maintain a high level of duties (above 50%) on a number of agricultural products including edible oils, with bindings up to 300%. In some instances, including for edible oils, MFN rates were higher than the final bound rate. Would India be reviewing these rates in light of their stated objectives in the 2002/2003 Budget speech?

It is incorrect to state that MFN rates on certain items including edible oils are higher than the final bound rate. Please also refer to answer to Q.128.

NORWAY

VAT

Q.248 The Government Report refers to plans of introducing a comprehensive VAT system in all the States by 2003. We would appreciate an update on progress in this work.

Please see answer to Q.81.

Maritime Transport

Q.249 Could the Indian delegation please provide information about the regulatory regime for maritime transport.

Port Sector

- (i) *There are 12 Major Ports in India. All Major Ports except the new Port at Ennore are governed by the Major Port Trusts Act, 1963. Ennore Port is the first corporatized Port of India incorporated under the Companies Act, 1956. All Major Ports are also governed by the Indian Ports Act, 1908. Apart from Major Ports, there are 181 Minor Ports under the control of the concerned State Governments. However, about 75% of the total traffic is handled by Major Ports and 25% by the Minor Ports.*

- (ii) *An Independent Tariff Authority for Major Ports (TAMP) was set up on 10th April, 1997 for fixing and revising the Tariff of major ports.*
- (iii) *The Major Ports at Kolkata, Visakhapatnam and Kandla have Dock Labour Board (DLBs) set up under the Dock Workers (Regulation of Employment) Act, 1948. The function of DLBs is to provide regular employment to dock labour.*

Shipping Sector

Shipping in India is governed by the provisions of the Merchant Shipping Act, 1958. The implementation authority is the Directorate General of Shipping, Mumbai which also regulates the multi-modal transport governed by the Multi-Modal Transportation of Goods Act, 1993.

UNITED STATES - Part II

WT/TPR/G/100

IV. Trade Policies by Sector

Agriculture

Removal of Quantitative Restrictions of Imports

Q.250 India's restrictions on imports on the grounds "of security, health, safety, and moral conduct" are explicitly laid out in this review. However, the United States points out that India doesn't include their practice of 100% sampling of imported food products. Why is this practice not mentioned?

The Prevention of Food Adulteration (PFA) Act, 1954 and Prevention of Food Adulteration Rules, 1955 are applicable on all foods for domestic sales. These regulations have been made applicable on import of edible/food products also. With a view to ensuring compliance with the relevant provisions, procedural guidelines like sampling of imported products etc to be followed for the clearance of consignment of food articles are prescribed by Customs through circulars issued from time to time. Various customs circular are posted on the website of the Ministry of Finance and, thus, may be readily accessed by the public.

WT/TPR/S/100

Agriculture and allied industries

IV. Trade Policies by Selected Sector

(2) Agriculture: Overview

Q.251 It should be noted that since the last review, intentions to increase exports through state-trading intensified. Example of this is the GOI's decision to tender wheat for exports through government parastatals – such as the State Trading Corporation (STC) and Project and Equipment Corporation (PEC) – in October 2000.

Government of India have not directly sold any wheat for export purposes. However, the Food Corporation of India (FCI) had invited an expression of interest from all parties, with no a priori exclusions, by issuing a global tender in view of its surplus stock position. The wheat was taken from FCI by cooperative agencies like NCCF, NAFED and MARKFED also, in addition to the State

Trading Enterprises like STC, PEC etc. In any case as per the EXIM Policy of the Government of India at that time, export of wheat was free subject to certain quantitative limits wherein any private individual/firm could also export. These quantitative restrictions have also been removed since then.

Q.252 IV.(2)(iii) - Export policy - India recently notified export subsidies in agriculture in March 2002 (G/AG/N/IND/3). India did not establish a base for export subsidies during the Uruguay Round negotiations, and therefore has a zero ceiling for export subsidy outlays. How does India justify providing export subsidies included in its notification? In addition, in October 2000, the GOI began tendering government-held stocks of wheat at 30 percent below the administered price support for wheat and 50 percent below the government's acquisition cost of wheat. The preferential sales price was contingent on exportation of the wheat. In April 2001, the GOI began a similar program for rice. Why did India choose not to notify these programs in its March 2002 export subsidy notification as well? Also, when does India plan to eliminate the sale of government-held stocks contingent on exportation?

Towards the end of the fiscal year 2000-2001, India started meeting a portion of the costs of handling, upgrading and other processing costs and costs of international transport and freight for export of wheat from the stocks held by Food Corporation of India. The wheat from the stocks of Food Corporation of India are sold at Open Market Sale Price to anyone who wishes to purchase in India or outside. A similar procedure is also followed for export of rice released by Food Corporation of India from 2001-2002. India takes recourse to provisions of Article 9.1(d) and (e) of the Agreement on Agriculture in making such transactions. Supplemental notifications will be made to the WTO.

Q.253. IV.(2)(iv) - Internal policies - The Secretariat report recognizes that India administers a minimum price support-government purchase program for selected agricultural commodities (e.g., rice and wheat). India did not establish a base for domestic support during the Uruguay Round negotiations, as India's calculated aggregate measure of support (AMS) was below the 10 percent de minimis level. Given that India has been increasing the minimum support price for commodities such as rice and wheat, and that government stock levels have been increasing, is it possible that India has or will exceed the de minimis level for these products? Please explain.

For the year 1997-98 up to which India's domestic support has been worked, India's AMS is still negative by a huge amount. In the near future it is not likely that India's AMS would exceed the de-minimis level of 10%. To dispose of surplus stock the Government of India has been using a part of these surplus stocks to create assets in rural areas through various employment generation programmes and distribute foodgrains to the people Below the Poverty Line at concessional prices. These steps are required to ensure that food and livelihood concerns of the vulnerable sections of the population are adequately addressed. The State Governments have been encouraged to procure foodgrains from their States to enable proper utilization of the foodgrains so procured by the States in their respective States. Certain schemes are also being implemented to shift areas from cereals cultivation to pulses and oilseeds cultivation.

Textiles

GOI report, report para. 44:

Q.254 India's statement that the major trading partners of India have not made any industrial adjustment nor have accorded any meaningful access to developing countries like India cannot be reconciled with the data in table A.I.2, which can be used to calculate the growth in India's exports of textiles and clothing from the 1997/1998 fiscal year to the 2000/2001 fiscal year. This shows a healthy increase of 25 percent. Furthermore, the statement conflicts with U.S. import statistics show

that U.S. imports of textiles and apparel from India increased 85 percent in volume and 73 percent in value since the ATC entered into force. Since India's argument is that ATC benefits have been denied India, it would be helpful for India to provide export data for the period the ATC has been in effect.

We would also like to note that in the U.S. market, the 90 percent global increase in imports under the ATC has led to intense structural adjustment for the textile and apparel sectors throughout the transition period, as anticipated by the agreement. Since continuous autonomous industrial adjustment and increased competition are important objectives under the ATC, which are to be promoted by all Members, we would appreciate information and available data on the extent to which the textile and clothing sectors in India are undergoing structural adjustment.

A statement indicating the total textile exports, and the US share during the pre and post ATC period is indicated in the table below. It may be seen therefrom that the exports of textiles and clothing have been increasing over the years. However, the growth rate has slowed down considerably from 1996-97 onwards. Interestingly the ATC was in force from 1995 and export growth has slumped subsequently. For example, the growth rate was to the tune of 68.2% in \$ terms between 1991-92 to 1995-96. But after the ATC the same has been only 10.5% between 1996-97 to 1999-2000. In the case of US, while the growth from 1991-92 to 1995-96 was 87.4%, it was only 14.3% from 1996-97 to 1999-2000. However if we also include the impending scenario emerging in 2000-02, the growth rate will be much less (exports are slowing down in US by approximately 20%).

As regards the observations regarding 90% global increase in US imports under the ATC, it is stated that in case of US, the growth rate on textiles and clothing imports during 1994-2001 is 8.38% as compared to 9.1% during 1990-94. The major growth has been captured by CBI+NAFTA. The growth rate in case of CBI+NAFTA has been 25.10% during 1990-94 and 15.68% during 1994-2000. In case of the restrained categories, the growth is only 8.69% during 1990-94 and 6.06% during 1994-2000.

It would also be pertinent to mention that the textile tariffs in major importing countries are much higher than the industrial tariffs. For instance, the US tariffs on clothing products are almost 8 times the overall average, which bring in nearly half of US's \$ 20 billion in annual tariff revenue. Furthermore, tariffs within these categories are usually higher on cheap goods imported from developing countries e.g. the US import tariffs are 19.7% for cotton shirts and 32% for MMF shirts.

The Government of India has been taking continuous measures for effecting structural adjustments to meet the challenges of Post Quota Regime. Some of the recent measures are as follows:-

- (i) The Government has de-reserved the woven segment of readymade garment from the SSI sector. It has also announced the de-reservation of knitted segment in the Budget 2002-03.*
- (ii) Certain measures have been taken to facilitate the modernization and upgradation of this sector so that it can become more competitive in international trade.*
- (iii) With a view to encouraging backward integration, the custom duty on shuttleless looms has been brought to 5%. A programme has also been announced to induct 50,000 shuttleless looms and to modernize 2.5 lakh powerlooms in the decentralized sector by 2004.*
- (iv) Foreign equity participation up to 100% through automatic route has been allowed in the textile sector with certain exceptions.*

- (v) *Reduction in the cost of machinery through fiscal policy measures announced in the budget 2002-03.*
- (vi) *Technology Mission for Cotton has been launched for initiating focussed steps for boosting production, productivity and quality of cotton for manufacture and export of competitive downstream textile products.*

The National Textile Policy – 2000 (NTxP-2000) has been announced to provide the policy direction for orderly and sustained development and growth of the textile industry in a harmonious way and to give a thrust to textile exports.

Figures for Total Textile Exports

Year	Value in US\$ Million	CARG
Before ATC		
Total		
1991-92	5069.7	10.96
1992-93	5051.9	10.96
1993-94	5998.9	10.96
1994-95	7548.4	10.96
1995-96	8526.9	10.96
US		
1991-92	804.4	13.39
1992-93	883.7	13.39
1993-94	938.2	13.39
1994-95	1,382.3	13.39
1995-96	1,507.4	13.39
After ATC		
Total		
1996-97	9,555.0	2.52
1997-98	9,797.5	2.52
1998-99	9,548.2	2.52
1999-00	10,556.7	2.52
US		
1996-97	1,781.7	3.41
1997-98	1,802.6	3.41
1998-99	1,997.1	3.41
1999-00	2,037.3	3.41

Source: DGCI&S

Secretariat Report, para. 28.

Q.255 Since the websites contained in footnote 35 could not be retrieved, can India provide information as to the tariff preferences provided for textiles and clothing for least developed countries under the SAARC and Bangkok Agreement.

The details of the tariff concessions on textiles and clothing provided under the SAPTA Framework to LDC's are provided under Customs Notification 105/99-Customs dated 10 August 1999. The details are available at <http://www.cbec.gov.in/cae/customs/cs-act/notifications/cs105-99c.htm>

The list of preferences provided by India to LDCs (Bangladesh is the only LDC Member country) under Bangkok Agreement is given below. Sr. Nos 28 to 33 pertains to tariff preferences provided for textiles and clothing.

India's concessions to LDCs (Bangladesh) under the Bangkok Agreement

Sl. NO.	TARIFF	DESCRIPTION	BASIC DUTY 2002-2003	Rate offered under the BA
1	0305.51	Cod (Gadus morhua, Gadus ogac, Gadus macrocephalus)	30%	Nil
2	0305.59	Other	30%	Nil
3	4104.22	Bovine leather, otherwise pre-tanned	25%	15%
4	4104.29	Other	25%	15%
5	4104.31	Full grains and full grain splits	25%	15%
6	4106.11 (4106.21 or 4106.22 or 4113.10)	Vegetable pre-tanned	25%	15%
7	4106.19 (4106.99 or 4106.92)	Other	25%	15%
8	4111.00 (4115.10)	Composition leather with a basis of leather or leather fibre, in slabs, sheets or strip, whether or not in rolls.	25%	15%
9	4403.10	Treated with paint, stains, creosote or other preservatives	5%	15%
10	4403.20	Other, coniferous	5%	15%
11	4403.41	Dark Red Meranti, Light Red Meranti and Meranti Bakau	5%	15%
12	4403.49	Other	5%	15%
13	4403.91	Of oak (Quercus spp.)	5%	15%
14	4403.92	Of beech (Fagus spp.)	5%	15%
15	4403.99	Other	5%	15%
16	4703.11	Coniferous	5%	5%
17	4703.19	Non-coniferous	5%	5%
18	4703.21	Coniferous	5%	5%
19	4703.29	Non-coniferous	5%	5%
20	4704.11	Coniferous	5%	5%
21	4704.19	Non-coniferous	5%	5%
22	4704.21	Coniferous	5%	5%
23	4704.29	Non-coniferous	5%	5%
24	4801 00	Newsprint, in rolls or sheets (of a particular type used for printing of newspapers)	15%	5%
25	4802.51 (4802.54)	Weighing less than 40 g/m ²	30%	15%

Sl. NO.	TARIFF	DESCRIPTION	BASIC DUTY 2002-2003	Rate offered under the BA
26	4802.52 (4802.55 or 4802.56 or 4802.57)	Weighing 40 g/m ² or more but not more than 150 g/m ²	30%	15%
27	4802.53 (4802.58)	Weighing more than 150 g/m ²	30%	15%
28	5007.20	Other fabrics, containing 85 % or more by weight of silk or of silk waste other than noil silk(Jamdani Sarees)	30%	Nil
29	5007.90	Other fabrics (Jamdani sarees)	30%	Nil
30	5208.49	Other fabrics (Jamdani sarees)	30% or Rs. 200 per kg, whichever is higher	Nil
31	5209.49	Other fabrics(Jamdani Sarees)	30% or Rs. 150 per kg, whichever is higher	Nil
32	5701.90	Of other textile materials	30%	25%
33	5703.90	Of other textile materials	30%	25%

In addition, concessions on the following items of textiles and clothing granted to other Member countries are also available to LDCs:

Sl.NO.	TARIFF	DESCRIPTION	BASIC DUTY 2002-2003	Rate offered under the BA
1.	5001.00	Silk-worm cocoons suitable for reeling.	30%	25%
2.	5105.10	Carded wool	20%	15%
3.	5105.21	Combed wool in fragments	20%	15%
4.	5105.31 or 5105.39	Fine animal hair, carded or combed	20%	15%
5.	5105.40	Coarse animal hair, carded or combed	20%	15%

Para. 34:

Q.256 The Secretariat comments that “it appears” that the Special Import License program has been discontinued. Can India provide a definitive statement on the status of the Special Import License program? If the program has been eliminated, what is the effect on the issuance of import licenses?

It is confirmed that Special Import Licensing Scheme (SIL) has been discontinued with effect from 1.4.2001. No special import licence has been issued after 1.4.2001.

Secretariat Report, para. IV.2.

Q.257 The Secretariat notes that the textile and apparel sector remains protected by relatively high tariffs, but in para. 47 and elsewhere, acknowledges that 33 percent of tariff lines in the textile and clothing sector involve alternative specific duties. The Secretariat states that it was unable to

calculate the effect of the alternative specific duties. The Secretariat further notes that, insofar as specific rates conceal relatively high *ad valorem* equivalents, the average level of tariff protection may be underestimated (as well as being less predictable), and this situation affects one-third of India's import regime in the textile and apparel sector.

- (i) Can India provide a calculation of the *ad valorem* equivalents of the tariff lines in the textile and clothing sector that involve alternative specific duties, as well as the back up data used in making the calculations?
- (ii) More generally, can India provide a current and definitive list of all tariffs, taxes and "other charges" that are applied to imports of textile products into India, including at the sub-federal level, if appropriate, as well as a citation to law or regulation that provide for the assessment of such charges?
- (iii) For each such special or additional tax, charge, fee or duty, can India provide a statement of the corresponding charges on domestic goods, if any?
- (iv) Can India describe the custom and administrative formalities associated with importations of textile products into India? Is there one central place, an office or website or document, that provides information regarding all of the formalities associated with importing textiles into India?
- (v) Are there specific customs or administrative formalities associated with the importation of textile products into India that are applied at the sub-federal level?
- (vi) How are India's trading partners notified of changes in Customs or other administrative formalities associated with importing?

The tariffs in India have come down significantly and the decline has been much faster than in many other developing economies. The specific duties provide the equivalent protection and were finalized after detailed negotiations with major trading partners namely US and EU in July/September, 2000.

India has faithfully carried out its WTO obligations, and has initiated concrete steps to eliminate quantitative restrictions and lowering of tariffs. There has been a progressive reduction in the applied Indian tariffs over the years. The peak rates have been slashed from 75% in 1998 to an average of 30% in 2002. The present applied tariffs for certain textile products are even less than 20%. The applied textile tariffs are less than the bound rates in nearly half of textile tariff lines; and less than 59% of the bound rates.

Further the textile tariffs in India are not different from the tariffs in case of other commodities, which is not the case of some other economies where average textile tariffs are much higher than other commodities.

The procedure for Customs clearance of textile products is the same as that for other products. However, textile items are required to be tested in certain situations to ensure compliance of conditions imposed by the Ministry of Textiles or the Directorate General of Foreign Trade. One such condition is testing of textile products to find out whether they have been manufactured using hazardous dyes. All the Customs provisions and formalities for clearance of goods are available in the Central Board of Excise and Customs Website (www.cbec.gov.in).

There are no Customs or administrative formalities associated with importation of textile products into India that are applied at the sub-federal level.

All the changes in Customs formalities are published in the Official Gazette and are also made available in the Website (www.cbec.gov.in).

Secretariat Report, para. ii. 40.

Q.258. Can India provide data and information on the “smaller markets” which are the focus of India’s efforts to diversify its textile and clothing exports?

India’s textile products are being exported to more than 100 countries of the world. Continuous efforts are made to diversify the product portfolio and markets through participation in Exhibitions/Fairs, holding of Buyer Seller Meets etc. The promotional events are also organized by the Association of Exporters in non-quota markets such as Japan, Australia, Middle East, Sub-Saharan African Region and the Latin American Countries.

Q.259 Can India and/or the Secretariat provide comments on the extent to which internal factors, such as those noted in footnote 77 and the second-to-last sentence of para. 43 have inhibited India’s ability to restructure its textile and apparel industries?

While India is taking steps to address the internal factors as mentioned in reply to Q.254, it is also to be emphasized that India’s textile export performance has been hampered by external factors such as lack of meaningful integration by major restraining countries and the increasing concentration of regional trade due to formation of FTAs and Customs Unions.

Please also see answer to Q.254.

Para. 46

Q.260 Please identify the specific “further incentives” available for the textile industry (such as granting exemptions from payment of excise duties for specified machinery to help in technological upgrading, such as the Technology Upgradation Fund).

CENVAT exemption has been provided on specific textile machinery items (45 in numbers) pertaining to weaving, processing and silk reeling industry. Besides, capital goods required by jute industry for making jute textiles have also been exempted from CENVAT. CENVAT exemption on most of these machinery items has been given mainly to provide a level playing field to indigenous manufacturers since import of such machinery items is also exempt from additional duty.

Export measures (paras 51 and 53)

Q.261 Please confirm whether the export promotion capital goods scheme, advance licensing scheme, duty exemption pass book scheme, export oriented unites/free trade zones scheme and the duty drawback scheme have been notified to the Subsidies Committee in accordance with Article 25 of the Agreement on Subsidies and Countervailing Measures. If these assistance programs have not yet been notified, could India please indicate when they will be notified.

In India’s view, these schemes do not constitute a subsidy in terms of the Agreement on Subsidies and Countervailing Measures in light of Annex I to the SCM Agreement read with footnote 1 thereto. Accordingly, these schemes have not been notified to the Subsidies Committee.

Q.262 Please confirm whether the External Market Assistance Scheme for jute product exports was extended or replaced with a similar program to provide benefits to jute exporters beyond the reported deadline of 31 March 2002. Please provide a complete description of the replacement program, if applicable.

External Market Assistance Scheme for Jute Product has been amended. Jute Yarn which formed biggest component of the scheme has been taken out of the purview of the Scheme. Some other products have also been taken out and the rest would be phased out by 31st March, 2003. It may be mentioned that the Scheme is funded by Industry itself from payment of jute cess.

Para. 57:

Q.263 Can India confirm whether the Government retains the ability to re-institute the export quota on cotton yarn, the purpose of which is to ensure an adequate supply of this input for the domestic textile industry, and if so, what circumstances would lead or require the Government to reintroduce the restraint?

In tune with the Policy of liberalization and reforms, the export restrictions on raw cotton, cotton waste and cotton yarn have been done away with so as to allow free inter-play of market forces. There are no restrictions on export of textile products. There is no proposal at the moment to reintroduce the export restrictions on any of the textile products. However, Government retains the ability to reintroduce export restrictions if situation so warrants.

Internal measures (para. 59)

Q.264 Please provide information about the scope and use (budget and actual use) of the scheme since its inception. Also, please confirm whether the Technology Upgradation Fund Scheme has been notified to the Subsidies Committee in accordance with Article 25 of the Agreement on Subsidies and Countervailing Measures. If this assistance program has not yet been notified, please indicate when it will be notified.

There is a provision of Rs.2.5 billion for implementing the Technology Upgradation Fund Scheme (TUFS) during the current fiscal year 2002-03. The Scheme has been introduced with the objective of providing loans at internationally comparable rates to meet the modernization and technological requirements of the textile industry. It is equally applicable to the domestic and export enterprises across the board and it does not impose any export obligation on the beneficiary units. Further, the industry itself is indirectly paying for the Scheme through collections of Additional duty of Excise on Textiles & Textile Article and thus the financial contribution is coming from the industry itself.

Para. 60:

Q.265 Can India provide details as to what exactly are the “appropriate” export-import intervention measures regarding raw cotton, and provide supporting GOI laws and/or regulations that provide authority for such measures?

Export and import of raw cotton is freely allowed.

Para. 64:

Q.266 Can India confirm that the garment quota on “FTA” imports from Sri Lanka, at a total of 6.67 million pieces, represents access for approximately 1 Sri Lankan garment for every 150 Indian

citizens, and if this calculation is generally correct, is this consistent with the purpose and objective of Article 24? Given that, according to India's data in table A.I.3, India's global imports of garments are at very low levels, is this limitation really necessary?

A Free Trade Agreement (FTA) was signed on 28.12.1998 between both the countries. The FTA was operationalized on 1.3.2000. The FTA allows for the export of garments to India with 50% tariff concessions subject to (a) annual restriction of 8 million pcs. out of which fabric for 6 million pcs. has to be sourced from India and (b) no category of garments can exceed 1.5 million pcs. per annum. This is a bilateral Agreement, the terms of which have been agreed between India and Sri Lanka, and the same has been notified under "Enabling Clause".

Q.267 Specifically regarding rules of origin for textile and apparel products, can India confirm that it does not maintain any rules for determining the origin of non-preferential imports? Is a declaration of country of origin required with an importation of textile products into India? If so, for what purpose? If so, can India confirm that its Customs (or other relevant officials, including if appropriate, at the sub-federal level), would accept without objection any declaration of country of origin stated by a importer? Where is this provided for in India's law or regulation? Are goods required to be marked according to country of origin? Is India considering any change in its policy regarding rules of origin for non-preferential imports?

India doesn't maintain any rules for determining the origin of non-preferential imports.

Q.268 With respect to standards and testing, can India explain the procedures and requirements that apply to imports of textile products, as well as a citation to law or regulation that provide for such? Does India maintain an ombudsman or other office for the resolution of disputes that arise under standards and testing requirements? Or must such disputes be taken to court in India?

Import of Textile & Textile Articles in India is permitted subject to the condition that they shall not contain any of the hazardous dyes whose handling, production, carriage or use is prohibited by the Government of India under the provisions of clause (d) of sub-section (2) of section 6 of the Environment (Protection) Act, 1986 (29 of 1986) read with the relevant rule(s) framed thereunder. For this purpose, the import consignments shall accompany a preshipment certificate from the National accredited Agency of the country of origin certifying that the import consignments do not contain any of the hazardous dyes. The import consignments accompanied by such certificates are cleared by customs without any further testing in India. In cases where such certificates are not available, the consignment will be cleared after testing of the same from the notified laboratories in India. For this purpose, Government of India have notified 12 state-of-the-art eco laboratories which are manned by qualified personnel.

Moreover, certain textile products irrespective of whether these have been manufactured indigenously or imported are required to contain all the statutory markings as envisaged vide Clause 3(e) of the Textiles (Consumer Protection) Regulations, 1988. The main objective behind prescribing the marking regulations is to ensure that the consumer has the information regarding specifications of cloth/material, which he is intending to purchase. The Regulations do not discriminate against imported products vis-à-vis indigenous products. The Regulations are notified in the official Gazette of India and are freely available to the public. India does not maintain an ombudsman. For any dispute, the remedy lies in administrative appeals/judicial appeals.

Telecommunications

Q.269 Para 97: Most countries are in the process of privatizing their state-owned telecommunications carriers (WT/TPR/S/100; page 127; para. 97). Does India currently have specific plans and a timetable to privatize BSNL and MTNL? If not, is the Government actively considering such action?

There is no immediate plan under consideration by the Govt. to privatize BSNL and MTNL.

Q.270 Para 98: Given India's expressed desire to attract large sums for investment for its telecom infrastructure, please explain why the ceiling of 49 percent foreign ownership still remains in the basic telecom sector (WT/TPR/S/100; page 128; para. 98). Is this limit based on statute or is it a policy guideline that can easily be changed?

Ceiling of 49% Foreign ownership in Basic Telecommunication Services is a policy decision.

Q.271 Para 98: There is mention of the division of the Department of Telecommunications Services, now BSNL, from the Department of Telecommunications, an effort to separate the service provider from the entity that formulates telecom policy and licenses service providers. (WT/TPR/S/100; page 131; para. 98). What concrete steps have been taken to guarantee that the government's Department of Telecommunications does NOT still exercise undue influence or control over the operations of the government-owned BSNL? What evidence is there that this has been more than just a change introduced on an organizational chart? For example, does BSNL staff now occupy separate buildings? Does BSNL have management officials that were not previously affiliated with DOT? Are there procedures in place to ensure that DOT deals with BSNL on an arms-length basis, the same way it might deal with any private telecom operator in India?

The management for operational activities is controlled by the Board of Directors appointed in the PSU. 99% of the staff is no longer Government staff. It is true that first lot of BSNL Management officials are drawn from the officers previously affiliated with DOT.

The BSNL Head Quarter is functioning from a separate building, Statesman House & Indraprastha Hotel taken on rent. Most of its Staff is shifted there and the remaining are also in the process of being shifted. The BSNL, MTNL & the Private Telecom Operators in India are treated at par.

Labour

Q.272 WTO Ministers renewed their commitment to the observance of internationally recognized core labour standards in the 1996 Singapore Declaration, as well as in the 2001 Doha Declaration. Recognizing that there is a connection between labour standards and trade issues, we believe that the subject of implementation of core labour standards is relevant for TPRM reviews. In reviews of other countries, the United States has raised questions about the application of core labour standards. In that spirit, we would like to raise a few questions about India's adherence to internationally recognized core labour standards.

- (6) The Constitution in India provides for the rights of association, and the Government generally respects this right in practice. Further, the right of workers to bargain collectively has existed for decades.

- (6) On the other hand, the problem of child labour in India is immense and complex. Child labour, including forced and bonded child labour, as well as employment of children in hazardous industries, exists in many parts of India.
- (7) We note that the Government of India is committed to the eventual elimination of child labour, with a particular priority toward the elimination of child labour in hazardous industries.
- (8) We are pleased that the U.S. Department of Labor and the Ministry of Labor have agreed to support a new project in ten hazardous industries through the ILO's International Program for the Elimination of Child Labor (IPEC).

We believe that ILO is the only forum to deal with the issue of core labour standards. Our views regarding linkages of trade with such extraneous issues is well known. WTO and trade policy review are not the forum to discuss these issues.

THAILAND

Secretariat Report (WT TPR /S/100)

Para. 14 page 28

Q.273 According to the Report, the rectifications and modifications of India's Schedule have resulted in an increase in a number of tariff lines. Nonetheless, pursuant to Article XXVIII.3 of GATT 1947, these higher rates are applied to a few products that are of interests to Thailand, notably alcoholic products and fabrics. This results in the applied tariffs being higher than their final bound rates. Given that the current MFN rates are generally lower than most final bound tariffs, we would like to know whether or not India considers bringing applied tariffs that are still higher than final bound rates to be in line with the latter.

All applied tariffs in India are within the bound levels.

Para. 15 page 28

Q.274 In its notifications to the Committee on Market Access, India reserved rights under Article XXVIII:5 of GATT 1994 to modify its Schedule during the three-year period from 1 January 2000 to 31 December 2002. We would be interested to know if there is any development relating to India's intention to modify or withdraw such concessions.

India has reserved its right to modify its schedule under Article XXVIII:5, to enable it to amend any tariff, if there is the necessity. Before carrying out any modifications, India will notify the WTO Members and follow the procedure as laid down.

Para. 31 Page 37

Q.275 The Report states that additional duties (Ads) are imposed on imports in place of a complex system of central excise duties, the purpose being to correct the excise duty's bias in favour of imports. Owing to the complexity of the excise tax structure, it is not clear, however, whether the AD actually imposed on each item corresponds to the excise tax levied on that item. We would like to seek further clarification as to how India administers the functioning of AD imposition to correct the said bias brought about by the excise duty.

The excise duty structure is not at all complex. There are only two major ad valorem rates, namely, 16% adv. which applies to almost all the excisable goods and an additional levy called 'special excise duty' of 16% adv. on 8 items specified in reply to question No. 231. As the domestically produced goods suffer excise duty as mentioned above, the imported goods are subject to additional duty of customs at these rates.

Para. 32 Page 37

Q.276 An across-the-board 4 per cent special additional duty (SAD) was recently introduced on most imports with a view to removing or reducing the pro-import bias resulting from the application of state sales taxes to similar domestically produced goods. As the Report points out, the introduction of SAD may not be equivalent to sales taxes, the reason being that domestically produced goods may face higher or lower rates of sales tax. In this regard, we would like to know the rationale for applying the SAD to most imports, rather than applying it to certain selected items that need to be rectified.

Please refer to answer to Q.94.

Para. 34 Page 38

Q.277 The Report states that India notified the WTO of its removal of restrictions on imports that were maintained under GATT Article XVII: B in 2001/02. It further says that, "It appears that the Special Import Licence, which was accorded to certain importers, has been discontinued since 1 April 2001." With the discontinuation of the Sils, we wish to know whether there may be any other import requirements being introduced apart from those measures already put in place, notable the additional and special additional duties (ADs and SADs), and minimum import prices.

India has removed quantitative restrictions which were being maintained on account of BOP reasons under Article XVIII of GATT. It is confirmed that Special Import Licence (SIL) scheme has also been discontinued. After removal of import restrictions and discontinuation of SIL scheme no import restriction has been put in place. For details about additional duty and SAD please see answers to Q.275 and Q.94. Minimum floor price was imposed on certain steel items on 10.12.1998. However, Government of India decided to remove minimum floor price restriction on import of prime steel items and accordingly, vide notification no. 31 dated 1. 11. 1999, price restriction on prime steel items were withdrawn with effect from 1. 1. 2000. However, this withdrawal notification has been challenged before High Court of Kolkata and matter is sub-judice.

Para. 35 Page 39

Q.278 From the Report, the Indian authorities imposed the requirement that, as of December 2001, all imports of natural rubber must be carried out through the ports of Kolkata and Visakhapatnam. We believe that this port-of entry requirement has constituted such an impediment to Thailand's rubber trade that our export interests in the Indian market have been hampered considerably. We would be grateful for India's clarification on this restrictive requirement, and to know whether it would be possible to increase the number of ports through which imports of rubber could be carried out.

Import of natural rubber is freely allowed. However, in order to ensure better monitoring of quality standards, which are already applicable and are being complied with by domestic producers, it has been prescribed vide notification no. 41. Dated 19. 12. 2001 that import of natural rubber shall be

allowed through Kolkata and Vishakapatnam ports only. As the major area of import of natural rubber is South-East Asia, these two ports in Eastern India have been specified.

Para. 38 Page 40

Q.279 Indian maintains minimum import prices on seconds and defective steel products for safety and human health reasons. We would appreciate clarification as to the justification for the adoption of the measures on human health grounds.

The Seconds/defectives grades are sometimes exported to India at very low prices. It is therefore necessary to regulate the prices to ensure that seconds/defectives are utilized only for the authorized end-uses. Misutilization of seconds/defectives also has serious safety/health implications viz.

- *Items like Tinsplate, Tinfree steel etc. are utilized for packing food products. The utilization of seconds/defectives poses a health hazard since they contain tinning defects which accelerate their corrosion and deterioration and consequently reduces the shelf life of the packed food leading to contamination.*
- *The defective Galvanized sheets/coils if utilized for watertanks, galvanized pipes for water transportation etc. may corrode, resulting in contamination of water.*
- *Utilization of seconds/defective steel products for the manufacturing of equipment/components in lieu of prime quality also poses a safety and health hazard.*

Para. 82 Page 64

Q.280 According to the Report, duty exemptions or rebates and tax concessions for imported inputs are employed to reduce or remove the anti-export bias and to encourage exports. These measures come under several schemes such as the Export Promotion Capital Goods (EPCG), Duty Entitlement passbook (DEPB) and Duty Free Replenishment Certificates (DFRC). We appreciate that Indian exporters are entitled to these schemes. Could India advise if these concessions are also available to importers who manufacture goods for domestic consumption?

Exporters of goods are provided exemption/remission of duties suffered on the inputs required for the export products through various schemes like Advance Licence, Duty Free Replenishment Certificate (DFRC), Duty Entitlement Pass Book Scheme (DEPB) etc., which is permissible as per WTO rules. Duty free imports are allowed only for export and only exporters can make applications under these schemes. Importers requiring goods for domestic consumption cannot make applications under these schemes.

PAKISTAN

Q.281 Para 35 of Secretariat Report states import restrictions maintained by India on a number of items for health, security and public morals that includes, inter alia, jewellery. Would the Indian Authorities kindly indicate the rationale of putting jewellery under restricted list?

India has already removed import restrictions on import of jewellery items on 31 March 2002, as appearing under Chapter 71 of ITC(HS) Book.

Q.282 Para. 128 of Secretariat report mentions a number of 'implicit' and 'explicit' subsidies that are distortionary in nature. Would the Indian authorities kindly explain the modus operandi or

rationale of these subsidies in terms of WTO framework? We would also like to know the future plans about the subsidies.

Reference may be made to para. 22 of the Government report which indicates some of the steps proposed to be taken by the Government in respect of the subsidies. The Annual Budget for 2002-2003 has also emphasized reduction of subsidies to a minimum over the next three to five years.

Q.283 Para 11 of Secretariat report indicates an increase in the average applied tariffs on agricultural items from 35% in 1997-98 to 41% in 2001-02 on items removed from quota restriction. The WTO framework, on the other hand, seeks to reduce tariffs. Would the Indian authorities explain the compulsions of increasing tariffs on these items?

Though the bound rates for primary and processed agricultural products are 100 and 150 per cent, the applied rates are lower for most of the products. Agriculture is a way of life for the developing countries like India having nearly two third of the population dependent on it. Majority of this population are resource poor and having small farms. The tariff modulation in consonance with international price fluctuations at times becomes necessary for their food and livelihood security.

Q.284 Para 12 of Secretariat report indicates that India has higher MFN applied rates as compared with its bound rates under WTO on a number of items. Pakistan would like to know the Indian Government plans in this regard?

As already stated in reply to Q.273, all applied tariffs in India are within the bound levels.

Q.285 Para. 17 of Secretariat report mentions that higher domestic prices in comparison with international prices for exportable such as sugar, wheat, rice etc. make Indian exports less competitive in international market. Contrary to this India is a leading exporter for example, for rice as its c.i.f. prices are lower than its competitors. Would the Indian Authorities kindly explain the kind of incentives/subsidies being extended in the export sector and their rationale in the context of GATT/WTO?

Please refer to India's notifications on export subsidies for the year 2000-01 (G/AG/N/IND/3). As a developing country India is not required to undertake commitments in respect of the export subsidies listed in Article 9.1 (d) and (e).

Q.286 Para 19 of Secretariat report mentions export prohibitions for a number of agricultural items. The GATT framework encourages price-based measures only. Would Indian Authorities please intimate the future plans on these non-price based measures?

Q.287 Para 20 of the Secretariat report indicates maintenance of export prohibitions that are against GATT provisions. Pakistan would like to know the programme of phasing out of these prohibitions and substituting these with price based measures.

Q.288 Para 20 of Secretariat report points out quota restrictions on export of certain Agricultural products. Pakistan would like to know if these quota restrictions have been notified to WTO?

Q.289 Para 21 of Secretariat report mentions maintenance of Minimum Export prices for onions. Would the Indian authorities like to inform whether this has been notified to WTO?

Answers to Q.286, Q.287, Q.288 & Q.289. In the last few years there have been progressive and continuous liberalization in so far as export of agricultural commodities are concerned. No

additional restrictions have been imposed on agricultural commodities during the last three years. Major items which have been made free for exports during this period are pulses, tea, wheat, wheat products, coarse grains, rice (non-Basmati), sugar, raw cotton and ten variety of agricultural seeds and planting material. Export of onion is freely allowed through the designated State Trading Enterprises. ITC(HS) book does not stipulate any MEP for export of onions. However, STEs prescribe MEP on export of onions. Even export restrictions on export of hides and skins have also been removed. However, exports cess has been prescribed on export on hides and skins which is fully WTO compatible.

ADDITIONAL QUESTIONS ON BEHALF OF THE EUROPEAN UNION

Additional duties (para. 31)

Q.290 The report by the WTO Secretariat draws attention to the existence of additional duties on imports in lieu of the excise duties to which Indian products are subject. The European Union wishes to express its concern following the introduction of an additional duty on imports of alcoholic beverages. The relevant text, which entered into force on 1 April 2001, provides that, for products under tariff headings 2204, 2205, 2206 and 2208, *ad valorem* duties of between 75 and 150 per cent will be applied at the time of importation into India, in addition to customs duties. This duty is supposed to represent a tax equivalent to the excise duties to which Indian products are subject.¹ However, the Indian measure at issue provides for a level of taxation on imported goods that is much higher than most of the taxes applied by Indian states on domestic goods of the same nature.

Could India therefore explain how, with the application of additional duties, it intends to preserve equality of treatment between domestic and imported products? In particular, how does India justify, in the light of Article III.2 of the GATT, the difference between the additional duty on imported wines and spirits and the taxes imposed by the Indian states on domestic products?

Please see reply to Q.93.

Special additional duty (para. 32)

Q.291 The Secretariat report refers to the introduction of a special additional duty of 4 per cent, which is supposed to represent a "taxation equivalent" in relation to domestic products. However, in the majority of cases, imports are not consigned directly to a final user but to an intermediate wholesaler who then resells them. Thus, imported products are subject to double taxation: the special additional duty of 4 per cent and local taxes when the product is resold on the local market.

How does India guard against the risk of double taxation in respect of the special additional duty and local taxes? In particular, how does India intend to avoid double taxation on goods not directly intended for a final user but for an intermediary?

Please refer to reply to Q.94.

Standards (paras. 48 and 49)

Q.292 The Secretariat report rightly emphasizes the participation of the BIS in the work of the ISO and the IEC. However, it would appear that international standards are still inadequately incorporated in Indian standards.

¹ This arrangement could be justified on the basis of Article II.2(a) of the GATT, which allows the imposition on imported products of internal taxes equivalent to those imposed on the like domestic product.

Could India clarify the efforts being made to bring Indian standards more closely into line with international standards, particularly those enacted by the ISO and the IEC?

It has always been endeavor on the part of BIS, the national standardizing body, to harmonize various standards with the relevant international standards. However, for various reasons like fundamental geographical, climatic or technological problems, it is not always possible to adopt an international standard always in toto.

Therefore, the Technical Committee of BIS, a Body of national experts on relevant subject, considers the International standards for adoption as National standards under the Dual Numbering System of ISO/IEC and if found appropriate in the light of reasons explained above, adopts them with a national Foreword.

In cases where an Indian standard is not totally equivalent to the corresponding International standard due to above mentioned constraints, the Foreword of these standards mentions the equivalence, differences and reasons for the same. [Please also refer to Q.11].

Certification (para. 50)

Q.293 For purposes of registration and licence application formalities, the foreign exporter must have a liaison office or a commercial subsidiary in India. He cannot have recourse to an agent (importer, distributor). Indeed, the licence application must be submitted through a subsidiary or the Indian office of the foreign company. In addition, the exporter must provide proof of authorization from the Indian authorities to open such an office in India. Finally, the foreign manufacturer undertakes not to relocate his office within Indian territory without authorization from the BIS.

What measures have been adopted by India to simplify certification procedures? More particularly, how does India justify the obligation to have a liaison office or a subsidiary in order to fulfil the registration and licence application formalities?

The Foreign Manufacturers Certification Scheme is being operated under the Bureau of Indian Standards Act, which contains a number of legislative provisions including liabilities for violation of certain provisions. In order to meet the statutory provisions, it has been considered necessary to make some person legally liable for non-adherence to such statutory provisions. Accordingly, an arrangement has been worked out to create this liability upon the Indian liaison/branch office of the foreign manufacturer. This arrangement is working satisfactorily.

However, in order to simplify the matter further, while keeping the provision for liabilities intact, the issue of permitting appointment of an Indian agent located in India (who would accept the liabilities under the Act on behalf of the foreign manufacturer through an agreement/undertaking) is being considered.

Labelling (para.55)

Q.294 The Secretariat report refers to notification No. 44 of 24 November 2000 (notified to the WTO on 28 May 2002), describing the information which must compulsorily be carried, prior to customs clearance, on the labels of pre-packaged goods imported into India. Such compulsory information includes the maximum sale price (including local taxes, freight and transport charges). This regulation constitutes an onerous requirement for the following three main reasons:

- In marketing terms, the maximum sale price is in most cases considered by retailers as the actual sale price, which prevents the sale of the product at a substantially lower price;
- This price is difficult to calculate prior to customs clearance, inasmuch as the destination of the product is not always known at the time of importation and local taxes may vary from one federal state to another, or indeed from one town to another.
- Precise knowledge of the maximum price is necessary, since it is sometimes used as a basis for certain local taxes.

How does India justify the requirement that the label must carry information on the maximum price, prior to customs clearance, when it is difficult to calculate the price in question at that stage, since the destination of the product is not always known at the time of import and local taxes may vary from one federal state to another, or indeed from one town to another?

Please see reply to Q.52.

Sanitary and phytosanitary measures (para. 51)

Q.295 The European Union wishes to express its concern in the wake of a notification by the Ministry of Health, dated 29 September 2000, which entered into force on 29 March 2001, and which toughens the standards applicable to mineral waters and aerated waters. These new standards are stricter than those contained in the Codex Alimentarius, particularly in respect of pH levels. They make it impossible to import certain mineral waters. Others have been deemed not to comply with the new Indian standards because of the presence of nickel, silver, magnesium, lead and cadmium in excess of the limits authorized by India.

Could India explain how it intends to incorporate international food standards in its legislation, particularly as regards the Codex Alimentarius? Could India explain how it justifies the toughening of the standards applicable to mineral waters and aerated waters (Notification by the Ministry of Health dated 29 September 2000)?

- 1) *pH: Codex has not prescribed any requirement for pH. The requirement of pH prescribed under PFA Rules, 1955 are based on our National guidelines prevalent in India and which is allowed for supply of water in the country as well as WHO guidelines.*
- 2) *Requirement of Lead, Nickel and Cadmium has been prescribed as per the Codex guidelines.*
- 3) *Codex has not prescribed the requirement for Silver and Magnesium in Natural Mineral Water. The requirement of Silver and Magnesium prescribed in these products are based on our national guidelines on water.*
- 4) *The step is fully compatible with the Article III of GATT, 1994(national treatment) and Agreement on SPS.*

Customs valuation and clearance (para. 9)

Q.296 The Secretariat report rightly draws attention to the efforts undertaken by India to simplify customs clearance procedures. However, the French delegation remains concerned at the introduction of systematic customs controls on agri-food products. Circular No. 36/2001 of the Central Board of

Excise and Customs, dated 15 June 2001, concerning the customs clearance of agri-food products, requires that every consignment be subject to inspection and tests. This measure pushes up import costs, inasmuch as importers bear the costs of warehousing and testing. In addition, it lengthens the time required for customs clearance, which may last as long as several weeks before the results are known. Finally, this measure constitutes a de facto penalty on perishable goods, and there is a risk of goods spoiling because of poor storage conditions.

How does India intend to facilitate the customs clearance of agri-food products. How does it justify the introduction of systematic customs controls on agri-food products?

Ans. The Prevention of Food Adulteration Act, 1954 and Prevention of Food Adulteration Rules, 1955 are applicable on all foods for domestic sales as well as for imports. In general, the provisions under PFA rules cover all aspects related to prescribing standards for food items, laying down procedure for sampling and regulating the production for sale, storage for sale and sale of food products with particular reference to health safety and protection of consumers. The standards prescribed under Appendix B of the PFA rules are minimum attainable mandatory standards. Violation of these standards entails penalties under the PFA act. Imported food products also need to conform to these requirements.

Compliance of PFA Act has been made mandatory on import of edible/food products, vide DGFT Notification no. 3 dated 31.03.2001(copy enclosed) also. These provisions were already applicable on imported products as per the PFA Act. Further, as per Exim Policy, all imported goods shall also be subject to domestic laws, rules, orders, regulations, technical specifications, environmental and safety norms as applicable to domestically produced goods. These provisions are well within the WTO mandated 'National Treatment' clause. Department of Revenue have, accordingly, issued Circular No. 58/2001 dated 25.10.2001 in this regard. This circular prescribes that all consignments of food products shall be referred to PHOs for testing and clearance shall be allowed only after receipt of test report. However, the perishable food items like fruits, vegetables, meat, fish, cheese, etc. have quick turn over and which, once opened, can lead to quick spoilage, if not kept in refrigerated conditions. On import of such items for direct use by the importers such as, hotels, etc., the consignments are not to be subject to drawal of samples and testing prior to clearance of the same. Such items are cleared relying on the certificates from the internationally known testing labs or government labs about these products conforming the food safety and quality of such products. However, if perishable items such as raw meat, fish etc. are not meant for direct use by the importer, samples are taken and tested prior to clearance of the same. The text of the aforesaid circular of the Department of Revenue is available on the website <http://www.cbec.gov.in>.

Also please refer to answer to Q.135.

Foreign investment regime

Q.297 European Union welcomes the progress made by India, as referred to in the Secretariat report, in liberalizing the investment regime. However, it would stress that foreign investment is still made difficult by burdensome taxation (for example, a rate of 48 per cent is applied to the income of non-resident enterprises) and by the gaps, complexity and lack of harmonization among states in the field of labour legislation.

How does India intend to continue its efforts to create an investor-friendly environment? In particular, how does it plan to advance the harmonization of labour legislation and introduce reasonable rates of taxation?

To attract more Foreign Direct Investment (FDI) into the country, Government has already put in place a dynamic, transparent and investor-friendly FDI policy. Further with the switchover from positive list approach to negative list approach in February, 2000, most activities, including services, have been placed on the automatic route without any restriction on the extent of foreign ownership. At post establishment stage, by and large there is a national treatment. There are very few entry-level requirements (restrictions in the form of minimum capitalization norms, FDI caps etc). There are no other operational restrictions, including restrictions on recruitment of expatriate employees. The Foreign Investment Implementation Authority (FIIA) set up in the Ministry, acts as a single point interface between the investor and the Government agencies including Administrative Ministries/State Governments to facilitate quick implementation of FDI approvals. Please also see reply to Q.72.

Intellectual property (paras. 153 to 194)

Q.298 In overall terms, the Secretariat report rightly points to an improvement in the level of legislative protection for intellectual property rights in India. Nevertheless, the measures implemented to enforce those rights are still insufficient to curb the phenomenon of counterfeiting.

With regard to geographical indications, the report states that indications are registered for ten years, with the possibility of renewal for a further period of ten years. Article 24.9 of the WTO TRIPS Agreement provides that the obligation to protect geographical indications ceases to apply when such indications are not or cease to be protected in their country of origin, or fall into disuse in that country.

- (i) How does India intend to combat counterfeiting? What punitive and judicial measures does India intend to implement in order to improve the means of enforcing intellectual property rights?

The Trade Marks Act, 1999 provides for criminal and civil penalties for infringement of the rights of the trademark owner. As per Section 103 of the Trade Marks Act, 1999, any person who falsely uses a trademark shall, be punishable with imprisonment for a term which shall not be less than six months but which may extend to three years and with a fine which shall not be less than fifty thousand rupees but which may extend to two hundred thousand rupees. As per the provisions of section 104, any person who sells, shall, be punishable with imprisonment for a term which shall not be less than six months but which may extend to three years and with a fine which shall not be less than fifty thousand rupees but which may extend to two hundred thousand rupees. As per Section 105 of the Trade Marks Act, 1999, second or subsequent offenders are punishable for the second and for every subsequent offence, with imprisonment for a term which shall not be less than one year but which may extend to three years and with a fine which shall not be less than one hundred thousand rupees but which may extend to two hundred thousand rupees. Section 111 provides that where a person is convicted under Section 103, 104 or 105 or is acquitted, the court convicting or acquitting may direct the forfeiture to the Government of all goods and things by means of or in relation to which the offence has been committed. The Court may order any forfeited articles to be destroyed or otherwise disposed of as the court thinks fit.

The Trade Marks Act, 1999, provides for relief in suits for infringement or for passing off. It states that an order passed by the District Court or any Superior Court on appeal, may include an ex parte injunction or any interlocutory order for any of the following matters for discovery of documents; preserving of infringing goods, documents or other evidence which are related to the subject matter of

the suit; or for restraining the defendant from disposing of or dealing with the assets in a manner which may adversely affect the plaintiff's ability to recover damages, costs or other pecuniary remedies which may be finally awarded to the plaintiff.

- (ii) With regard to geographical indications, how does India justify the ten-year limit (with the possibility of renewal) on the registration of geographical indications, whereas the TRIPS Agreement provides for continued protection as long as the indication exists and is protected by the authorities?

It is quite possible that a registered geographical indication may have become generic or have ceased to be protected in the country of origin. Therefore, provisions for renewal and rectification have been incorporated. The renewal fee is payable as indicated in the Notified Rules.
