



**India and Australia**  
Joint Free Trade Agreement (FTA)  
Feasibility Study



**Government of India**  
Ministry of Commerce & Industry  
Department of Commerce



**Australian Government**  

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**Department of  
Foreign Affairs and Trade**

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## Executive Summary

Recent years have seen remarkable growth in the trading relationship between India and Australia, fuelled by the many complementarities between the two economies. Over the past five years, bilateral trade in goods and services has increased by 24 per cent annually to US\$16 billion in 2008-09. Two-way investment is also significant, estimated at over US\$1.5 billion including portfolio investment in 2008.

Against this backdrop, Australia and India agreed in April 2008 to undertake a feasibility study for a possible bilateral free trade agreement (FTA) to explore the scope for building an even stronger economic and trade relationship.<sup>1</sup>

The feasibility study shows that significant barriers to goods and services trade remain in both countries.

An FTA between India and Australia would be expected to address tariff and non-tariff barriers. It would go beyond each country's commitments in the World Trade Organization (WTO) and cover substantially all trade in goods.

Services liberalisation would seek to remove barriers that impose additional costs on exporters and erode competitiveness. A possible FTA would be expected to have substantial services sector coverage.

Australia-India investment flows are modest relative to bilateral trade, reflecting both regulatory and other impediments and, to some extent, a lack of awareness of business opportunities in the other country. A possible FTA may address this imbalance by removing – or reducing – existing restrictions in both foreign investment regimes. It could also focus on enhancing transparency and strengthening investment protection mechanisms.

A comprehensive FTA offers scope to take the relationship to the next level to the mutual advantage of both economies. It could foster even stronger growth, including through more diverse trade and investment flows. Cooperation, capacity building and exchange of information on other issues such as the protection of intellectual property rights (covering all issues including TRIPS & CBD, and GIs inclusive of non-food GIs), SPS & TBT matters, competition policy and government procurement could also be considered during possible FTA negotiations.

In order to make an assessment of the possible trade gains from the proposed FTA, independent economic modelling was commissioned in both the countries for the study. The results provide insights into how an FTA might impact on bilateral trade and investment flows as well as economic welfare. Economic modelling is necessarily based on certain assumptions and the results of the modelling for this study should be regarded as indicative rather than as exact estimates. Different economic modelling methods, GTAP-CGE modelling and modelling based on an analysis of complementarity, were used in the study to estimate the welfare gains to both countries. The results indicate that the welfare of the two countries would increase with the conclusion of an FTA. The welfare gains for both the countries could be in the range of 0.15 and 1.14 per cent of Gross Domestic Product (GDP)

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<sup>1</sup> FTA in this study is comprehensive including trade in goods and services along with investment cooperation. In other words, it is akin to CEPA or CECA in other contexts.

for India and 0.23 and 1.17 per cent of GDP for Australia. An Australia-India FTA could result in a modest positive impact on total global economic output.

The Joint Study Group concludes that a bilateral FTA is feasible and it recommends that both governments consider the negotiation of a comprehensive India-Australia FTA.

## 1. Introduction

### 1.1 Background and objectives of study

The economic relationship between Australia and India has developed rapidly in recent years, particularly under the impetus of India's far-reaching process of economic reform and the resulting rapid globalisation of the Indian economy. In recognition of the growing synergies between the two economies, and the commitment on both sides to further enhance the economic partnership, Australia and India agreed in August 2007 to undertake a feasibility study for a possible bilateral FTA. This would help inform a subsequent decision by the two Governments about whether to proceed to FTA negotiations. In doing so, the study is without prejudice to whether possible future FTA negotiations between Australia and India would take up all issues in the forms considered in the study.

Terms of reference (TOR) for the study were developed and are set out in Annex A. Key elements of the TOR are:

- . To identify the benefits that India and Australia would derive from a WTO-consistent FTA
- . To assess the feasibility of a comprehensive FTA covering goods, services and investment as well as other cross-cutting issues such as intellectual property, sanitary and phytosanitary issues, technical barriers to trade, competition policy and government procurement
- . To assess prospects for expansion of trade in goods through liberalisation of tariffs and non-tariff measures
- . To assess prospects for expansion of trade in services across a substantial range of sectors, including through labour mobility and encouragement of mutual recognition arrangements
- . To explore how to create a favourable environment for investment in both directions
- . To produce a report for consideration by Governments in the first half of 2009 or earlier.

A Free Trade Agreement (FTA), for the purposes of this Study, has a wide coverage including goods, services and investment. In India, FTAs are commonly understood as goods-only agreements whereas a Comprehensive Economic Cooperation Agreement (CECA) includes goods, services, investment and other areas of cooperation. In Australia, FTAs are understood as comprehensive agreements.

## 1.2 Approach of the study

The feasibility study was undertaken by the Joint Study Group (JSG) which held its meetings, with co-chairs from the Indian Department of Commerce and the Australian Department of Foreign Affairs and Trade. The JSG met four times between April 2008 and September 2009. It conducted much of its work through inter-sessional contact and exchange of material between the two departments. Both sides undertook consultations with business and other stakeholders. Written submissions were invited and received. Economic modelling was conducted by both India and Australia, with details provided in Annexures B and C.



## 2. Overview of Indian and Australian economies

To set the context for the Joint Study Report, this chapter provides an overview of the Indian and Australian economies, including their global trade and investment.

Table 2.1 puts recent macroeconomic and trade data for both countries in a broader comparative context. It is evident that the two economies are different in various ways and similar in others. Such similarities and divergences may provide avenues for economic interactions and cooperation. The present joint study is an endeavour to explore such possibilities and to suggest ways and means to harness economic synergies to the maximum extent feasible.

**Table 2.1:**

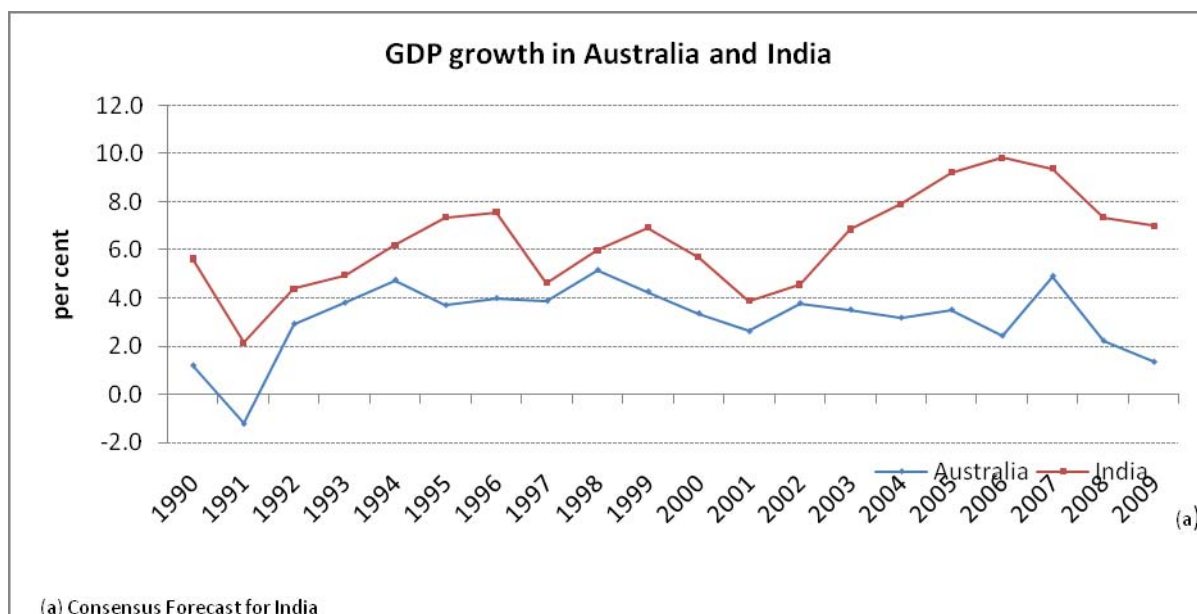
<b>Broad Macroeconomic and Trade Indicators: Australia and India</b>	<b>Australia</b>	<b>India</b>
GDP, average annual growth, 2004-2009, per cent	2.9	8.4
GDP, current prices, US\$ billion (2009)	996	1,243
GDP per capita, current prices, US\$ (2009)	45,157	1,033
Structure of output, per cent (2009)		
Agriculture	2.9	14.9
Industry	26.6	28.3
of which manufacturing	9.1	15.9
Services	62.7	56.8
Population, million (2009)	22	1,203
Rural population as per cent of total (2007)	11	71
Life expectancy at birth, years (2007)	81	65
Educational enrolment, tertiary, per cent	73	12
Exports, US\$ billion (2009)		
Goods and services	198	198
Goods	155	163
Services	42	35
Imports, US\$ billion (2009)		
Goods and services	204	326
Goods	161	273
Services	43	54

Sources: Australia Bureau of Statistics, IMF World Economic Outlook, World Bank World Tables on dX Data, Economist Intelligence Unit, DFAT STARS, CEIC database

### 2.1. Indian economy

The Indian economy has remained on the high growth path of recent years, despite some moderation in recent growth projections. (See Chart 2.1) After independence, India followed the system of a command and control economy to implement the development policies outlined in the Five Year Plans. The principal objectives were to increase aggregate consumption, reduce unemployment, work towards self-reliance and self-sufficiency, and reduce social disparities. The priority among these objectives changed from plan to plan.

Chart 2.1: GDP growth in Australia and India



Some policy reforms had been initiated in the 1980s, but it was not a sustained and continuous process. The trend towards a liberal economic policy gathered steam in the early 1990s when the Government of India announced a series of packages for autonomous structural policy reforms. These policy reforms, guided by the need to raise productivity and economic growth, were in part a response to the process of globalisation. The reforms were aimed at improving internal and external competitiveness through greater private sector participation and provision of more appropriate incentives alongside prudent governmental regulatory structures.

These policy changes were accomplished by structural reforms in the form of industrial deregulation, tariff reduction and de-licensing policies, increasing opportunities for foreign direct investment, public enterprise reforms and social sector policies. The main objective of these reforms was to re-orient the Indian economy so as to make it open to market-driven forces with the role of the State as a facilitator. The reforms were carried out in many segments of economic activity, though their coverage and depth varied from sector to sector.

The economic reforms of the early 1990s led to an initial spurt in output growth to over 7 per cent a year during the first phase of reforms (1992-93 to 1996-97), fuelled by growth in the industrial and services sectors. Substantial reforms in key sectors subsequently helped shift the growth rate to an average of 8.94 per cent per annum during the later period 2003-04 to 2007-08.<sup>2</sup>

The growth rate in trade has been an integral part of India's success story. In 1992-93, merchandise exports were US\$18.5 billion, with the compound annual growth rate touching around 9.83 per cent per annum during 1992-2000. The acceleration in the growth of exports in recent years has been remarkable. Total exports nearly tripled between 2001-02 and 2006-07, with an annual growth rate of 20.81 per cent per annum during 2000-08.

<sup>2</sup> Growth rate in NDP. Source: GO.I. *Economic Survey 2008-2009*.

The share of agriculture in output has been consistently declining. On the other hand, services has been one of the most dynamic and strongly growing areas for India in the past decade, and has emerged as the largest sector with a high growth rate and a more than 55 per cent share in total real output (GDP). The emergence of India as one of the fastest growing economies in the world during the 1990s was attributable in significant part to the rapid growth of its services sector, which grew at an annual average of 10 per cent. In services, India pursued significant reforms, especially in telecommunications, financial services and, to some extent, in infrastructure services, such as power and transport.

In 2008, India was the tenth-largest services exporter in the world and the eighteenth-largest services importer. India's services-led export boom over the last decade fully offset India's net merchandise trade deficit until 2007<sup>3</sup>. The result also has been that, with growth of over 17 per cent annually in the 1990s, India's services exports have experienced one of the fastest global growth rates, well ahead of the world average of 5.6 per cent. This was led by exports of software and IT-related services which have grown at around 46 per cent per year since the mid-1990s.

Services exports from India have continued to be one of the main sources of foreign exchange earnings in the country and the sectors which have seen higher growth have included: software; IT-enabled Services (ITeS), including financial IT services; and Business Process Outsourcing (BPO); as well as emerging areas such as healthcare (in particular diagnostics and surgery); telecommunications; and professional services.

India's developmental trajectory, therefore, owes much to the broad-based growth in the services sector of the economy. Services have contributed around 69 per cent of the overall average growth of GDP in the period 2002-03 to 2006-07. Interestingly, services falling under the rubric of trade, hotels, transport and communications have clocked double digit growth (Table 2.2) since 2003-04 except in 2008-09 (period of global slowdown).

**Table - 2.2**  
**Growth in the Services Sector in India**

Year	Services	Trade, Hotel, Transport and Communications	Finance, Insurance, Real Estate & Business Services
2000-01	5.71	7.26	4.07
2001-02	6.85	9.19	7.28
2002-03	7.52	9.44	7.98
2003-04	8.84	12.02	5.58
2004-05	9.86	10.69	8.69
2005-06	11.20	12.11	11.39
2006-07	11.30	12.82	13.78
2007-08	10.77	12.39	11.75
2008-09	9.38	9.05	7.82

**Source:** Reserve Bank of India's 'Hand Book of Statistics on Indian Economy'

<sup>3</sup> Directorate General of Commercial Intelligence and Statistics data and RBI estimates.

## India's services exports

Services exports increased threefold during the last three years. Preliminary estimates indicate that an annual growth of 26 per cent was achieved during 2007-08. Growth has been particularly rapid in exports of software services, business services, financial services and communication services.

In 2008, while India's share and ranking in world merchandise exports were 1 per cent and 26th, respectively, its share and ranking in world commercial services exports was 2.7 per cent and 10th, respectively. Services exports grew much faster than merchandise exports and constituted almost 60 per cent of merchandise exports in 2005-06. The composition of India's services exports and growth in specific sectors is represented in Table 2.3.

**Table 2.3**

Indian Services Exports(US\$ million)										
	1990-91	% Share	1994-95	% Share	2000-01	% Share	2005-06	% Share	2007-08 (P)	% Share
<b>Total Services Exports</b>	4551		6135		18870		57659		90077	
<b>Travel</b>	1456	32	2365	39	3168	17	7853	14	11349	13
<b>Transportation</b>	983	22	1696	28	1913	10	6325	11	10014	11
<b>Insurance</b>	111	2	152	2	257	1	1062	2	1639	2
<b>Miscellaneous</b>	2001	44	1953	32	13,532	72	42419	74	67075	74
<i>of which</i>										
<i>Software Services</i>							23600	41	40300	45
<i>Business Services</i>							9307	16	16771	19
<i>Financial Services</i>							1575	3	3217	4
<i>Communication Services</i>							2182	4	2408	3

Source: For 2007-08 and update to previous year's figures: RBI monthly bulletin of June 2009 ([http://rbidocs.rbi.org.in/rdocs/Bulletin/PDFs/T43\\_TCS0609.pdf](http://rbidocs.rbi.org.in/rdocs/Bulletin/PDFs/T43_TCS0609.pdf)) For 2005-06: RBI monthly bulletin of December 2007 (<http://rbidocs.rbi.org.in/rdocs/Bulletin/PDFs/82020.pdf>).

In recent years, a sectoral shift within the spectrum of service exports has also taken place. The buoyant growth of professional, technical and business services have provided a cushion against the slowdown in traditional services like travel and transportation. The relative share of travel and transportation in India's service exports has declined over the years.

While it is well known that Indian software services have been growing for some time, other services such as management and consultancy, advertising and trade fairs, financial services, architectural and engineering services are emerging as major foreign exchange earners(see Table 2.4).

Business services, which also include legal, accounting and auditing services and environmental services, achieved exports of US\$12.9 billion in 2005-06 as against US\$23.6 billion from software services. This has been made possible because of the widespread expansion of the telecommunications sector and the increasing digitisation of various services, making it possible to supply services remotely. This is also referred to as Cross Border Supply (Mode 1).

**Table – 2.4**  
Indian Business Services Exports 2005-06

<b>Exports of Business Services</b>	<b>2005-06 (US\$ billion)</b>
Architectural and engineering	3
Management and consultancy	1.6
Financial services	1.9

**Source: NASSCOM**

According to the Indian National Association of Software and Services Companies (NASSCOM), US\$10-15 billion of the US\$750 billion spent globally on engineering services is off-shored, and India's share is around 12 per cent of this offshore market. With the global spend in this sector expected to grow to more than US\$1 trillion, and outsourcing also expected to grow, Indian service providers have tremendous opportunity to expand given that India has the single largest pool of engineering talent among the emerging countries.

Finally, temporary movement of natural persons (Mode 4) is an area of significance for India's services trade. India's service providers, particularly in some professional services and in the information technology sector, have earned a reputation worldwide as providers of high quality services.

The United States (US) and the United Kingdom (UK) are the key destinations for Indian service exports. In the European Union (EU), India has a presence in the travel services imports of France and Italy, while in East Asia it has a presence supplying transportation services in Hong Kong.

### **India's services imports**

An emerging feature of India's economy is the growing importation of services (see Table 2.5). India's import of services grew more than ten-fold during the period 1990-91 to 2005-06. The rapid growth in the import of services is being fuelled by sustained 8 per cent plus economic growth and increased engagement by India with the world economy. The growth in services imports is spread across most sectors.

**Table 2.5**

<b>Indian Services Imports (US\$ million)</b>										
	<b>1990-91</b>	<b>% Share</b>	<b>1994-95</b>	<b>% Share</b>	<b>2000-01</b>	<b>% Share</b>	<b>2005-06</b>	<b>% Share</b>	<b>2007-08 (P)</b>	<b>% Share</b>
<b>Total Services Imports</b>	3571		5533		16392		34489		52512	
<b>Travel</b>	392	11	818	15	2874	18	6638	19	9254	18
<b>Transportation</b>	1093	31	1863	34	3170	19	8337	24	11514	22
<b>Insurance</b>	88	2	181	3	122	1	1116	3	1044	2
<b>Miscellaneous</b>	1998	56	2671	48	10226	62	18398	53	30700	58

<i>of which</i>										
<b>Software Services</b>							1338	4	3058	6
<b>Business Services</b>							7748	22	16715	32
<b>Financial Services</b>							965	3	3138	6
<b>Communication Services</b>							289	1	859	2

Source: For 2007-08 and update to previous year's figures: RBI monthly bulletin of June 2009 ([http://rbidocs.rbi.org.in/rdocs/Bulletin/PDFs/T43\\_TCS0609.pdf](http://rbidocs.rbi.org.in/rdocs/Bulletin/PDFs/T43_TCS0609.pdf)) For 2005-06: RBI monthly bulletin of December 2007 (<http://rbidocs.rbi.org.in/rdocs/Bulletin/PDFs/82020.pdf>).

Imports of commercial services have become important in recent years reaching US\$44 billion in 2006-07 with annual growth of 29 per cent. Business services are the most important category of services imports, followed by transportation and travel. Business services grew by 121 per cent in 2006-07.

Temporary movement of people to deliver services is an area of great importance for India given the growing work-age population and increasing potential to supply services through movement of skilled persons. India identifies several domestic laws and regulations that apply to free movement of natural persons to Australia, including in relation to the ability of Indian service providers to visit Australia for providing different types of services. There exist other issues including the requirement for recognition of the qualifications and experience of professionals, and other licensing/registration requirements.

## **Investment**

The higher GDP growth in India has been accompanied by an increase in the investment rate and a somewhat larger increase in the savings rate. The rate of domestic investment increased to 36 per cent of GDP in 2007. At the same time, the rate of gross domestic savings increased from 21 per cent of GDP in the pre-reform period to around 36 per cent.

Among the different forms of foreign capital inflows, foreign direct investment (FDI) is the most attractive type in a large emerging economic market like India. FDI in India has accelerated in recent years due to the adoption of various reforms, development of better infrastructure and emergence of a vibrant financial sector, among many other determinants. On a gross basis, FDI inflows to India reached US\$23 billion in 2007<sup>4</sup>.

Investment in infrastructure development, however, remains a developmental challenge that will need to be addressed to ensure sustained high economic growth rates in India into the future. The Government of India gives priority to the development of infrastructure such as power, roads, ports, telecommunications and civil aviation in addition to social infrastructure.

## **2.2. Australian economy**

Australia has a highly open, market-based and capital-intensive economy which is currently enjoying a prolonged economic expansion, presently in its 18th year. It grew by an average of 3.5 per cent from the early 1990s to 2009, but the global financial crisis has had an impacted on rates of economic growth in Australia from late 2008 to 2009 (see Chart 2.1).

<sup>4</sup> UNCTAD World Investment Report 2008

The strong performance of the Australian economy in recent years has been underpinned by a series of deep and wide-ranging economic reforms undertaken since the early 1980s. Key reforms included the deregulation of foreign exchange markets (which resulted in the floating of the Australian dollar), a comprehensive program of tariff liberalisation (reducing the average tariff from over 10 per cent in 1980 to 3.5 per cent in 2008), financial market deregulation, taxation reform and labour market reforms. Reforms have also resulted in the levels of domestic industry support falling to among the lowest in the world. These measures have collectively made the Australian economy highly flexible and resilient to economic shocks, as was evident during the 1997 Asian financial crisis, and has been the case during the current global financial crisis.

Australia's economy has also undergone substantial structural change. While the traditional agricultural and resource industries remain important export-focused sectors, the economy has become predominantly services-based, with services accounting for 72.9 per cent of economic activity in 2009 and over 85.6 per cent of employment. The relative share of manufacturing to GDP has been declining steadily for some years (from 18 per cent in 1980 to around 9.1 per cent currently). Agriculture constitutes only about 2.9 per cent of GDP, though it is much more important in Australia's exports where it contributes 10.2 per cent of the total.

Although Australia's population of 22 million people is small by Indian standards, total economic output is of a similar order of magnitude. Australian GDP per capita is consequently relatively high at almost US\$45,157 in 2009 (A\$57,067).

Like all economies, the Australian economy was not immune to the effects of the global financial crisis. Following growth of 2 per cent in 2008, and 1.4 per cent growth in 2009. The International Monetary Fund forecasts 2.5 per cent growth in 2010 and 3 per cent growth in 2011.

While unemployment fell from a peak of almost 11 per cent 15 years ago to 4.3 per cent in October 2008 – the lowest level since the 1970s - it has since risen to over 5 per cent with the effect of the global financial crisis.

Australia relies heavily on imports for a wide range of products, and has a relatively high trade intensity (defined as total trade of goods and services) of 40 per cent of GDP.

Globally, Australia ranked 21<sup>st</sup> as an importer of goods in 2008. Australia's imports have expanded rapidly in recent years, largely reflecting strong growth in the economy. Imports of goods made up around 79 per cent of total imports in 2009, with services imports constituting around 21 per cent. Imports of goods are dominated by manufactures, which made up 74 per cent of total merchandise imports in 2009. Fuels constituted a further 16 per cent of merchandise imports. The top ten global goods and services imports in 2009 were: personal travel services (excluding education); crude petroleum; refined petroleum; passenger motor vehicles; gold; freight transportation services; passenger transportation services; telecommunications equipment; medicaments; and goods vehicles.

Globally, Australia ranked 23<sup>rd</sup> as a merchandise exporter in 2008. Australia's export mix is different from most other developed economies, as a result of a small population and modest industrial base but with significant, easily extractable natural resources (minerals and fuels make up the largest share of exports (41 per cent in 2009), with rural products constituting a further 11 per cent). Services account for around 21 per cent of exports. The importance of minerals, fuels and services in Australia's exports is illustrated by the top ten exports in 2009, that include coal; iron ore; education services; gold; personal travel services (excluding

education); crude petroleum; natural gas; aluminium ores; beef; and aluminium. However, Australia also has a significant manufacturing sector, with manufactured goods accounting for around 16 per cent of total exports and elaborately transformed manufactures making up 69 per cent of total manufactured exports in 2009.

Foreign investment has played a key role in the development of the Australian economy, with foreign capital helping to fund the development of Australia's agricultural industries in the 1960s and 1970s. More recently, foreign investment has focused on Australia's booming resources sector and has been important in providing the capital to open new mines, build new infrastructure and expand Australia's export capacity. The stock of FDI in Australia reached US\$427 billion at the end of December 2009, with a further US\$980 billion in portfolio investment. Since the deregulation of Australia's foreign exchange markets in the 1980s, Australian companies and superannuation funds have also become increasingly active investors in other countries. Australian direct investment abroad totalled US\$349 billion at the end of December 2009, with portfolio investment amounting to a further US\$383 billion.<sup>5</sup> Australia is home to the fourth-largest investment fund asset pool in the world (with a total investment fund pool of around US\$1.3 trillion in the December quarter in 2009).

### 2.3. Institutional framework for economic cooperation

The premier trade and economic institutional link between Australia and India is the Joint Ministerial Commission. It is an annual meeting between Australia's Minister for Trade and India's Minister for Commerce and Industry which aims to strengthen bilateral economic cooperation. It is normally preceded by an associated senior officials meeting.

The importance of the Australia-India economic relationship was underscored by the signing of a bilateral *Trade and Economic Framework* (TEF) in March 2006. A number of sector-specific working groups take forward the economic relationship across a broad front under the *Trade and Economic Framework* (TEF). The TEF provides a government-to-government structure for promoting economic development in key areas including energy and mining, infrastructure development, information and communication technology, services, agriculture and biotechnology. The sector-specific working groups include:

- . The *Joint Working Group on Minerals and Energy* (led by Australia's Department of Resources, Energy and Tourism and India's Ministry of Mines representing four other Indian Ministries – Ministries for Coal, New and Renewable Energy, Petroleum and Natural Gas and Power. The sixth Joint Working Group Meeting took place in March 2009).
- . The *Joint Working Group on Education and Training* (led by Australia's Department of Education, Employment and Workplace Relations and India's Ministry of Human Resource Development – Agreement for an Education Exchange Programme on Cooperation in Education and Training signed in 2003).
- . The *Joint Working Group on Information, Communications and Technology* (led by Australia's Department of Broadband, Communications and the Digital Economy and India's Ministry of Communications and Information Technology – Memorandum of Understanding (MOU) signed in 2005).

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<sup>5</sup> ABS 5302.0 Table 26 and 27.



- The *Joint Working Group on Tourism* (led by Australia's Department of Resources, Energy and Tourism and India's Ministry of Tourism – MOU signed in 2002).
- The *Joint Science and Technology Committee* (led by Australia's Department of Innovation, Industry, Science and Research and India's Department of Science and Technology – MOU renewed in 2003).
- The *Joint Biotechnology Committee* (led by Australia's Department of Innovation, Industry, Science and Research and India's Department of Biotechnology – MOU signed in 2006).
- The *Joint Working Group on Visa, Passport and Consular Issues* (led by Australia's Department of Immigration and Citizenship and India's Ministry of External Affairs).

Many other Australian and Indian agencies are fostering links that can aid the economic relationship. A number of agencies have recently agreed MOUs to enhance bilateral cooperation:

- IP Australia and India's Office of the Controller of Patents, Designs and Trademarks (MOU signed in 2008)
- Australia's Commonwealth Scientific and Industrial Research Organisation and India's Council of Scientific and Industrial Research (MOU signed in 2008)
- Australia's Customs Service and India's Central Board of Excise and Customs (MOU signed in 2006)

Air services between Australia and India are governed by an Air Services Agreement signed in 2006 and supplemented by a Memorandum of Understanding between aeronautical authorities signed in 2004 (see Chapter 6.3.8 Air Services).

Senior officials in Australia's Treasury and India's Ministry of Finance established an annual economic policy dialogue in 2008. This group shares experiences in relation to economic reform, and exchanges information on financial sectors, regulatory architecture and the tax regimes in the two countries.

A *Double Taxation Agreement* between Australia and India was agreed in 1991 to avoid duplication of taxation payments and fiscal evasion of taxation. An *Agreement on the Promotion and Protection of Investment* was concluded in 2000 to promote favourable conditions for investors seeking to invest in the other country.

Agricultural cooperation is becoming an increasingly important part of Australia's relationship with India. Bilateral discussions on agriculture to progress each country's market access issues are conducted between relevant agencies. Australia and India have established an arrangement for the recognition of certification of food inspection systems covering fish and fisheries products exported from India to Australia.

A number of Australian states have established trade offices in India – Western Australia has an office in Mumbai and South Australia has established an office in Chennai. Some Australian states have signed MOUs with Indian states:

- The State Government of Victoria signed an MOU with the Indian State of Karnataka in 2005, which aims to establish stronger links in education, tourism, Information Communication Technologies (ICT), manufacturing and biotechnology, and has established an office in Bangalore
- The State Government of Queensland signed an MOU with the Indian State of Karnataka in 2003, which aims to promote trade and investment between the two States in tourism infrastructure, bio-sciences, agribusiness, mining services and transport infrastructure, and has established an office in Bangalore

In addition, the State Government of Western Australia signed an MOU with the Sports Authority of India (SAI) in 2004, and it has also signed an MOU covering minerals with the Government of India (the Indian Environment and Forests Ministry, Mines Department and Indian Mineral Federation), together with the Chamber of Minerals and Energy of Western Australia.

The State Government of South Australia signed a sister state agreement with the Indian State of Tamil Nadu in 2006.

Business-to-business collaboration is an important facet of the economic relationship. The *Australia-India Business Council* (AIBC) was set up in 1986. The AIBC has representatives and members across all Australian states and territories. It aims to help its members capture the benefits of the expanding trade between the two countries. In India, the *Australia- New Zealand Business Association in India* (ANZBAI) assists business-to-business links and meets regularly in New Delhi and Mumbai. The *India-Australia Chamber of Commerce* in Chennai is another important organisation that brings together businesses from the two countries.

The *Australia-India Council* (AIC) was founded in 1992, and works closely with its counterpart in India, the *India-Australia Council*. Its purpose is to broaden the relationship between Australia and India by encouraging and supporting contacts and increasing levels of knowledge and understanding between the peoples and institutions of the two countries. The Council initiates or supports a range of activities designed to promote a greater awareness of Australia in India and a greater awareness of India in Australia, including visits and exchanges between the two countries, development of institutional links, and support for studies in each country of the other.

The Australian and Indian Governments have also supported the establishment of an Australia-India Chief Executive Officers Forum.

Australia and India are committed to multilateral and regional economic cooperation processes and work together in various fora. The two countries are members of the *East Asia Summit* (EAS) which is examining a possible Comprehensive Economic Partnership in East Asia (CEPEA). India and Australia are members of the *Indian Ocean Rim Association for Regional Cooperation* (IOR-ARC), which was established in 1997 to facilitate and promote

economic cooperation among Indian Ocean Rim countries, as well as Asia-Europe Meeting (ASEM).

Australia has recently been granted observer status at the *South Asian Association for Regional Cooperation* (SAARC). This will provide another forum in which Australia and India can engage on economic issues of shared interest. Such a partnership could assist the process of regional economic integration. Australia is a member of the *Asia Pacific Economic Community* (APEC) and is keen to see India become a member after the new membership moratorium ends in 2010.

### 3. Australia-India Trade Relationship

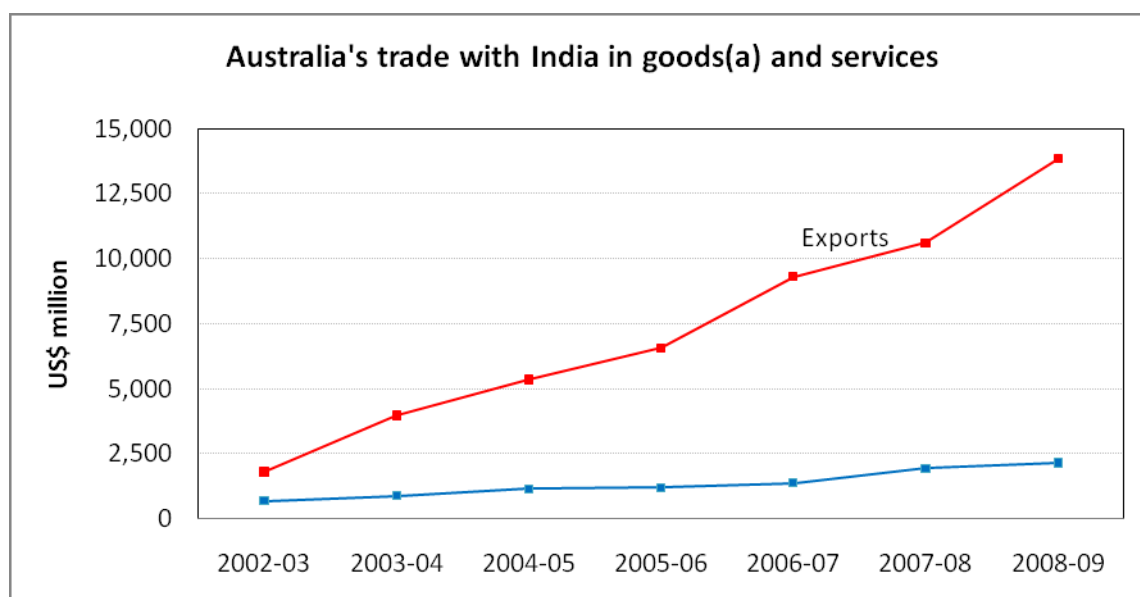
#### 3.1. Bilateral trade

##### 3.1.1 Overview

Trade between Australia and India has grown strongly over recent decades, with a particularly sharp upswing since 2002 (see Chart 3.1). Two-way trade between Australia and India in 2008-09 reached US\$16 billion, of which goods trade was the largest component, at US\$12.9 billion. Two-way services trade has risen markedly off a low base and amounted to US\$3.1 billion in 2008-09.

The growth in trade between India and Australia is based on the complementarities between the two economies. India has been able to use Australian exports of items, such as iron ore and coal, to meet its growing economic demands, fill infrastructure gaps and as inputs to its own exports. Australian companies have gained productivity and cost benefits from India's services industries. Rising Indian investment in Australia, including in areas as diverse as coal and copper mining, software development and biotechnology, has also underpinned a new dimension in bilateral goods and services trade. Similarly, increasing Australian investment in Indian sectors such as infrastructure, financial services, telecommunications and mining are boosting important sectors of the Indian economy.

**Chart 3.1: Australia's trade with India in goods and services**



(a) Trade in goods is on a recorded trade basis.

(b) Financial year ending 30 June.

Source: ABS trade data from DFAT, STARS database & ABS Cat. 5368.0, December 2009

Bilateral trade cooperation has assumed new significance in the wake of the global economic crisis which has led to a dramatic deterioration in the world economic outlook and slower growth in both India and Australia, which has the potential to impact on future trade between Australia and India.

### 3.1.2 Australia's exports to India

India is one of the fastest growing of all Australia's major markets for both goods and services, with exports growing at an annual average rate of 25 per cent during the five years to 2008-09. In 2008-09, India was Australia's fourth-largest goods export market and its fifth-largest services export market. Australia is an increasingly important source of goods imports for India, with its share increasing from 2.4 per cent of total imports in 2001 to 3.5 per cent in 2008.

#### 3.1.2.1 Merchandise exports

Table 3.1 shows Australia's top merchandise exports to India in 2008-2009. Commodity exports dominate, consistent with the traditional pattern of trade. Coal, gold, and copper were Australia's three principal exports, with fertilisers, manganese, wool, aluminium, vegetables and lead also significant.

While Australia's main exports are commodities, manufactured goods exports (including semi-manufactured gold) to India have also been growing strongly. Manufactured exports have grown to US\$5,169 million in 2008-09 – displaying an average annual growth of over 21 per cent over the last 5 years.

The main products in which there is current growth for Australia's manufactured exports to India include fertilisers, aluminium, machinery, aircraft and associated equipment, and perfumery and cosmetics or toilet preparations. The main imports from India where there has been significant growth include machinery, and pharmaceutical products.

It is interesting to note that the bilateral trade relationship between Australia and India is to a significant extent characterised by India's imports from Australia of raw materials and intermediate products which are used by India to produce final goods for exports, a part of which in turn is imported from India by Australia. This export-import linkage between the two countries is illustrated below.

For example some Australian merchandise goods are essential to India's jewellery industry. Australia exports to India significant quantities of diamonds (through a third country) and gold. At the same time, India's jewellery exports to the world have increased markedly from US\$1700 in 2003 to US\$7441 in 2008, including to Australia, which imported US\$47 million in 2008 (up from US\$12 million in 2003).

Australia's wool exports to India have also played an important role as an input to India's exports. India is Australia's third largest export market for wool with exports of US\$98 million in 2008-09 representing around 50 per cent of India's wool imports. India uses Australian wool to make clothing and textiles exported around the world. Australia imported textiles, clothing and footwear from India totalling US\$239 million in 2008-09.

**Table 3.1 - Australia's principal merchandise exports to India**

**Table 3.1 - Australia's principal merchandise exports to India**

HS codes		2007-08 US\$m	2008-09 US\$m
270112	Bituminous coal, whether or not pulverised, but not agglomerated	2,445	4,991
7108	Semi-manufactured gold	3,620	4,270
2603	Copper ores and concentrates	892	586
3105	Mineral or chemical fertilisers	44	365
9999	Confidential items <sup>3</sup> (incl wheat,	155	223
2602	Manganese ores and concentrates	73	117
5101	Wool, not carded or combed	129	98
071320	Dried shelled chickpeas (garbanzos)	42	88
7601	Unwrought aluminium	13	76
7801	Unwrought lead	79	73
2704	Coke and semi-coke of coal, of lignite or of peat, whether or not agglomerated; retort carbon	41	62
7204	Ferrous waste & scrap, remelting scrap ingots of iron or steel	58	54
0802	Other nuts, fresh or dried, whether or not shelled or peeled	19	39
7407	Copper bars, rods and profiles	80	39
2709	Petroleum oils and oils obtained from bituminous minerals, crude	157	36
7602	Aluminium waste and scrap	42	32
7408	Copper wire	13	22
320611	Pigments and preparations based on titanium dioxide	23	21
8474	Machinery for sorting, screening, grinding, mixing etc. of mineral substances	7	16
071310	Dried shelled peas ( <i>Pisum sativum</i> )	17	14
	<b>Total merchandise exports</b>	<b>8,383</b>	<b>11,610</b>

Source: DFAT, STARS database consistent with ABS Cat 5368.0, February 2010

## Services exports

As with merchandise exports, services exports to India have grown rapidly, from US\$306 million in 2002-03 to US\$2.5 billion in 2008-09.

Australia's dominant services export to India in 2008-09 was education-related travel services (US\$2.8 billion), a reflection of the number of Indian students studying in Australia.

It is important to note that services trade data does not take account of services delivered by Australian companies with a commercial presence in India. Australian companies have established a presence in a range of Indian services sectors such as engineering, infrastructure design, health, financial services and mining services industries.

**Table 3.2**  
**Australia's services exports to India**

Australia's services exports to India		
	2007-08 (US\$m)	2008-09 (US\$m)
Travel services:	2,253	2,487
Education related	1,765	2,076
Personal travel excluding education	166	147
Business	104	99
Transportation services	77	61
Personal, cultural & recreational services	46	34
Business services	50	31
Telecom. computer & information services	24	21
Insurance & pension services	5	7
Charges for the use of Intellectual property n.i.e.	5	4

Source: ABS Cat No. 5368.0 International Trade in Goods and Services, Australia. Consistent with September 2009

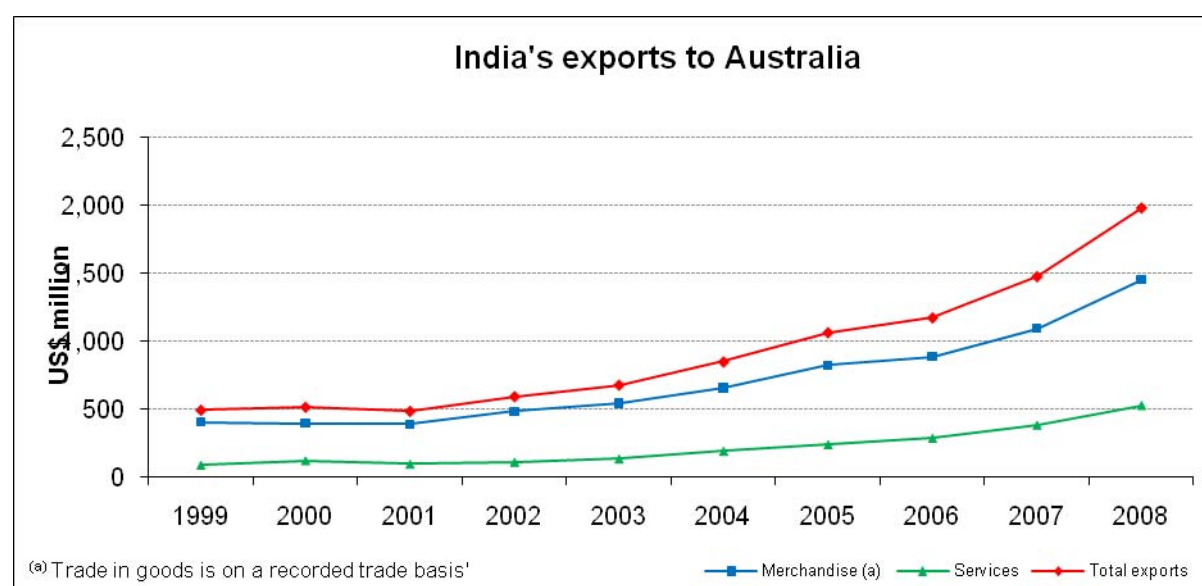
### 3.1.3 India's exports to Australia

Australia is an increasingly important destination for Indian exports. In 2008, India's goods exports to Australia reached US\$1.45 billion, while its services exports to Australia were almost US\$529 million.

#### 3.1.3.1 Merchandise exports

Australia is India's 14th-largest trading partner in terms of India's total merchandise trade (2008). Australia ranked 34th as a destination of India's total goods exports, which amounted to US\$1.45 billion (A\$1.7 billion) in 2008.

Chart 3.3: India's exports to Australia



Source of data: DGCI&S, Ministry of Commerce & ABS

(a) Trade in goods is on a recorded trade basis, as at Apr 2010

(b) Financial year ending 30 June.

Note: Services data is Australia's imports from India and converted to USD using the IMF annual average exchange rate.

While increasing in value over the period (see Chart 3.3), India's exports to Australia as a proportion of India's total exports declined over the period 1990 to 2007 as shown in Chart 3.4, from 1.44 per cent in 1991-92 to 0.73 per cent in 2006-2008<sup>6</sup> (although, on a calendar basis, Indian exports to Australia as a proportion of India's total exports rose slightly between 2006 and 2008). The trend to 2006 reflects the rapid growth in Indian exports to other markets, including services to the US and resources to China.

**Chart 3.4**



Source: Ministry of Commerce and Industry, GOI

Note: Financial year ending 31 March.

India's key merchandise exports to Australia by broad product groups are shown in Table 3.3. The major product group in 2008-09 among India's merchandise exports to Australia was machinery and equipment, constituting a share of around 29 per cent. The other major items in India's exports to Australia included textiles and garments (14 per cent), gems and jewellery (8 per cent), base metals (10 per cent), chemicals (12 per cent), vegetable products<sup>7</sup> (7 per cent), plastics and rubber (4 per cent) and leather and leather products (4 per cent). Over recent years the percentage of textiles and garments from India as a proportion of Australia's total merchandise imports has fallen.

<sup>6</sup> Based on India's Official Trade Statistics; Government of India, Department of Commerce, MOC&I, April 2008

<sup>7</sup> Based on WTO HS classifications, under which "vegetable products" include fruit, tea and coffee and cereals



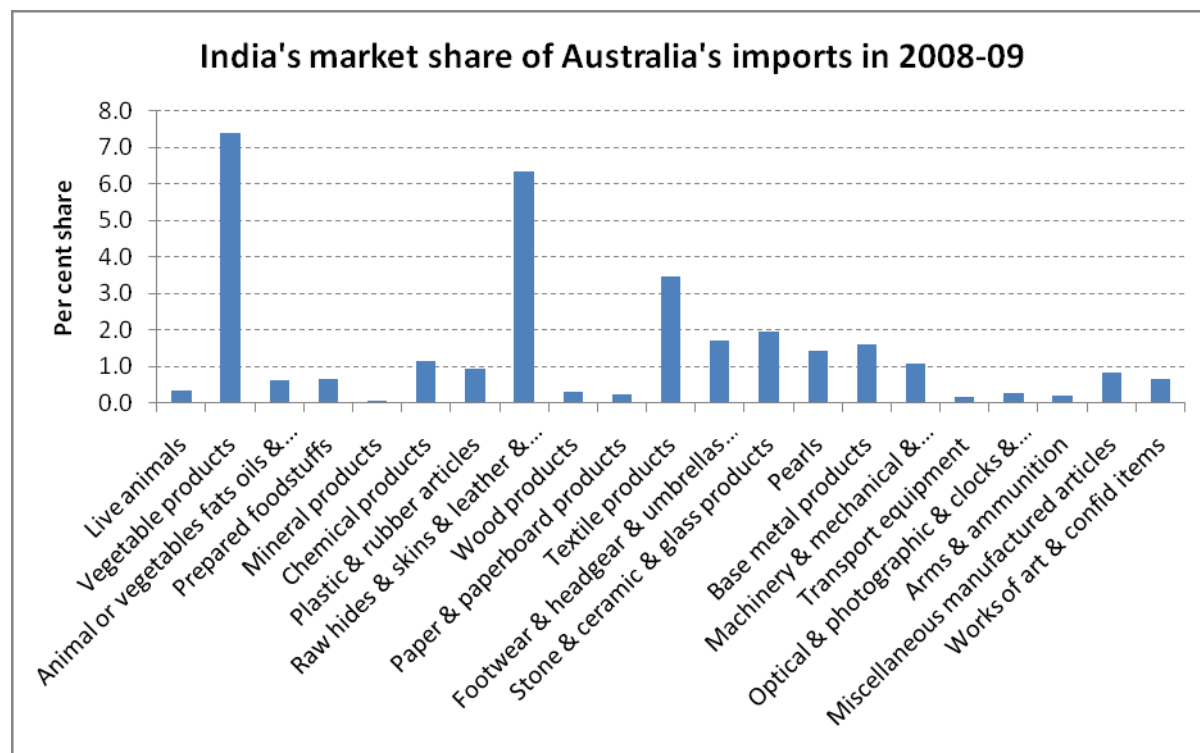
Table 3.3

<b>Australia's key imports from India</b>			
	<b>2006-07 US\$m</b>	<b>2007-08 US\$m</b>	<b>2008-09 US\$m</b>
Machinery & equipment	123	320	449
Clothing	56	68	97
Diamonds, unmounted	83	96	84
Iron and steel products	45	53	68
Medicaments	26	41	53
Jewellery	30	55	44
Soft furnishing articles, including bedspreads	27	29	36
Carpets and rugs	29	36	35
Tea	23	25	27
Leather apparel and clothing accessories	11	18	23
Miscellaneous & confidential items	24	19	22
Cases, bags and wallets	18	22	21
Rice	8	15	19
Heterocyclic compounds with nitrogen hetero-atom(s) only	12	11	16
Leather Footwear	9	15	15
Tractors	15	11	14
Parts and accessories of motor vehicles	13	19	13
Worked building stone	14	17	13
Furniture	11	15	13
Equipment for physical exercise	16	16	13

Source: DFAT, STARS database consistent with ABS Cat. 5368.0, Feb 2010

India's market share of Australia's imports divided into broad product groups is shown in Chart 3.5).

Chart 3.5



Source: DFAT, STARS database consistent with ABS Cat. 5368.0, Feb 2010

### 3.1.3.2 Services exports

India exports a range of services to Australia, including ITeS, software and BPO – see Table 3.4. India's exports to Australia have grown over the last decade. The balance of services trade is in Australia's favour. The major Indian exports to Australia, by sector, are: travel services, IT and IT enabled services and other business services.

The growth in travel services indicates increasing interest in India towards Australia as a tourist destination, as well as travel from India to visit Indian origin residents in Australia or students from India studying in Australia.

**Table 3.4 India's Services Exports to Australia**

<b>India's services exports to Australia</b>		
	<b>2007-08 (US\$m)</b>	<b>2008-09 (US\$m)</b>
Travel services:	500	593
Personal travel excluding education	287	280
Business	60	39
Education related	10	10
Transport services	5	109
Telecom. computer & information services	75	102
Business services	36	43
Insurance & pension services	23	6
Personal, cultural & recreational services	3	3

Source: ABS Cat No. 5368.0 International Trade in Goods and Services, Australia. Consistent with September 2009

NB. Data does not take account of services delivered by Indian companies with a commercial presence in Australia.

## 4 India-Australia Investment Relationship

### 4.1 Investment linkages

#### 4.1.1 Overview

Australia has a long history as a destination for global investment, particularly FDI, while India has increasingly emerged as a major FDI destination over the past two decades. This chapter outlines two-way investment to allow the report to examine the potential for bilateral investment flows to be enhanced through a possible FTA in a subsequent chapter.

##### 4.1.1.1 Australian investment in India

Total FDI into India since the onset of the Indian liberalisation process has reached US\$ 133.6 billion up to June 2009.

India's FDI policy has been liberalised in recent years as a result of a comprehensive review of policy in 2006, including liberalisation of a number of sectors in 2008 and the revision of norms for calculation of total foreign investment and for transfer of ownership and control from resident Indian citizens to non-resident entities in 2009. The result has been a marked upswing in FDI inflows, from US\$2.22 billion in 2003-04 to US\$24.58 billion in 2007-08.

An analysis of FDI flows into India from Australia reveals that investment from Australia has risen off a low base (Table 4.1) since the announcement of India's new industrial policy in August 1991. Australia's FDI in India as a percentage of total Indian FDI has remained low and relatively constant.

Table 4.1 FDI from Australia to India

Sl No	Year	FDI from Australia in US\$ Million	%age of India's total FDI
	<b>From 1991 to Dec.1999</b>	68.51	0.43
1	<b>2000</b>	9.50	0.33
2	<b>2001</b>	14.07	0.38
3	<b>2002</b>	18.42	0.49
4	<b>2003</b>	19.90	0.79
5	<b>2004</b>	18.45	0.49
6	<b>2005</b>	5.95	0.14
7	<b>2006</b>	41.04	0.37
8	<b>2007</b>	43.81	0.23
9	<b>2008</b>	71.39	0.22
10	<b>2009</b>	21.20	0.20
	<b>Grand Total</b>	332.24	0.30

Source: India FDI Fact-sheet, DIPP, GOI, April 2009

Table 4.2 shows the principal Indian sectors receiving Australian FDI inflows. Australian investment has benefited India's metallurgical industries, services, telecoms, consultancy and hotel and tourism sectors.

Table 4.2 Principal sectors in India attracting FDI inflows from Australia from 2000 to 2009

S.No	Sector	Value of FDI inflows (US \$ Mn.)	Share of sector in Australia's total FDI in India %
		(In US\$)	
1	SERVICES SECTOR	62.31	23.63
2	METALLURGICAL INDUSTRIES	56.04	21.25
3	TELECOMMUNICATIONS	36.69	13.91
4	CONSULTANCY SERVICES	15.70	5.95
5	AUTOMOBILE INDUSTRY	15.40	5.84
	TOTAL	186.14	70.58

Note : amount includes inflows received through FIPB/SIA, acquisition of existing shares and the RBI's automatic route

Source: India FDI Fact-sheet, DIPP, GOI, April 2009

### Box 1: Tata BlueScope Steel

An equal joint venture between Tata Steel of India and BlueScope Steel of Australia, Tata BlueScope Steel was formed to promote steel usage in the construction industry in the South Asian region. It is a good example of the powerful synergies which can be achieved when Australian and Indian firms partner for joint ventures. In the short time since starting its operations in India, the company has generated new employment in India through its new Indian factories.

The Australian company, BlueScope Steel was keen to expand its Asian and global footprint, and in order to do that, it chose to partner with a strong Indian company that shared the same fundamental values. Tata Steel was also looking for a strong like-minded partner. Tata Steel is the world's 6th largest steel company, the world's second most geographically-diversified steel producer and a Fortune 500 Company. The technical expertise of BlueScope Steel combined with the local knowledge and reach of Tata Steel have proved to be a winning formula for a diverse market.

Tata BlueScope Steel has three business divisions, the Building Solutions, Building Products and Distribution and the Coated Steel division. The Buildings Solutions business markets pre-engineered buildings, the Building Products and Distribution business markets roll-formed roof and wall cladding solutions and related building components and the Coated Steel business markets metallic coated and pre-painted steel, for the building and construction industry.

Tata BlueScope Steel's Buildings Division, which comprises Building Solutions and Building Products and Distribution divisions, has three manufacturing facilities located at Pune, Chennai and Bhiwadi and a network of 20 sales offices. They produce pre-engineered steel buildings and a range of other steel building solutions. Coated steel products include pre-painted steel and metallic coated steel. The coated steel manufacturing facility at Jamshedpur will be operational from the first quarter of 2010. This facility will have an annual metallic coating capacity of 250,000 million tonnes and paint line capacity of 150,000 million tonnes.



**Source: Tata BlueScope Steel (Chennai facility)**

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#### 4.1.1.2 Indian investment in Australia –

As a highly globalised economy, Australia is a major destination for foreign investment. At the end of Dec 2009, the total level (i.e. accumulative stock) of foreign investment in Australia was US\$1729 billion, and the total level of inward FDI was \$427 billion.

Historically Indian investment in Australia has been low and below levels which might be expected between two economies with such strong complementarities, as reflected in the strength of growth in trade. With the recent opening of the Indian economy, however, flows of Indian investment into Australia have been rising, albeit off a low base. The stock of inward investment (including portfolio investment) increased almost nine-fold to approximately US\$758 million during the period 2002-07<sup>8</sup> reflecting average annual growth of 55 per cent.

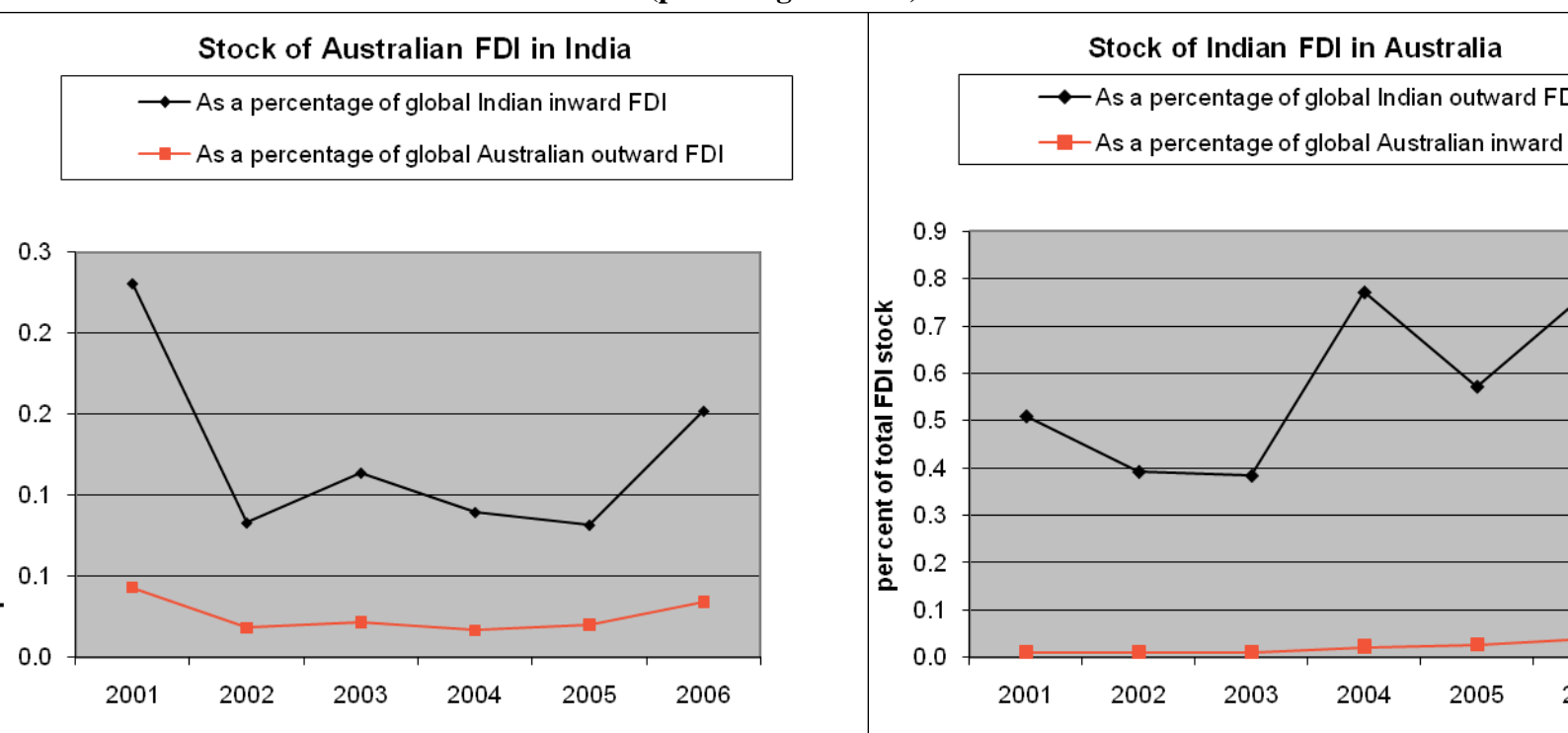
FDI forms only a relatively small portion of total two way investment and is relatively low in both directions. The stock of India-sourced FDI in Australia was around US\$48 million in 2008, while the total stock of India-sourced foreign investment into Australia was US\$481 million in 2006 . Australia is a more significant source as well as recipient of global FDI than India (chart 4.1), although Indian global FDI flows (inward and outward) are growing fast.

Chart 4.1 reveals the relative significance of bilateral FDI stocks for each country, as a proportion of the total stock of FDI in each case.

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<sup>8</sup> DFAT estimate from published Australian Bureau of Statistics (ABS) data, based on historical cost,

**Chart 4.1 Stock of bilateral Australia–India FDI (percentage of total)**

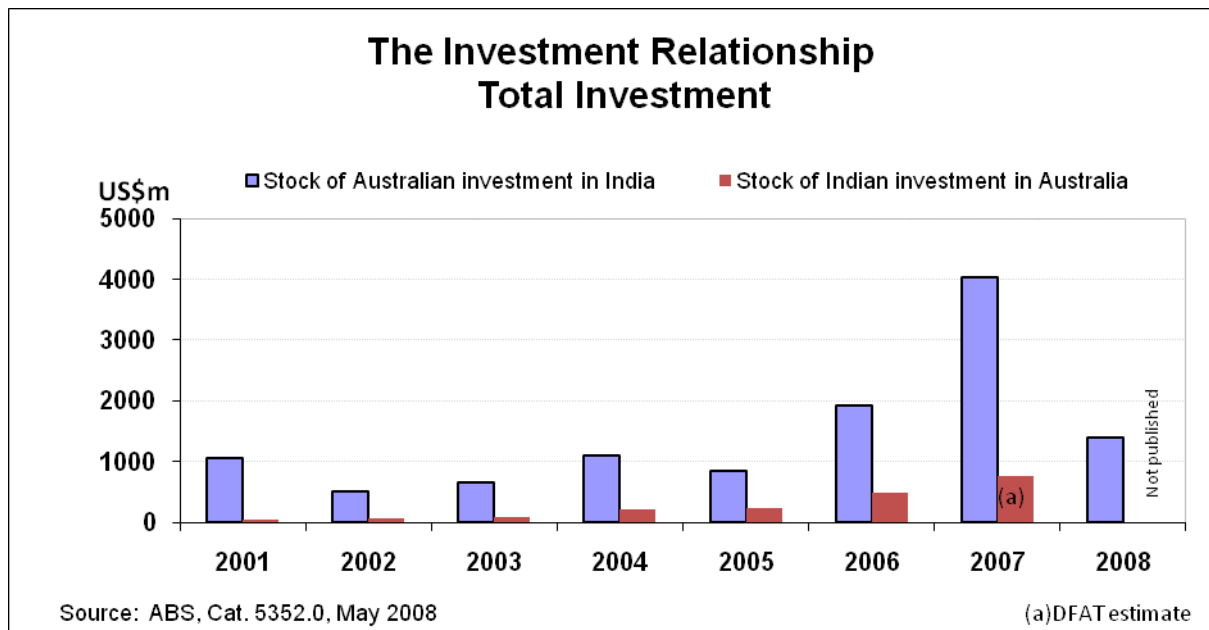


Data source: ABS 5352.0 (various years), UNCTAD Foreign Direct Investment Database (online) and CIE calculations (see footnote 28 of full Economic Modelling Report for fuller explanation of calculations – in Annex).

Indian companies are required to obtain Indian Government approval before making significant investments in other countries. Approved overseas investment by Indian corporations between financial years 1999 to 2007, stands at over US\$12 billion, with 42 per cent in the manufacturing sector and 44 per cent in the financial and non-financial services sector. Actual outflows in 2006-07 were US\$11 billion, with US\$8.2 billion in non-financial services and US\$3.7 billion in the manufacturing sector.

As Chart 4.2 shows, Indian investment in Australia has increased in recent years. There are now a number of high-profile Indian investments in Australia across the resources, hospitality, manufacturing, software, banking and telecommunications sectors. The majority of Indian investment in the Australian natural resources sector is aimed at establishing greater reliability of supply for the rapidly growing Indian economy. Coal, copper, LNG and uranium exploration are areas of particular interest for Indian investment in this sector. Indian software development companies have a growing presence in Australia and are significant employers. Some Indian ICT companies use their Australian offices to service Asian business clients.

Chart 4.2



## 5. Liberalisation of Trade in Goods

### 5.1 Existing trade policies and constraints

Australia and India enjoy a healthy economic relationship and there is scope to further strengthen trade links. A range of tariff and non-tariff impediments to bilateral flows for trade in goods remain, even taking into account the efforts India and Australia have undertaken to reduce these barriers.

#### 5.1.1 India

Within the ambit of trade liberalisation, reduction in import tariffs has remained central to India's broader economic reforms. The Government has continued to reduce applied MFN tariffs especially on non-agricultural products to meet its goal of reaching ASEAN tariff levels on these products. Applied tariffs have steeply declined in India since its reforms of the early 1990s. The overall average applied MFN tariff has fallen from over 32% in 2001-02 to less than 16% in 2006-07, with the average tariffs for non-agricultural products at 12.1% a few years back (WTO, Trade Policy Review: India, 2007). India's peak customs duty (Table below) has fallen to 10 percent in 2008-09. Customs duty as a percentage of imports has also declined tremendously over the years, reflecting comprehensive tariff policy reforms. Furthermore, India abolished quantitative restrictions (QRs) on her imports in 2000-2001.

**Table 1. India's Peak Customs Duty Reductions**

Year	Peak duties (per cent)	Customs duty as a percentage of imports
1999-00	<b>40</b>	21.88
2000-01	38.5	21.25
2001-02	<b>35</b>	17.23
2002-03	<b>30</b>	15
2003-04	<b>25</b>	13.6
2004-05	20	11.08
2005-06	<b>15</b>	9.64
2006-07	<b>12</b>	9.64
2007-08	<b>10</b>	9.65
2008-09	<b>10</b>	7.4

**Source:** Government of India, *Economic Survey* 2010 based on DGCI&S, Kolkata, Budget of Union of India and Budget Speeches of Finance Minister.

#### 5.1.2 Australia

Tariffs have been one of the main instruments of Australian economic policy since the nineteenth century. However, since the 1980s, Australia has pursued successive rounds of unilateral tariff reductions and applied tariffs are currently low by global standards. In 2010, Australia's simple average applied tariff (most favoured nation basis - MFN) was 3.1 per



cent. Australia's average WTO bound tariff rate is 9.9 per cent and 97 per cent of Australian tariffs are bound. More than 96 per cent of Australia's tariff lines were applied at an MFN rate of 5 per cent or less, with over 46 per cent of all tariff lines with tariff-free treatment on an MFN basis. Following unilateral tariff reductions implemented on 1 January 2010, Australia now has 46 per cent of its tariff lines with tariff-free treatment, and 96 per cent with tariffs of 5 per cent or less.

India is listed in Schedule 1 of the *Customs Tariff Act 1995* as a developing country whose originating goods may receive preferential rates of duty, known as 'DCS' rates of duty. As Australia applies developing country preferential tariffs on a range of goods from India, the average applied tariff on goods from India is 2.8 per cent, lower than the MFN average.

In February 2008, Australia announced a comprehensive government review of Australia's export policies and programs (the Mortimer Review). As part of this review, a group of experts considered Australia's approach to the negotiation of FTAs and proposed new benchmarks for the negotiation of future FTAs. The review was completed in September 2008 and concluded that FTAs should form an integral part of Australia's future market access strategy and that Australia should pursue a strategic FTA agenda. However in assessing possible future FTA partners, the Government should consider several objectives, including the potential for achieving substantial trade liberalisation in a more timely way than is possible through other negotiating mechanisms; the need to ensure WTO consistency while also ensuring that agreements go beyond current WTO commitments and the need to enhance foreign and security relations.

The Government's 'New Car Plan for a Greener Future', released in November 2008, provides a comprehensive plan to make the Australian automotive industry more economically and environmentally sustainable. The Plan features a US\$1.1 billion Green Car Innovation Fund to stimulate research, development and commercialisation of technologies that significantly reduce the fuel consumption and greenhouse gas emissions of passenger motor vehicles. Tariffs in the Passenger Motor Vehicle sector fell to 5 per cent on 1 January 2010, giving Australia the third lowest tariff regime among economies with a well developed automotive industry. Tariffs in the Textiles, Clothing and Footwear (TCF) sector range between 5 and 10 per cent. Tariffs for apparel and certain finished textile goods were reduced to 10 per cent on 1 January 2010 and are scheduled to be reduced 5 per cent on 1 January 2015. In 2008 Australia's imports of TCF products from India were valued at approximately US\$241 million, or 3 per cent of Australia's total imports of TCF products.

## 5.2 Impact of liberalisation

India and Australia have carried out far-reaching trade liberalisation over recent decades. The next two sections indicate that the trade liberalisation carried out to date has had net positive impacts in both countries, indicating that further liberalisation associated with a bilateral FTA will benefit the two economies.

## 5.2.1 Australia

Australia's experience with trade liberalisation has been unambiguously positive. The economy has been transformed since the mid-1980s as successive governments have moved to liberalise trade and implement microeconomic reforms.

Tariffs were increased during the 1940s, 50s and 60s as governments sought to establish a strong local manufacturing industry after the Second World War. However, in the early 1970s the real costs of tariff protection had begun to be recognised. Australian industry fell behind world best practice and annual productivity growth averaged just 2.7 per cent between 1950 and 1973, compared with the Organisation for Economic Co-operation and Development (OECD) average of 3.8 per cent.

It was in this context in the mid-1980s that Australia commenced a process of trade and economic reform which has delivered substantial benefits to the Australian economy and the living standards of Australians. Key reform measures have included the removal of controls on foreign exchange transactions, the floating of the Australian dollar, the reduction of tariffs, the liberalisation of the banking sector, widespread competition reforms in non-traded product markets (including transport, communications and utilities) and the move away from centralised wage fixing in favour of enterprise-level bargaining, in some occupations, so that wage rises reflect productivity gains.

Australia's experience has been consistent with that of many other countries – as trade barriers were lowered living standards rose. Since 1988, Australia's trade-weighted average MFN tariff has fallen from 15 per cent to 3.1 per cent. While tariffs have fallen, manufacturing output (industry value added in chain volume terms) has grown by 27.5 per cent and the value of manufacturing exports has risen almost four-fold. Overall employment grew by 2.9 million jobs between December 1988 and December 2007 - a 46 per cent increase - and GDP per capita has risen around 47 per cent in real terms to US\$47,001 in 2008 (A\$54,955).

Tariff liberalisation has also led to higher trade intensity in the economy. Exports of goods and services now account for around 20 per cent of Australia's total net output (GDP), up from 16 per cent in 1988. In the automotive sector despite the reduction of tariffs, exports have risen strongly. In the 1980s tariffs were as high as 57.5 per cent and vehicle exports were worth approximately US\$110 million (in 1988). By 2007, however, tariffs had been reduced to 10 per cent and vehicle exports had risen to approximately US\$3 billion.

Trade reform has helped lower the cost of capital goods and other inputs for business, increasing the efficiency and international competitiveness of Australian industry. It has also given firms access to the best available products produced globally. At the same time, Australian consumers have been able to obtain a wider range of goods and services at lower prices, enhancing living standards through greater choice and buying power.

Many of the reform measures to-date have been directed at inefficient behind-the-border regulations and industry structures. Addressing such inefficiencies improves the domestic business and investment environment by allowing markets to operate as efficiently as possible and lowering the cost of doing business. Removing unnecessary regulation and facilitating competition in domestic markets remains a high priority for the Australian Government. Domestic reform creates productivity growth which in turn lifts living

standards and enhances international competitiveness. As a result, Australia has been able to maximise the economic gains from its participation in the increasingly globalised trading system (see Box 2 below). A 2006 OECD report cites Australia's approach to regulation as a best practice benchmark for other OECD countries.

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### **Box 2: Australia's Dairy Industry**

The Australian dairy sector provides a good example of the positive impact of reform on international competitiveness and export growth.

Until the 1980s, the dairy industry was highly protected. Federal and State Governments maintained price support programs and strict regulations to ensure constant supply and to regulate the price of milk on the domestic market. Farmgate prices were fixed by law and trading between regions was restricted. Milk sold for processing and subsequent export received a lower price than milk sold for consumption on the domestic fresh milk market – discouraging exports. Governments paid out large amounts of public funds in industry support and consumers and industry paid premium prices for milk and other dairy products.

Reform of the dairy sector was initiated by the Australian Government in the late 1980s with a series of deregulation measures leading to complete liberalisation of both federal and state regulation of both domestic and export markets. All price support mechanisms were removed in July 2000.

Consumers gained immediately. In the first year of the fully deregulated market, the average price received for milk declined by 18 per cent in the state of Queensland and 12 per cent in New South Wales. A consumer-funded restructuring package was provided by the Australian Government, in consultation with industry, to help the sector adjust to the pressures of the deregulated trading environment. Farms consolidated, grew in size and became more efficient and productive. Herds expanded and approaches to feed, pasture management, fertilizers and irrigation were all streamlined. Producers have become more cost efficient and innovative, recognising the need to compete for a share of the consumer dollar.

The reforms, though complex, ultimately helped Australia push down its costs of production, to the point where the state of Victoria is now the second largest dairy exporter in the world after New Zealand. In 2008-09, Australia's dairy exports were worth US\$1.9 billion.

*End of box.*

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Australia has undertaken successful economic reform, with short term costs being outweighed by medium and long term benefits. Broad community support for reforms and the introduction of appropriate adjustment packages have underpinned the success of economic reform in Australia.

As a consequence, Australian business and the community more broadly, generally accept that further economic reform, including trade and investment reform, can provide benefits. However, industry and consumer support for specific reforms, including those negotiated in any future high quality FTA with India, will be subject to an assessment that the medium to long-term benefits of further liberalisation in Australia and the additional access provided in

the Indian market outweigh the shorter-term costs of adjustment. A comprehensive and transparent explanation of the costs and benefits is necessary if broad community support is to be forthcoming.

## 5.2.2 India

It is widely recognised that India's highly protective trade regime, which was in existence before the trade reforms of the 1990s, created anti-export bias which had adverse effect on India's export performance, however this was attuned to the imperatives of India's economic development and stage of development then. The subsequent liberalisation of imports and reduction in tariffs significantly reduced this anti-export bias. Reductions in tariff rates and removal of quantitative restriction in this period were accompanied by rapid export growth. India's total exports of goods rose from US\$18 billion in 1991 to US\$123.6 billion in 2006. In the early 1990s, some important export incentives were either rationalised or abolished along with devaluation of the Rupee.

India has had a consistent policy of moving towards comparable East Asian tariff rates. In February 2007, India announced a reduction in the peak rate for non-agricultural products from 12.5 per cent to 10 per cent.

## 5.3 Sector Analysis

### 5.3.1 Manufactures

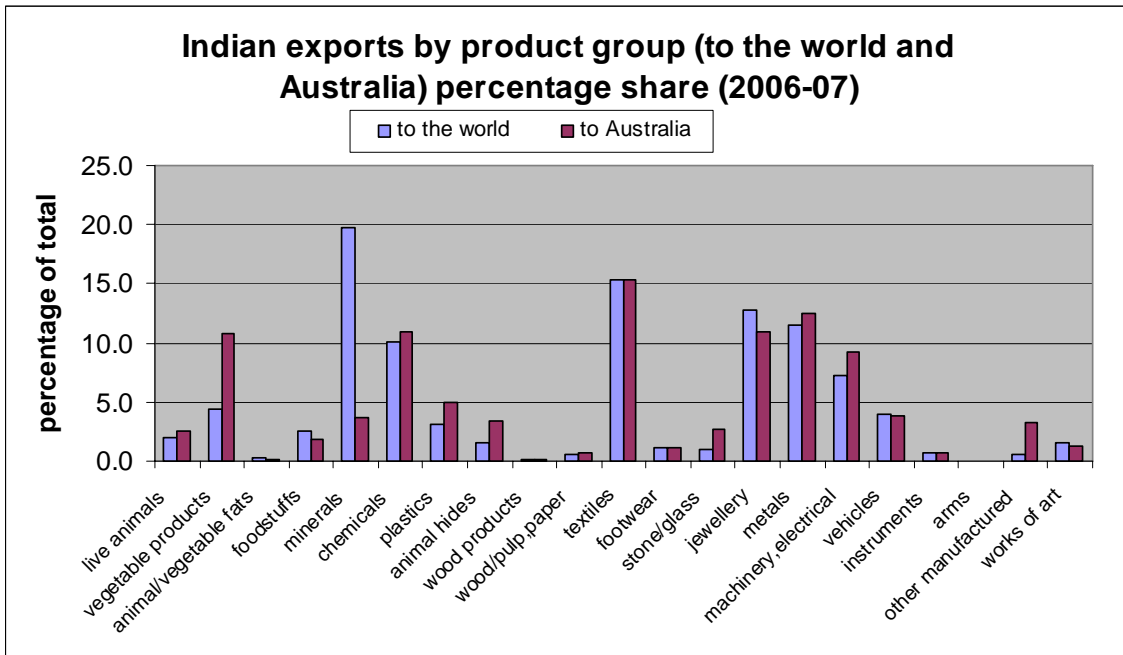
#### *Manufacturing goods trade*

India's largest export sector in its trade with Australia is manufacturing. Indian manufacturing exports rose from US\$386 million in 1996-97 to US\$745 million in 2006-07, constituting around 80 per cent of India's total exports to Australia.

While Australia's manufactured exports (including non-monetary processed gold) to India are substantial, at around US\$3.4 billion in 2006, they constituted a somewhat smaller portion (52 per cent) of Australia's total exports to India during that year.

Major product groups in India's exports to Australia (during 2006-07) were textiles and garments, base metals, gems and jewellery and machinery as shown in Chart 5.1. The composition of India's export basket to Australia is not significantly different from India's global export profile. However, the profile of India's exports to Australia has significantly changed over time. In 2000-01, textiles and garments constituted 40 per cent of India's manufacturing exports to Australia, but declined to 22 per cent in 2006-07. Base metals, gems and jewellery and machinery have shown significant increases over the same period.

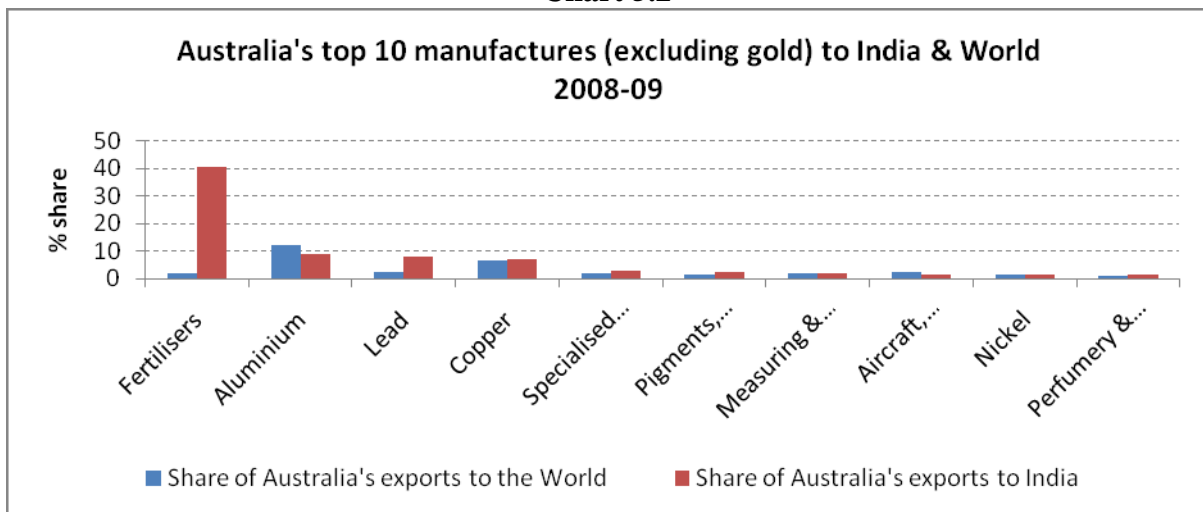
Chart 5.1



Source of data: Department of Commerce, Government of India

Australia's largest manufacturing export to India is non-monetary processed gold, which represented 83 per cent of Australian manufactured exports in 2008-09. Other key manufactures that Australia exports to India are fertilisers, base metals, paints, machinery and instruments, electronic circuits and perfumery and cosmetics (see Chart 5.2 which compares main Australian manufactured exports to India with its exports of those products to the world).

Chart 5.2



Source: DFAT, STARS database consistent with ABS Cat. 5368.0, Feb 2010

### *Tariffs and other measures affecting trade*

Tariff rates are generally defined in the form of *ad valorem* duties but Australia and India apply specific tariffs to a small range of products. In Australia, these include certain cheeses, certain fruit and vegetable juices and used passenger motor vehicles. India applies specific tariffs for certain products, including textiles and garments.

India also provides a number of exemptions from import duties for certain sectors or importers depending upon the industrial use of the import.

Australia provides assistance to its food processing industry in the form of income support and sustainability grants. The Automobile Competitiveness and Investment Scheme (ACIS) provides import duty credits to eligible Australian automotive producers earned on the basis of eligible production, investment in plant and equipment and research and development activities as well as some grants for research and development. A new re-targeted Automotive Transformation Scheme, to replace ACIS from 2011, will provide assistance in the form of grants rather than duty credits.

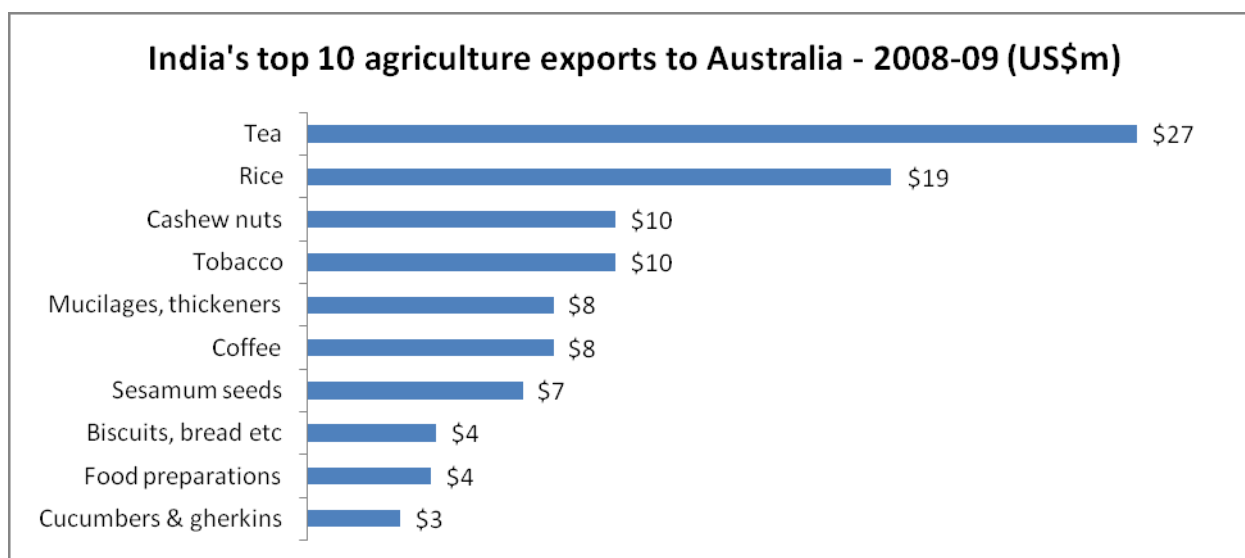
### 5.3.2 Agriculture, forestry and fisheries

#### *Agricultural goods trade*

Trade between Australia and India in agricultural products, including forestry and fisheries products, is modest relative to other sectors. Two way agricultural trade between India and Australia totalled US\$456 million in 2008-09. Nevertheless, India's agricultural exports to Australia grew increased by an annual average of 15% over the last 5 years to 2008-09. India's global exports of agriculture have increased by 25 per cent a year (trend growth) over the past five years to 2008. Australia's agricultural exports to India have increased slightly over the past five years.

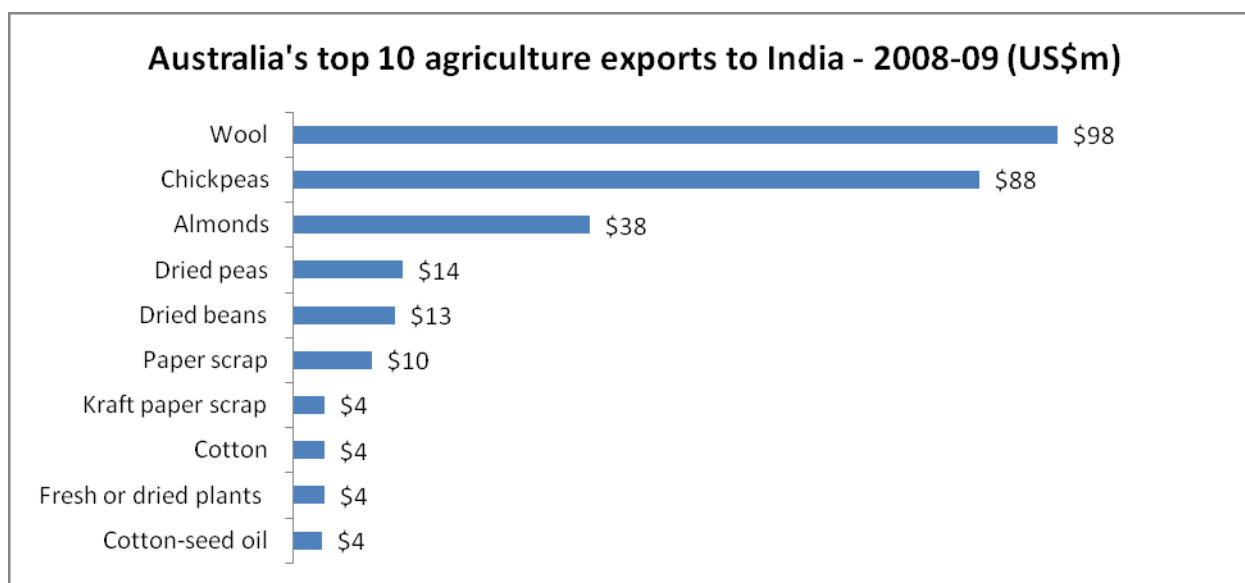
Principal Indian agricultural exports to Australia include tea, rice, cashew nuts and tobacco (see Chart 5.3). Australia's principal agricultural exports to India include wool (for which Australia is India's largest supplier), pulses (particularly chickpeas), almonds, paper and paperboard (see Chart 5.4), and in previous years, wheat. While still small, wine exports from Australia to India are increasing, and accounted for 15 per cent of India's total wine imports in 2008.

**Chart 5.3**



Source: DFAT, STARS database consistent with ABS Cat.5368.0, February 2010

**Chart 5.4**

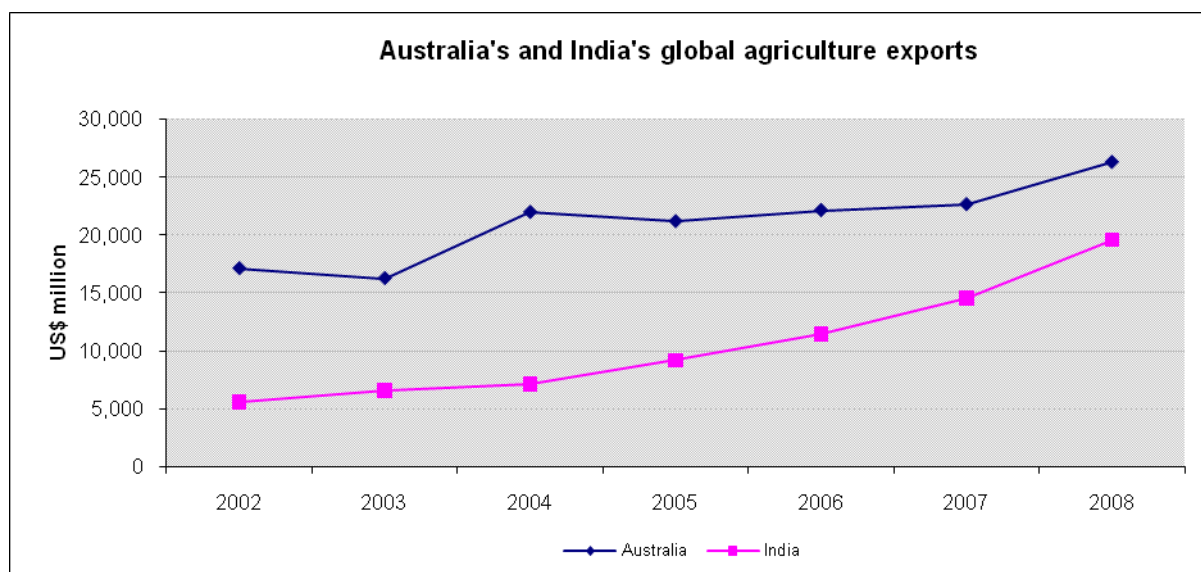


Source: DFAT, STARS database consistent with ABS Cat.5368.0, February 2010

### *Role of agriculture in both economies*

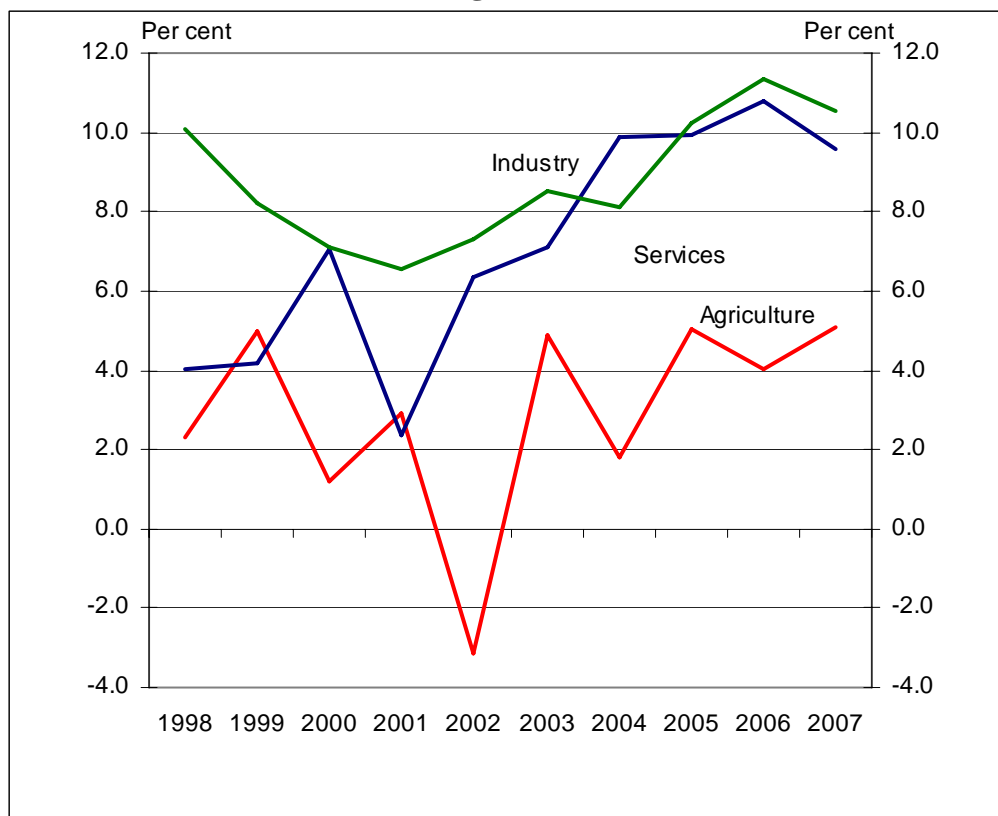
The agriculture sector (including forestry and fisheries) accounted for only 2.9 per cent of Australia's GDP in 2009, though due in part to Australia's strengths as an efficient, low cost and innovative producer of agricultural products, it contributed a larger proportion of Australia's exports – 14 per cent of total goods exports. Around two-thirds of Australia's total agricultural production is exported. Approximately 1 per cent of Australia's agricultural exports go to India, well below India's share of total Australian goods exports (6.7 per cent).

**Chart 5.5: Comparison between Australian and Indian global agricultural exports**



India is the world's third-largest agricultural producer. Agriculture makes up a significant proportion of Indian GDP, 17 per cent of total production in 2008, though this has been declining in significance - in 1990-91 it constituted 29 per cent of total production. About 60 per cent of India's population continues to depend directly or indirectly on the agricultural sector.

**Chart 5.6: India – annual sectoral growth rates**



Source: CEIC database from Central Statistical Organisation (CSO), Ministry of Statistics and Programme Implementation India



India's agricultural exports have grown in value terms considerably since 2003 (Chart 5.5). They, however, have been declining as a proportion of total merchandise exports, from around 14 per cent in 2000-01 to 10 per cent in 2005-06. India's imports of agriculture products are low in relative terms. They fell from 7.6 per cent of total merchandise imports in 2000-01 to below 5 per cent in 2005-06.

#### *Tariffs, tariff rate quotas and other measures affecting agricultural trade*

Tariff barriers to agricultural imports into Australia are low by world standards. Most Australian agricultural tariffs are applied at rates of between zero and 5 per cent. The simple average applied tariff for agricultural goods is less than 2 per cent. Most agricultural products are imported duty-free. All Australian agricultural tariff lines are bound under the WTO at rates from zero to 29 per cent, and the average bound tariff rate is 4 per cent. India's agricultural tariffs have been progressively reduced over the past few years. Its current simple average applied MFN tariff for agriculture is 36 per cent.

Australia's WTO schedules contain two limited tariff rate quotas (TRQs) for agricultural products - selected cheeses and tobacco. The tobacco TRQ is no longer effective as the applied tariff rate is zero. India maintains bound tariff rate quotas on items such as milk powder, maize, rape, colza or mustard oil, sunflower seed and safflower oil.

#### *Opportunities and complementarities*

There are high levels of complementarity in agricultural trade between the two countries. These include the ability of Australia to meet domestic shortfalls in Indian production, agri-trade opportunities (outlined below) and the opportunity to trade seasonal items on a counter-seasonal basis, in both directions (which would provide consumers with access to high quality fruit and vegetables at a lower price year round).

Mutually advantageous opportunities in the agricultural trade relationship are only likely to grow. Due to changing structure of demand, India is likely to become a more regular importer of certain food items, some of which Australia will be well placed to provide, such as high-value dairy products. In addition, as India's food processing sector continues to expand and look for export opportunities, Australian inputs (potentially facilitated under an FTA) could become an increasingly important part of India's supply chain.

There are limits, however, to the extent to which Australia's agricultural goods exports to India could increase. Australia faces substantial capacity constraints due to the limited availability of arable land and water. Australia has existing agricultural export markets that it will need to continue to service. Australian agricultural exports are also not likely to compete with subsistence farmers in India, and are more likely to target distinct niche markets in urban high population centres.

Agricultural trade is affected not only by tariffs and similar measures, but also by the sanitary and phytosanitary (SPS) requirements that most countries have in place to control pests and disease. In the case of Australia and India, SPS requirements have an impact on agricultural trade. SPS issues are addressed more fully in Section 5.5.

### *Prospects for cooperation*

In light of the complementary nature of Indian and Australian agricultural exports, trade liberalisation through an FTA which liberalised tariff and non-tariff barriers, would bring significant benefits to both countries. Such benefits would be commensurate with the level of liberalisation undertaken. However, because of the important role of agriculture in both countries, the potential impacts of greater liberalisation would need to be fully discussed in the event FTA negotiations commence.

### 5.3.3 Mining

Australia and India are richly endowed with mineral and energy resources. Mining is a major part of Australia's economy contributing 7.4 per cent of GDP in 2009 and figures even more prominently in its exports with mining exports accounting for approximately 41 per cent of total exports. Australia's mining know-how covers the full life-cycle of mining activities: investment, mine operation, general mine occupational health and environmental management, and logistics - including for exports. Mining exports accounted for approximately 21 per cent of India's total goods exports in 2008. Australia is a reliable supplier of minerals and energy and deeper trade engagement would enhance India's energy and minerals security.

#### *Mining trade*

Mining exports are the largest component of bilateral trade between Australia and India. India's imports of mining commodities from Australia totalled US\$6 billion in 2008-09 excluding non-monetary gold, representing 6 per cent of Australia's total minerals exports up from 4 per cent in 1999. In 2008-09, India was Australia's third largest export destination for both coking coal (US\$3.6 billion) and copper ore (US\$586 million) (see Table 5.3). Australian exports of diamonds to India, are also significant, many of which are then cut and polished before they are re-exported by India. Australia accounted for 53 per cent of India's coking coal imports and 52 per cent of India's total coal imports. Australia imported mineral commodities worth US\$10.9 million from India in 2008, with key imports being crude minerals, stone, sand and gravel (see Table 5.3).

#### *Tariffs and other measures affecting trade*

India's and Australia's tariffs on mining and energy imports are low (see Table 5.3 and 5.4). In 2006, Australia's average bound tariff rates for metals and mineral products were 6.7 per cent and its average applied rate was 2.7 per cent (see Table 5.4).

**Table 5.3: Tariffs applying to India's mining imports from Australia**

Product	Value of imports from Australia 2008 - US\$m	India's applied tariff per cent
Coking Coal	4,442	0-5
Thermal Coal	149	5
Copper ores and concentrates	815	2
Manganese ores and concentrates	190	2
Ferrous waste and scrap	41	Free
Aluminium waste and scrap	38	Free

Source: DGCI&S, Ministry of Commerce

**Table 5.4: Tariffs applying to Australia's mining imports from India**

Product	Value of imports from India 2008 - US\$m	Australia's applied tariff
Calcified petroleum coke	0.0	Free
Industrial diamonds	1.5	Free
Bentonite	2.2	Free
Sandstone	0.6	Free to 5

Source: DGCI&S, Ministry of Commerce

### *Investment in Mining*

There is significant potential for investment in each other's resource sectors.

All investment proposals by foreign investors in Australian resource processing, oil, gas and mining sectors need prior approval by Commonwealth Government authorities where they exceed US\$35 million for acquisitions of substantial interests in existing businesses, US\$7 million for establishment of new businesses and US\$35 million for offshore takeovers.

Australian states and territories are principally responsible for the regulation of onshore mining, including coal and petroleum. Commonwealth laws regulate management schemes and licensing systems for the mining and exploration of minerals and petroleum offshore, and ensure matters of national environmental significance are not impacted by proposals.

The success of direct Indian investment in the Australian mining sector, which has included the listing of Indian companies on the Australian stock market, has been a prominent feature of India's overall investment in Australia. Direct Indian investment in the Australian mining sector including for exploration covers LNG, copper, coal, platinum mineralisation, phosphates, ammonia, oil and gas and uranium. Indian companies have indicated an intention to increase their level of investment in Australian mineral and energy projects.

Australian mining companies are keen to invest in India, but to date have come up against a range of regulatory and administrative obstacles. It is generally acknowledged that domestic obstacles inhibit mining investment and much of India's mineral wealth remains untapped. Some of the regulatory and administrative obstacles include:

- . state regulations requiring that resources mined in one state also be processed in that state;
- . state government regulations in relation to issues such as zoning, land-use and environment frequently vary markedly from state to state, creating uncertainty, increasing compliance costs and adding to delays in approvals;
- . multiple approvals are required for most aspects of mining and approval times are typically long by international standards;

- rules governing foreign investors in joint ventures are cumbersome and reduce the commercial viability of a project;
- state governments have considerable discretion to terminate leases, reducing security of tenure for foreign firms; and
- taxes and cesses at both the central and state level are sometimes raised unpredictably, impacting on the commercial viability of the project.

Other challenges facing the Indian mining industry are the small scale of many new and existing operations and a lack of investment in technology and supporting infrastructure like ports, rail and shipping.

### *Prospects for cooperation*

Australia and India have established a number of bilateral mechanisms to enhance cooperation on mining and energy issues. The Joint Working Group on Minerals and Energy aims to provide a framework for long-term resources cooperation, including five action plans covering coal, renewable energy, petroleum & natural gas, mining and power.

An FTA between Australia and India could look into lowering existing trade barriers and addressing behind-the-border barriers impeding investment to further boost trade and investment flows to the benefit of both economies. Additionally, tariff reductions could reduce inflationary pressures on core inputs to growth in India.

Australia will continue to rely on investment by Indian companies in the Australian mining sector (see additional discussion of mining investment in Section 7.2 “Impact of Investment Liberalisation”).

Similarly, investment by Australian mining companies in India, including through joint ventures with Indian partners, would enable Australian firms to bring international best practice to India in the full range of mining activities, including environmental management and logistics.

## 5.3.4 Energy

Energy collaboration between Australia and India is likely to increase as India’s economic expansion leads to higher demands for power. It has the potential to expand further including through both trade and investment at a time of further development and expansion of Australia’s energy sector.

### *India*

India is well endowed with reserves of thermal coal, oil and gas, though it is a significant importer of different forms of energy. It imports around 70 per cent of its petroleum consumption, and its thermal coal imports of 30.7 million tonnes in 2007 are expected to rise by over 10 per cent in 2008. The Indian Planning Commission estimates that in order to sustain 8 per cent GDP growth through to 2031, India will need to increase its primary energy supply three to four fold.

In order to meet India's projected future energy needs, the Government has taken a range of measures to encourage investment, including by the private sector. As a result, 100 per cent foreign investment is allowed in all petroleum-related activity, including exploration, production and marketing.

Measures have also been taken to encourage exploration and production of gas. As of 1997, 100 per cent foreign investment is permitted in all types of exploration.

Under the Petroleum and Natural Gas Regulatory Board Act 2006, a Regulatory Board is to be set up to regulate the refining and marketing of petrol, petroleum products, and natural gas, but not exploration and production of crude oil and natural gas.

### *Australia*

While states and territories are principally responsible for the energy sector in Australia, it is increasingly governed by national regulation by the Australian Energy Regulator and Australian Energy Market Commission, which also regulate Australia's gas market.

Australia has substantial energy reserves and is a major net exporter of energy products. In contained energy terms from all sources (thermal coal, crude oil and condensate, naturally occurring LPG, natural gas, uranium and renewables), Australia consumes less than a third of the energy it produces (over 17,000 petajoules in 2004-05). Energy consumption more than doubled over the thirty years to 2004-05, to around 5500 petajoules a year.

Thermal coal dominates Australia's energy exports, amounting to over 126 million tonnes in 2008, whereas Australia is a net importer of liquid hydrocarbons (though also a significant exporter). It is an increasingly significant exporter of LNG.

Australia accounted for almost 20 per cent of global uranium production in 2007, of which almost all was exported.

Australia applies zero tariffs on all energy products except for ethanol, with a duty of 5 per cent.

While Australia currently does not export significant energy products to India, it has the potential to play a greater role in helping to meet India's growing energy needs, especially through greater exports of thermal coal and LNG, and by the provision of leading edge mining technology services which could improve India's extractive capacity. Exports to India face tariff levels of 5 per cent on both thermal coal and LNG.

### *Prospects for cooperation*

Collaboration in the energy sector is beginning to expand through investment. Petronet LNG, India recently signed a historic agreement for the long term supply of 1.5 million tonnes per annum of liquefied natural gas from Australia's Gorgon LNG Project in Western Australia. Australian and Indian firms are bidding for oil and gas exploration licences in India and Australia respectively. An FTA could seek to facilitate further intensification of such links.

## 5.4 Rules of Origin

It would be necessary to develop preferential Rules of Origin (ROO) in order to implement an FTA between Australia and India. ROO are used to determine whether a good traded between parties to an FTA qualifies for access to the preferential tariffs negotiated under the agreement. They ensure that the benefits negotiated under an FTA accrue primarily to the FTA parties.

In order to qualify for preferential tariff treatment, a good has to be either wholly obtained in the territory of the FTA parties, or any non-originating materials or sub-components used in its production must be substantially transformed within the territory of the FTA parties. There are a number of tests which may be used separately or in combination for ascertaining whether substantial transformation has occurred.

### *Australia's approach to ROO*

To facilitate trade, Australia supports ROO that are objective, liberal and easy to administer. Australia's preferred approach is to utilise a *product specific rules* (PSR) approach whereby a specific rule is applied to each product line. Australia prefers to base these rules largely on the CTC method but it should be supplemented as required by the other two methods in order to confirm substantial transformation.

Australia's more recent FTAs with Chile (entered into force on 6 March 2009), the US and Thailand (both of which entered into force on 1 January 2005) utilise PSRs based largely on the CTC method to establish substantial transformation. ROO in Australia's earlier FTA with Singapore (which entered into force on 28 July 2003) is based on the value-added approach. On 1 January 2007, Australia and New Zealand introduced new ROO for the Australia New Zealand Closer Economic Regional Trade Agreement (which entered into force in 1983) utilising PSRs based largely on the CTC method.

Australia's FTA with ASEAN and New Zealand, which entered into force on 1 January 2010, uses a "co-equal" approach to ROO, under which for the vast majority of goods, the exporter can choose either a CTC-based test or an equivalent Regional Value Content (RVC) test. For a small number of tariff lines, only a single test – either CTC or RVC – is offered.

### *India's approach to ROO*

India considers that rules of origin, if formulated adequately, alongside checking trade deflection, could serve as an instrument of development as they emphasise on domestic manufacturing and value addition. ROO provisions in India's existing agreements are based

largely on a 'general rule' comprising CTC plus value-added requirements. In its more recent agreements, India has also adopted a PSR approach.

Under the South Asian Free Trade Agreement (SAFTA)<sup>9</sup>, goods covered by the agreement have to meet a general rule which incorporates a CTC requirement (CTH at HS 4-digit level as well as a value-added requirement). However, for a few (191) tariff lines (where both inputs and outputs are at the same 4-digit HS level) exporters can meet either a general rule or another specified PSR, denoting transformation as Change in Tariff Sub-heading (CTSH).

In the Comprehensive Economic Co-operation Agreement between India and Singapore (which was signed in January 2004) a similar approach was adopted. The general ROO provisions of that agreement combine a CTC requirement (CTH at HS 4-digit level) with a value-added requirement of 40 per cent. The agreement's ROO take into account the production system of Singapore and provide a list of 380 tariff lines which are exempted from the agreement's general ROO provisions. For each of these products exporters must meet a PSR.

In the India-Sri Lanka FTA (which was implemented in 2000) the general ROO criteria are based on both CTC (CTH at HS 4-digit level) and value-added criteria.

It is apparent that the approaches most recently adopted by Australia and India have many commonalities and cooperation would be facilitated by the proposed FTA.

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<sup>9</sup> Members of SAFTA were: Bangladesh, Sri Lanka, Nepal, Pakistan, Bhutan, Maldives and India, in 2006, when it was implemented.

## 5.5 Sanitary and Phytosanitary measures

Both Australia and India apply SPS measures on imported plants, animals and their products to the extent necessary to protect human, animal or plant life or health from risks associated with pests and diseases, as provided for under the SPS Agreement of the WTO to which both countries are parties.

### *Australia*

Australia bases its SPS measures on international standards where they exist and where they achieve Australia's appropriate level of protection (ALOP). However, where such standards do not achieve Australia's ALOP, or relevant standards do not exist, Australia exercises its right under the SPS Agreement to apply measures based on a scientific assessment of the risks. Australia's ALOP is expressed as providing a high level of sanitary or phytosanitary protection aimed at reducing risk to a very low level, but not to zero.

Australia's policy and regulatory activities under the SPS Agreement fall within the responsibilities of several government portfolios. These are primarily the Australian Government Department of Agriculture, Fisheries and Forestry (DAFF), which is responsible for animal and plant quarantine; and the Australian Government Department of Health and Ageing and its associated statutory authorities (notably Food Standards Australia New Zealand - FSANZ) which are responsible for public health and food safety. The Department of Foreign Affairs and Trade is responsible for trade policy and legal aspects of Australia's rights and obligations under the WTO SPS Agreement.

Biosecurity policy is developed by Biosecurity Australia (a prescribed agency within DAFF) and implemented by the Australian Quarantine and Inspection Service (AQIS) whose responsibilities include ensuring border quarantine security, issuing import permits and providing export health certification. Biosecurity Australia uses a science-based import risk analysis (IRA) process to develop biosecurity policy. IRAs identify the quarantine pests and diseases relevant to an import proposal, assess the risks posed by them and, if those risks are unacceptable, identify and evaluate risk management measures that might be applied to reduce those risks to a level that achieves Australia's ALOP. Australia is in the process of implementing the recommendations of the independent review of Australia's Quarantine and Biosecurity Arrangements—the Beale review. The recommendations include the development of new biosecurity legislation and streamlining the functions currently undertaken by AQIS, Biosecurity Australia and elements of DAFF.

### *India*

A range of laws and agencies exist to frame and implement India's SPS regime. In India, import control requirements are the responsibility of the Bureau of Indian Standards (BIS), the Directorate General of Foreign Trade, the Ministry of Health and Family Welfare (MoHFW) and the Ministry of Agriculture (MoA). The Export Inspection Council (EIC) is responsible for export inspection and certification of commodities.

Import control in India for the food sector is operated under the Prevention of Food Adulteration Act by the MoHFW for health and safety aspects and the MoA for quarantine aspects. In addition, all products which are under compulsory certification by the BIS for the domestic market should conform to BIS standards when imported.



The EIC is the only agency in India responsible for export inspection and certification of a range of commodities in areas such as food, chemicals, leather, engineering and footwear as commodities notified under the *Export (Quality Control & Inspection) Act, 1963*. The EIC also operates export inspection and certification on a voluntary basis by developing suitable inspection/ certification schemes. The export inspections and certification are based on standards recognised under the relevant notification. These standards may be international standards, standards of importing countries, national standards prescribed in the notification, or even contractual specifications.

Both sides acknowledged that it would not be appropriate for science-based SPS measures to be the subject of negotiations under an FTA. However, it was recognised that further work at the bilateral level should be undertaken to improve an understanding of each other's SPS regimes and their impact on trade. An FTA could possibly consider appropriate mechanisms to:

- . enhance consultation and cooperation between the parties on SPS matters;
- . provide a forum for reviewing progress on sanitary and phytosanitary matters; and
- . address issues of transparency through providing a forum for information exchange.

## 5.6 Technical Regulations, Standards and Conformity Assessment

Both Australia and India regulate the production and sale of certain goods for a variety of reasons including consumer protection, safety and the environment. Technical regulations may require the goods to meet a published standard and undergo a conformity assessment procedure before the goods can be sold in the market. Increasing globalisation has made technical regulations, standards and conformity assessment an important aspect of international trade. A widely accepted international standards system can play a key role in protecting fair market competition, expediting commercial transactions and promoting international trade. Excessively strict or unreasonable regulations may, however, create unnecessary obstacles to trade.

Australia and India are both signatories to the Technical Barriers to Trade Agreement (TBT Agreement) of the World Trade Organization, actively involved in the development of international standards through bodies such as the International Organisation for Standardization (ISO) and International Electrotechnical Commission; and members of international conformity assessment bodies including the International Laboratory Accreditation Cooperation and the International Accreditation Forum. They are also both active members of so-called specialist regional bodies that facilitate cooperation in the fields of metrology, laboratory accreditation and product certification.

### *India*

The Bureau of Indian Standards (BIS) is responsible for formulating and enforcing standards in a large number of Indian sectors. Some apply to all sectors, though there are also sector-specific standards for automobiles, pharmaceuticals and cosmetics, among others. BIS also give certificates for products which meet its standards. Although, BIS standards are voluntary, it is compulsory to notify BIS of compliance with standards relating to health and consumer safety for certain products. Product certification can also be granted to companies outside India. In addition to products certification BIS grants license of "eco mark" to environmentally friendly products.

## *Australia*

Australia has developed an extensive framework for addressing standards and conformance issues. Several government and non-government bodies provide Australia's measurement, standards and conformance infrastructure:

- . Standards Australia, the peak non-government standards writing body, is responsible for the formulation and publication of the majority of voluntary standards in Australia. Standards Australia is a signatory to the Code of Good Practice for the Preparation, Adoption and Application of Standards, which is an Annex to the WTO TBT Agreement. There are also at least 16 private sector bodies that prepare industry standards, codes and guides.
- . In the area of technical regulations, the Council of Australian Governments operates in accordance with a binding guide that ensures regulations are compatible with relevant international standards and consistent with international obligations.
- . The Joint Accreditation System of Australia and New Zealand provides accreditation of certification bodies, inspection bodies, and auditor training course providers.
- . The National Association of Testing Authorities accredits the competence of calibration and testing laboratories and inspection bodies.
- . The National Measurement Institute is responsible for establishing and maintaining Australia's units and standards of measurement and for coordinating Australia's national measurement system.
- . Some government agencies develop and enforce industry-specific standards and technical regulations, for example, the Therapeutic Goods Administration, the Australian Quarantine and Inspection Service and the Department of Infrastructure, Transport, Regional Development and Local Government.

## *Prospects for Cooperation*

Building on this existing foundation of international and bilateral cooperation an FTA would offer further opportunities to develop cooperation on standards and conformance issues between Australia and India. A chapter on technical regulations, standards and conformity assessment procedures would complement commitments relating to liberalisation of trade in goods between the Parties and would also facilitate trade by committing the Parties to arrangements that are transparent, provide certainty and minimise transaction costs.

Possibilities for collaboration could include:

- . Improving access to necessary information on technical regulations, standards and conformity assessment procedures;
- . Establishing communication links between agencies in the parties and fostering cooperation and greater mutual understanding of each other's approaches at the regulatory level;
- . Building on existing cooperation between standards, accreditation and conformity assessment organizations for the purpose of promoting recognition and acceptance of the results of conformity assessment; and
- . Encouraging reduction of transaction costs between the parties to the extent possible.

## 5.7 Customs Cooperation

Consistent and transparent customs procedures play an important role in the practical facilitation of trade. The harmonisation and streamlining of such procedures have been long-standing priorities for governments and the international trading community.

Australia and India work closely together as members of the WTO and World Customs Organization (WCO). Both have signed the WCO's Revised Convention on the Simplification and Harmonization of Customs Procedures, which reflects modern practices of customs administration. The Convention aims to simplify and harmonise customs procedures and provides the core principles for modern, efficient and effective customs procedures. In accordance with international standards, it provides for the creation of a uniform system of customs valuation, duties and documentation in all ports of entry in signatory countries. Australia and India are also signatories to the WTO Customs Valuation Agreement and the International Convention on the Harmonized Commodity Description and Coding System.

The additional costs arising from administrative paperwork and procedures - including customs requirements - can constitute a substantial percentage of the value of goods traded. Consultations and submissions to this study indicate these costs would be important issues to consider in any FTA between Australia and India.

### *India*

In recent years, India has taken steps to bring its customs procedures up to best international practice, including the introduction of electronic systems. Such measures have been designed to ensure consistency and transparency in the application of customs procedures, including the payment of customs duties, throughout India. India has set up a Fast Track Scheme under which certain categories of importers have been allowed to pay duty and clear the imported goods on a self-assessment basis. India also operates an electronic data interchange (EDI) system under which qualified importers, identified on the basis of past performance, are given a waiver of inspection of imported cargo through a "green channel" facility. At present, about 75 per cent of India's international trade is covered by 23 automated customs stations. Other initiatives, like the installation of the Interactive Voice Response System (IVRS) and touch screen kiosks are designed to allow traders to ascertain the status of their documents. A number of other steps have been taken to reduce irritants, particularly in the area of documentation.

### *Australia*

The Australian Customs and Border Protection Service (Customs and Border Protection) is responsible for preventing the illegal movement of people and harmful goods across Australia's border while supporting legitimate trade and travel. Customs also administers Australia's anti-dumping and countervailing systems and collects duties and taxes.

Australia's customs procedures are readily accessible, with all relevant information available on the web. It is regularly updated. This information includes up to date information on tariff rates, trade statistics, customs-related laws and regulations, customs procedures and administrative rules. For specific inquiries such as cargo, product classification and origin criteria, traders can utilise enquiry points and an advance ruling system.

A customs declaration is required for most imports to Australia. Australia has developed an integrated cargo system (ICS) for imports. To use the system all customers must be registered with ICS. This clearance can be taken by importers or custom brokers (holding a license). Almost all custom entries are electronically processed, and preference is given to electronic processing. Imports subject to quantitative restrictions require a clearance from Australian Customs and Border Protection as well as AQIS

### *Prospects for cooperation*

Both countries face new challenges in customs administration and trade facilitation. These include reconciling greater security scanning based on sound risk management with swift clearance of increasing levels of legitimate cargo, and enforcing complex rules of origin as the provisions of preferential trade agreements take effect. There is always a risk that customs procedures can cause unnecessary delays and restrictions on trade. Every effort should be made to streamline customs procedures to minimise the time required for goods to pass borders.

Cooperation and exchange of information between customs administrations provides greater transparency, improves understanding of processes and procedures and assists customs administrations operationally in undertaking enforcement responsibilities. The Indian Central Board of Excise and Customs has forged a strong and cooperative working relationship with its Australian counterpart, including through an MOU signed on 6 March 2006. Nevertheless, further cooperation between Australian and Indian customs administrations may help to expedite trade between Australia and India. Areas that could be discussed in an FTA might include:

- . the establishment of contact points in both countries to respond to customs-related inquiries and provide timely and accurate information;
- . the exchange of information on technical customs matters;
- . improved channels for information exchange on intelligence issues, including more timely provision of information for the prevention, investigation and combating of customs offences;
- . the promotion of increased dialogue between Australian and Indian customs administrations and businesses;

## 5.8 Anti-Dumping, Countervailing and Safeguards Measures

Under WTO rules, Members have recourse to trade remedies (anti-dumping, countervailing duty and safeguard measures) in certain situations where imports cause or threaten to cause injury to the domestic industry in the importing country. Anti-dumping and countervailing measures allow governments to take remedial action to address material injury caused by 'dumping' and subsidisation of imported goods. Safeguard measures allow for emergency action where there is a surge of imports that cause serious injury to the domestic industry and are intended to facilitate industry adjustment.

Australia and India, as Members of the WTO, are both subject to the WTO rules relating to trade remedies as set out in the relevant WTO agreements (Anti-Dumping Agreement, Agreement on Subsidies and Countervailing Measures and Agreement on Safeguards).

### *Australia*

In Australia, anti-dumping and countervailing investigations are carried out by the Australian Customs and Border Protection Service in accordance with the governing legislation. The two key pieces of legislation are the Customs Act 1901 ('Customs Act'), which sets out the general inquiry process, and the Customs Tariff (Anti-Dumping) Act 1975 ('Anti-Dumping Act'), which makes provision for the imposition of anti-dumping and countervailing duties. Such investigations are initiated following the receipt of an application from Australian industry.

Australia's safeguards investigation procedures are contained in the Commonwealth Gazette No S 297 of 25 June 1998 and amended by Commonwealth Gazette No GN39 of 5 October 2005. Following a decision by the Australian Government to initiate a safeguard investigation, the Productivity Commission conducts a safeguard inquiry in accordance with the published general procedures. These procedures reflect the WTO Agreement on Safeguards.

### *India*

Anti-dumping in India is based on a strong legal framework of laws and procedures. They include Sections 9A, 9B and 9C of Customs Tariff Act, 1975, Customs Tariff (Identification, Assessment and Collection of Anti-Dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995 and also Article VI of GATT 1994 and the Agreement on Anti-Dumping.

In India, anti-dumping inspection is initiated by the Directorate General of Anti-dumping and Allied Duties (DGAAD). Anti-dumping measures are only considered at the request of industry. India's Directorate General has been active in imposing anti-dumping cases.

India has a separate safeguards legislation, and investigation is conducted by the Directorate General of Safeguards. A case has to be initiated on the request of industry.

In India, the decisions of the Directorate General of Anti-dumping and Allied Duties as well those of the Directorate General of Safeguards can be challenged by taking appeals to higher appropriate authorities.

### *Prospects for cooperation*

In the context of a possible FTA, Australia and India could consider:

- . informal consultations and dialogue on trade remedy measures; and
- . technical exchanges, including the exchange of officials between respective trade remedy authorities.

## **6. Liberalisation of Trade in Services**

### **6.1 Existing policies**

#### **6.1.1 India**

Deregulation of services sectors has been one of the highlights of the Indian reforms. . Telecommunications has been substantially opened up to competition. Newer sectors broadly defined as Information Technology and IT Enabled Services<sup>10</sup> are largely open. Knowledge-based segments have been prominent among the faster growing services sectors, assisted by technological advances and a low-cost educated workforce with good English language capabilities. Significant changes have occurred in the financial sector although foreign investment in banking and insurance remains relatively less open. Transport, power, business services such as accountancy and legal services remain protected from foreign competition, as does the retail sector.

India has made services commitments in the WTO Uruguay Round. It made partial commitments in 42 subsectors – or about 23 per cent – across six of the 12 major services groupings (business, communications, construction, financial, health and tourism) in the Service Sectoral Classification List. India made no commitments on distribution, educational, environmental, recreational, transport or other services not included elsewhere. However, since the commitments in the Uruguay Round at the WTO, India has autonomously opened up its services sectors and this is reflected in its Offer at the WTO wherein it has offered 11 out of the 12 services sectors as per the Services Sectoral classification of the WTO. The details are reflected in India's Revised Offer of 2005 at the WTO.

In 2008, India's services exports were US\$ 106 billion while the imports were US \$ 92 billion. Thus, India has trade surplus in services. India's services exports to Australia have grown over the last decade. The balance of services trade is in Australia's favour. The major Indian exports to Australia, by sector, are travel services, transport services, IT and IT enabled services (or computer and information services), and other business services. IT and IT enabled services have a share of more than 50 per cent of total services exports.<sup>11</sup> Within the travel services exports from India, Education related travel services (60% of Australia's total services imports from India as per Reserve Bank of India figures; 80% as per Australian Bureau of Statistics) constitute an important segment.

#### **6.1.2 Australia**

Services are increasingly important in trade and investment worldwide, both directly as a component of trade, and indirectly by enabling or facilitating international business through communications, travel and professional services. A liberal services sector brings economy-wide benefits by facilitating innovation, efficiency and improved quality.

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<sup>10</sup> Computer Related Services (CRS) is a subset of IT and IT related services for the purposes of this study.

<sup>11</sup> A large number of services provide by Indian IT services providers are not captured by CRS and, therefore, Australian and Indian figures on IT/CRS services trade do not match.

In part as a result of unilateral regulatory reform, services have grown strongly in Australia. Services accounted for 73 per cent of economic activity and over 85 per cent of employment in 2009. Services growth in the economy generally has translated into booming services exports. In 2009, Australian services exports exceeded US\$42 billion.

By international standards, Australia’s services sector is considered to be open with few barriers to foreign services suppliers. Where immigration and qualification (registration/accreditation/licensing) requirements have been met, national treatment is generally extended to foreign suppliers of services.

In its WTO commitments Australia has bound a high proportion of services sectors and modes of delivery as defined by the WTO General Agreement on Trade in Services (GATS), with commitments in all 12 sectors in the Service Sectoral Classification List.

In Australia, certain services sectors are regulated by the Australian Government while others are regulated by state and territory Governments (some services are regulated at both the Commonwealth and state/territory levels

Australia’s existing FTAs all contain services commitments.

***Bilateral Trade in Services***

Australian services exports to India have grown rapidly, from US\$262 million in 2002 to US\$2.5 billion in 2008-09. In 2008-09, India was Australia’s sfifth-largest services export market. Travel services (mainly education-related travel to Australia) account for 93 per cent of Australian services exports to India. Australia’s education exports to India have increased at an annual rate of 39per cent over the past five years. Services delivered by a range of Australian companies with a commercial presence in India are also significant, although they are not captured by official trade data.

**Chart 6.1 Bilateral Trade in Services between Australia and India**



Source: ABS Regional Services series, Cat. 5368.0 Dec. 2009

## **6.2 Impact of liberalisation**

Liberalisation of services trade will be an important and mutually beneficial component of a possible FTA between Australia and India. Consumers benefit from the greater range of products and lower prices that result from services liberalisation. Access to new technologies and expertise can also boost economic growth. Services trade liberalisation should seek to remove barriers in domestic regulations relating to foreign service providers that impose additional costs for importers and erode competitiveness.

The lessons from existing services liberalisation are clear. There are a few barriers, for instance, in the IT services trade between India and Australia, and as a result IT trade flows between both countries have grown rapidly, strengthening the efficiency and export competitiveness of IT sector in both countries. Similar is the case with regard to outsourcing administrative and technical services to companies in India. Growth in such outsourcing has benefited Indian services providers as well as the productivity of Australian companies. Gains could be expected from services liberalisation in other sectors as part of an FTA. For example, access to a wider range of banking and insurance services and services providers in India would be to the benefit of Indian consumers – who have already benefited from liberalisation in financial services.

Any future FTA negotiations on services should take an ambitious approach, aiming for commercially meaningful ‘GATS –plus’ outcomes. The utility of the services commitments would be judged by the content of new commercially-meaningful market access provided. A decision would need to be taken on whether to adopt a ‘negative’ or ‘positive’ list approach. A negative list approach means that all services except those listed in a defined schedule of exemptions are subject to market access and national treatment obligations as outlined in the FTA. A positive list approach means that only the services included in a FTA schedule will be subject to market access and national treatment obligations. In all its completed FTA’s (with Singapore and South Korea) and ongoing negotiations India has followed a positive list approach which corresponds to the approach taken in services negotiations at the WTO under GATS, while Australia has followed a negative list approach in some recent FTAs (such as with Singapore, the US and Chile). Each of these approaches has its merits.

Facilitation of enhanced mutual recognition of professional qualifications by competent authorities and professional registration bodies in Australia and India to strengthen services trade and more closely integrate the two economies could also be an important objective. A possible FTA could seek to address issues relating to mobility of natural persons which is one of the modes of trade in services.

In summary, an FTA that liberalises and facilitates trade in services would create new opportunities for business and help accelerate growth in both countries. Such gains would be commensurate with the level of liberalisation undertaken in each sector, in which context the level of development of both countries may be a relevant consideration.



## 6.3 Sector Analysis

The list of services sectors contained in this chapter is not exhaustive.

### 6.3.1 Financial services

There are considerable opportunities to promote further trade and investment in bilateral financial services to the benefit of both countries. An FTA that liberalises financial services would stimulate capital flows between Australia and India. By allowing capital to move where it can best be used, an FTA would lead to a more efficient allocation of financial resources. Financial services linkages would deepen, providing access to new managerial expertise as well as a greater range of services and financial products. Businesses and retail customers both stand to gain. However, the imperatives of prudential regulations and best business practices should be considered, as they are considerations of importance against the backdrop of the current global financial crisis.

#### *Australian financial services sector*

Finance and insurance is the largest sector in the Australian economy in terms of gross value added, generating 10.7 per cent of real gross value-added in 2009, up from 9.8 per cent in 1999. This sector has been one of the country's best performing industries, achieving an average annual growth rate of 4.6 per cent a year between 1999 and 2009. This growth rate is well above the GDP growth rate for the same period (3.2 per cent) and reflects the growth in Australia's service-based economy during the period.

The major regulatory reforms that have taken place over the past two decades have played a vital role in underpinning the strength of the Australian services sector. The Australian financial services sector has developed markedly since the reforms of the early 1980s when the previously regulated Australian dollar was floated (1983) and the Australian banking sector, which had been closed to foreign banks since 1942, was opened to foreign investors in 1984. Further reforms were implemented in the 1990s. As a result of these reforms, the Australian financial services sector is at the forefront of world best practice. It has high standards of governance, deep and liquid markets, a skilled workforce strategically located in the East Asian time zone and advanced IT integration. Australia has particular strengths in funds management.

The regulation of the Australian financial services sector is principally conducted by three independent Commonwealth statutory bodies: the Australian Prudential Regulation Authority (APRA); the Australian Securities and Investments Commission (ASIC); and the Reserve Bank of Australia. This financial regulatory framework divides responsibility for supervision along functional rather than institutional lines, promoting efficiency and certainty in the financial system.

#### *Indian financial services sector*

Banking and insurance services in India accounted for around 5.6 per cent of GDP in 2006-07, with its share being relatively stable between 5.5 and 6.5 per cent over the preceding five years. Between 2000-01 and 2006-07, the sector grew at an average annual rate of 10.8 per

cent, well above the GDP growth rate. Regulation of the financial services sector in India is outlined in the following sections.

## *Banking*

### *India*

Significant steps to liberalise the financial sector have been taken in India since 1991, when the sector operated in a heavily regulated environment, for example state-owned banks controlled 90 per cent of bank deposits, a high proportion of funds were channelled to the government and credit was allocated on the basis of government policy. Foreign banks have since been allowed some access to the Indian market.

The financial sector reforms in India since the early 1990s initially focused on ensuring existing financial institutions operated in an environment of operational flexibility and functional autonomy. From the second-half of the 1990s, they focused on strengthening the financial system consistent with the movement towards global integration of financial services.

In recent years, the Reserve Bank of India (RBI) has outlined a road map for presence of foreign banks in India (phase I from 2005 to 2009 and phase II after 2009). The next phase of the RBI roadmap (after 2009) will commence after a review of the experience gained and after due consultation with all the stakeholders in the banking sector.

As per the road map from March 2004 foreign banks have been permitted to hold a total of 74 per cent foreign equity in Indian private banks, while there has been an aggregate cap of 20 per cent for Indian public sector banks. However individual foreign banks are restricted to holding less than 5 per cent equity of any one bank, unless a bank is identified for restructuring. It is worth noting that for non-banking finance companies, FDI up to 100 per cent is allowed automatically subject to minimum capitalization norms.

India has a WTO commitment to allocate 12 new bank branch licences per year to foreign banks, subject to a minimum initial capital requirement. The grant of a licence to operate an ATM is not counted in the WTO commitment of 12 bank branches of foreign banks. The grant of ATM is governed by the Branch authorisation policy of September 2005. There are more than 280 foreign bank branches in India and more than 800 ATM's of foreign banks in India.

Implemented reforms have led to a significant improvement in public sector banks performance. The introduction of best international practices and norms, refinements in the supervisory practices, tightening of risk weights/provisioning norms in regard to sectors witnessing high credit growth, market discipline brought about by listing on the stock exchanges and interest rate deregulation are key factors in this improved performance. Simultaneously, greater competition has been induced with the introduction of new generation private sector banks.

A number of Australian banks are active in the Indian market, including the Commonwealth Bank (which has received in principle approval for a banking branch licence), the ANZ, the National Australia Bank, Westpac and Macquarie Bank.

## *Australia*

Prior to 1985, foreign-owned banks had only a limited involvement in the Australian banking system, largely via wholly or part-owned merchant banks. The relaxation of foreign-bank entry restrictions in 1984 led to the rapid entry of 15 overseas banks to the Australian market. These banks were required to incorporate locally as subsidiaries, and to hold capital in Australia.

Further liberalisations in the early 1990s allowed foreign banks to operate as branches in Australia. Branches were not required to hold capital locally. These reforms led to a significant growth in foreign-owned bank participation in the Australian market. A restriction precluding foreign banks from acquiring smaller Australian banks was removed and this was ultimately followed by the removal of a blanket prohibition on the foreign takeover of major Australian banks. As at July 2008, there were 58 authorised banks in Australia, of which 44 were foreign-owned (with 34 of these operating as branches and 10 operating as subsidiaries) and 14 were domestic.

Foreign investment in the banking sector needs to be consistent with the *Foreign Acquisition and Takeovers Act* (FATA), the *Banking Act*, the *Financial Sector (Shareholdings) Act* and banking policy, including prudential requirements. Any proposed foreign takeover or acquisition of an Australian bank is considered on a case-by-case basis and judged on its merits.

A foreign acquisition (other than by a US investor) of 15 per cent or more of an Australian bank requires prior approval from the Treasurer under the FATA. The FATA provides the Treasurer with the power to prohibit a foreign acquisition of an Australian bank if he is satisfied that it would be ‘contrary to the national interest’.

Acquisitions of more than 15 per cent of an Australian bank also require prior approval under the FSSA. Domestic and foreign investors are subject to this requirement alike. Australia also has a ‘four pillars’ policy, which prohibits mergers among the four major Australian banks.

Subject to APRA authorisation, foreign banks may establish one of three kinds of commercial presence in Australia – a representative office, a branch of a foreign bank, and a foreign subsidiary bank. A foreign bank wishing to establish a representative office in Australia must obtain the written consent of APRA. Minimum entry standards must be met and the representative office must comply with certain operating conditions set by APRA. A foreign bank that operates a representative office in Australia is not permitted to undertake any banking business, including advertising for deposits in Australia.

Foreign banks wishing to operate in the ‘wholesale market’ may operate through a branch structure and thereby not be required to maintain endowed capital in Australia or be subject to any capital-based large exposure limits (as these are the responsibility of the regulator in the bank’s own country). As APRA does not have direct oversight of the capital adequacy of foreign bank branches, foreign bank branches are not subject to the depositor protection provisions of the *Banking Act* and are not permitted to accept retail deposits of less than \$250,000.

A foreign bank wishing to operate in the retail deposit market in Australia is required to seek authorisation from APRA as a locally incorporated subsidiary for that purpose. The requirements for authorisation of the locally incorporated subsidiary are non-discriminatory and also apply to Australian-owned authorised deposit-taking institutions. There is an entry requirement of \$50 million start-up capital (which applies for all locally incorporated banks).

While relevant licences must be sought and banks must satisfy APRA of their capacity to operate consistent with Australia's prudential requirements, there are no limits on foreign bank numbers. Nor is the country of origin relevant in APRA's assessment of a licence application.

Only one Indian bank, the State Bank of India, has a branch licence in Australia while, the Bank of Baroda and Union Bank have representative offices in Australia. Thus, there exist opportunities for more Indian banks to open up branches in Australia with the trade likely to be increased with both sides entering into a FTA.

### *Securities/Funds Management*

#### *Australia*

The Australian Securities Exchange (ASX), Australia's largest financial market operator, is in the top ten listed exchanges in the world as measured by market capitalisation. The ASX imposes rules on participants including liquid capital requirements. Responsibility for the supervision of transactions which occur on Australia's financial markets, including the ASX, will be assumed by ASIC in the third quarter of 2010.

While financial products, services providers and financial market operators are required to be licensed under the Corporations Act, a streamlined route is provided for financial markets regulated overseas under comparable regulatory regimes. That is, overseas financial markets can operate in Australia if comparable regulatory regimes exist in the home jurisdiction.

In Australia, investment houses wishing to conduct a brokerage business on the ASX must be licensed by ASIC. Foreign stockbroking firms wishing to participate on ASX markets can conduct business without the need to establish an office or shopfront in Australia.

#### *India*

Guidelines for the issue and valuation of securities in India are set by India's RBI/ Securities and Exchange Board guidelines. The India Portfolio Investment Scheme is incorporated under the *Foreign Exchange Management (Transfer and Issue of Securities to a Person Resident outside India) Regulations, 2000*. With progressive economic reforms, the policy on portfolio investment has been liberalised. Foreign Institutional Investors (FIIs) registered with Security Exchange Board of India (SEBI) are eligible to purchase shares and convertible debentures under the Portfolio Investment Scheme (PIS).

In the case of FIIs, total holdings of each FII/SEBI approved sub-account shall not exceed 10 per cent of the total paid up capital or 10 per cent of the paid up value of each series of convertible debentures issued by an Indian company, and the total holdings of all FIIs/sub-accounts of FIIs put together cannot exceed 24 per cent of the paid-up capital or paid-up value of each series of convertible debentures. However, the limit of 24 per cent can be increased to the sectoral cap/ statutory limit by the company's board of directors passing a resolution followed by a special resolution being passed by the general body of the company

Portfolio investments abroad for all Indian mutual funds are limited to US\$5 billion. Individual funds can invest up to 10 per cent of net assets, up to US\$200 million each. Residents and corporates are limited to US\$200,000 a year and 50 per cent of their net worth respectively.

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#### *Global depository receipts/American depository receipts investment policy*

An Indian company can issue rupee-denominated shares to a person resident outside India (being a depository for the purpose of issuing Global Depository Receipts (GDRs) and/or American Depository Receipts (ADRs)). There are no end-use restrictions except for deployment/ investment of these funds in real estate and the stock market. There is no limit up to which an Indian company can raise ADRs/ GDRs.

A limited two-way fungibility scheme is available under which a stockbroker in India, registered with the Security Exchange Board of India (SEBI), can purchase shares from the market for conversion into ADRs/GDR.

Re-issuance of ADRs/GDR would be permitted to the extent of ADRs/GDRs, which have been redeemed into underlying shares and sold in the domestic market.

An Indian company can sponsor an issue of ADRs/GDRs by offering its resident shareholders a choice to submit their shares back to the company so that on the basis of such shares, ADRs/GDRs can be issued abroad. The proceeds of the ADR/GDR issue is remitted back to India and distributed among resident investors who had offered their rupee-denominated shares for conversion.

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### **Box 3: Macquarie Bank/State Bank of India Joint Venture**

A recent example of cooperation between leading businesses in India and Australia is the announcement in April 2009 that the State Bank of India (SBI) and Macquarie Group Limited (Macquarie) had launched the Macquarie-SBI Infrastructure Fund (MSIF).

SBI and Macquarie bring a unique combination of local and international expertise to the joint venture. SBI is the largest project finance arranger in Asia and the largest lender in India with a deep knowledge of the country's infrastructure sector.

Macquarie is a leading owner and operator of infrastructure assets globally and brings to the joint venture its global expertise in the financing, development and operation of infrastructure assets.

The fund will invest in infrastructure projects in India, with total capital anticipated to be between US\$2 and US\$3 billion. The fund will bring together foreign capital, including Australian institutional investors, and domestic Indian capital which will be invested together into Indian infrastructure products. MSIF will be managed by the SBI and Macquarie joint venture, with the International Finance Corporation, a member of the World Bank Group, as a cornerstone investor in the fund and minority shareholder in the management company.

This joint venture demonstrates the capacity for financial services to deliver mutually beneficial outcomes for both countries - which could be further increased through a bilateral FTA.

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## *Insurance*

### *India*

India has carried out significant reform in the insurance sector. Most significantly the previously nationalised insurance sector in India was opened to private investment in April 2000 and a foreign ownership cap of 26 per cent was put in place. Further liberalisation occurred in 2007 with some relaxation of pricing tariffs which were fully abolished on 1 January 2008. These latest reforms have resulted in lower insurance costs for Indian business and private consumers. In the general insurance sector in particular, the number of licensed general insurers has increased from the four state-owned entities in 2000 to 22 currently, many of whom have a foreign partner.

A number of Australian insurers are actively pursuing opportunities in the Indian market, including the QBE, which has announced a joint venture with India's Rajan Raheja Group, and Insurance Australia Group Limited, which announced in November 2008 that it and SBI had signed a joint venture agreement to establish a general insurance company in India.

### *Australia*

The Australian general insurance sector has undergone significant reform in the last decade. These reforms, combined with significant industry consolidation, have produced an advanced and sophisticated insurance sector. The Australian general insurance sector is the 12th largest in the world. In Australia, the minimum capital requirements for general insurers are determined on a case by case basis, with a minimum capital requirement of US\$4 million.

Recent reforms, which commenced on 1 July 2008, now require all direct offshore foreign insurers operating in Australia to be authorised by APRA and subject to Australia's prudential regime. However, there is limited exemption arrangements that allow some insurance business to be placed with offshore insurers not authorised in Australia. The exemptions are for high-value insured, atypical risks and a customised exemption as assessed by a licensed insurance broker.

Approval of non-resident life insurers is restricted to subsidiaries and must meet a minimum US\$8 million capital requirement. An authorised non-life insurance company operating in Australia as a non-incorporated entity must appoint either an Australian resident or a company incorporated in Australia as agent of the insurer. The *Corporations Act* requires all general and life insurance participants (including agents and brokers) to be licensed by ASIC and to comply with specific disclosure, compliance, ongoing training and dispute resolution requirements. The *Corporations Act* also sets out the requirements for financial reporting by companies which could include general and life insurance companies.

Most state and territory governments maintain restrictions, by way of provisions covering monopolies, licensing and associated controls on premiums and other terms of policies and in some areas of insurance, such as workers compensation and third-party motor insurance.

Financial services are an area where enhanced commercial engagement and cooperation between India and Australia - facilitated through the reduction of barriers under an FTA and enhanced dialogue between both countries' would clearly deliver substantial benefits to both sides.

### 6.3.2 IT & IT enabled Services

#### *India*

The Indian IT sector is a pillar of strength for the Services economy of the country and has seen a robust growth in recent years. . Indian service providers provide competitive software and solutions to various sectors of various countries including Australia. The IT industry has emerged as the fastest growing sector of the Indian economy both in terms of production and exports. Growth of software services from India has been the highest, with business IT growth at over 21 per cent during the 1990s, and similar high levels of growth this decade. Offshore markets for Indian software companies are typically developed countries, traditionally to the west and have tremendous scope to expand towards the east including to Australia. Global exports contribute 63 per cent of Indian IT and ITES sector output. Exports rose from US\$4 billion in 2000 to US\$17.9 billion in 2005, US\$23.6 billion in 2006, US\$31.1 billion in 2007, US\$40.4 billion in 2008, and are estimated to reach \$US47 billion in 2009<sup>12</sup> and US\$ 55-60 billion by 2010.

Keeping up with the continued growth in IT and ITES exports, the domestic market in India has also seen a significant growth. Strong demand over the past few years has placed India amongst the fastest growing IT markets in the world. India maintains its distinctive lead as an off shoring destination. Having aligned their internal process and practices to international standards such as ISO, CMM, and Six Sigma, companies in India are achieving the quality and productivity benchmarks more suitable for remote service delivery, hence meeting the standards of their business partners outside India. Indian firms are expanding their service offerings to compete internationally by also shifting from low-end business processes to higher value-added services. They are also enhancing their global service delivery capabilities through a combination of greenfield initiatives, cross-border mergers and acquisitions, partnerships and alliances with local players.

The enhanced reach of Indian companies has enabled many Australian companies to expand into international markets. An example is the use by Australia of the automatic teller software system provided by India's largest software exporter, Tata Consultancy Services.

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#### **Box 4: Business Process Outsourcing (BPO)**

India's success in IT services and the BPO sector is well-known. India now aims to become a global ICT research and development (R&D) hub.

Industry analysts estimate the R&D outsourcing market in ICT is expected to grow to over US\$13 billion by 2010 with significant technology diffusion effects. As a result of new technologies it has become possible to trade in previously un-tradable services. The

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<sup>12</sup> According to data from the Industry association NASSCOM:  
[http://nasscom.org/upload/5216/IT\\_Industry\\_Factsheet-Mar\\_2009.doc](http://nasscom.org/upload/5216/IT_Industry_Factsheet-Mar_2009.doc)

expansion of BPO is an indicator of this phenomenon. New services, which can be supplied through the BPO route, include financial engineering, equity analysis, and R&D services. These are areas in which India is already a market leader.

A number of Australian companies have utilised Indian BPO services to foster their own productivity and growth prospects through enhanced global competitiveness. Equally, Australia has a well-developed market for business process outsourcing, with many Australian companies providing such services to clients locally and offshore.

Both Australia and India have open markets to facilitate business process off-shoring.

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### *Australia*

Australia's information and communications technology (ICT) sector spans a diverse array of businesses in areas including computer software and hardware, telecommunications and multimedia.

It is illustrative to consider both goods and services for ICT. Australia's exports of all ICT goods and services totalled US\$4 billion in 2008-09, accounting for 2 per cent of total exports. Imports of ICT goods and services totalled US\$21 billion, accounting for 10.3 per cent of Australia's total imports.

The high demand for ICT goods and services reflects Australia's e-readiness, a measure of the quality of a country's ICT infrastructure and the ability of its consumers, businesses and governments to use ICT to their economic and social benefit. In 2008, the Economist Intelligence Unit ranked Australia fourth in the world in terms of overall e-readiness, up from ninth position in 2007.

In the field of software and information technology enabled services, firms located in Australia have expertise in areas that include financial services, energy efficiency, radio frequency identification in logistics and supply chain management, agricultural and mining services applications and digital content.

Australia has an open foreign investment regime which is reflected by the number of Indian companies present in this sector in Australia. As of 2006, there were 26 Indian IT firms with a significant established presence in Australia supplying both domestic and overseas markets.

To assist cooperation in ICT, Australian and Indian Governments have established a Joint Working Group on ICT which meets regularly at official level (a bilateral MOU was signed in 2005).

The potential for Australian and Indian organisations to partner on important IT projects is demonstrated by the cooperation agreement signed between Indian ICT company Infosys and Australia's Commonwealth Scientific and Industrial Research Organisation (CSIRO) in 2005. It encompasses cooperation in research and development in information engineering and commercialisation of CSIRO's intellectual property.

While there are currently no tariff restrictions for this services sector, an FTA may be able to further boost trade and cooperation by addressing non-tariff barriers.



### 6.3.3 Telecommunications

#### *Australia*

Australia has a liberal and open domestic regulatory framework for telecommunications for all providers. In recent years, the Australian Government has carried out significant liberalisation and deregulation of the telecommunications market leading to increased competition in the sector. In the context of the proposed National Broadband Network, the Australian Government has recently announced reforms to the telecommunications regulatory regime.

These reforms will drive future growth, productivity and innovation across all sectors of the economy by:

- addressing Telstra's high level of integration to promote greater competition and consumer benefits;
- streamlining and simplifying the competition regime to provide more certain and quicker outcomes for telecommunications companies;
- strengthening consumer safeguards to ensure services standards are maintained at a high level; and
- removing redundant and inefficient regulatory red-tape.

The Australian telecommunications sector is highly developed by world standards. For example, the number of mobile services in operation as a proportion of the Australian population was at 107 per cent in June 2007 (more than one per person). Approximately 64 per cent of households had internet access in 2006-07 – with 68 per cent of those households connected to a broadband service. Australian telecommunications providers are active in a number of foreign markets, particularly in Asia.

Australia's telecommunications framework differentiates between 'carriers' and 'service providers'. Carriers are those entities that own and operate infrastructure and are subject to regulatory obligations and carrier licence fees. Carriage service providers are those entities that provide carriage or content services to the public by using this infrastructure. Service providers are not subject to licence fees.

Australia's telecommunications regime is the responsibility of the Australian Government. The main legislative instruments governing Australia's telecommunications industry are the *Telecommunications Act*, the *Telecommunications (Consumer Protection and Service Standards) Act*, the *Telstra Corporation Act*, parts of the *Trade Practices Act* and the *Telecommunications (Low-Impact Facilities) Determination*. This legislative framework provides for strong competition in the Australian telecommunications sector. The major regulatory features include no restrictions on the number of providers or installers of network infrastructure, ensured access rights for carriers and service providers, competitive safeguards and the separation of regulatory and operational functions.

Australia applies no market access restrictions on foreign providers for telecommunications, except in relation to Telstra (the former government-owned monopoly). Foreign ownership

of Telstra is limited to 35 per cent of shares. The maximum individual foreign ownership allowed in Telstra is five per cent of shares.

All of Telstra's major competitors are foreign owned. Telstra maintains a dominant position in the Australian telecommunications market especially with regards to fixed line services. However, other sectors of the telecommunications market are increasingly competitive. For example, there is strong competition in the mobile market, with the market split between four infrastructure owners, Telstra with a market share of around 44 per cent, Optus with 32 per cent, Vodafone with 17 per cent and Hutchison with 7 per cent. The retail segment of the broadband market is also strongly competitive with over 400 Internet service providers operating in Australia, 200 of which are wireless broadband providers.

### *India*

In India up until the mid 1990s, the Government was the sole provider of telecom services. There has been gradual deregulation, starting with the announcement of the National Telecommunications Policy in 1994 allowing private entry into various telecom sub-sectors, and the Indian Government also established an independent regulator, the Telecom Regulatory Authority in 1997. The major breakthrough came with the initiation of the National Telecommunications Policy in 1999 which opened up telecoms services to the private sector without any restrictions on the number of operators except in the cellular mobile market due to frequency constraints. Since 1999 reforms have continued including in relation to internet telephony, long distance service and modernisation of Radio Frequency spectrum Allocation.

Since liberalisation of the telecommunications sector commenced in India in 1992, the sector has experienced very strong growth. India now has the fifth-largest telecommunications services market in the world and it continues to grow rapidly. Foreign investors - including Australian firms - are already active in India.

Market access for telecommunications for foreign providers in India remains subject to certain restrictions. India raised the foreign equity limit for telecommunications from 49 to 74 per cent in 2005, with some qualifications. For instance, foreign carriers are not permitted to use overseas networks to link Indian cities. The Government allows up to a maximum of 74 per cent foreign equity in basic, cellular mobile, paging and value added service and global mobile personal communications by satellite; up to 74 per cent (beyond 49 per cent requiring government's approval) in internet service (with gateways), radio paging services and end-to-end bandwidth; and up to 100 per cent in manufacturing of telecommunication equipment and services such as electronic mail and voice mail.

Trade in telecommunications between Australia and India is limited, with exports from Australia to India of US\$8 million in 2006 and exports from India to Australia of US\$8 million in 2004 (the most recent year for which figures are available), despite the strength of the sector in both economies. This suggests that this is an area with potential for growth. A possible bilateral FTA could help improve access for telecommunication service providers and stimulate investment in both markets and help harness the potential for bilateral cooperation in this sector.

### 6.3.4 Education

Education levels have a direct bearing on the sustainability of a country's competitiveness and economic growth. Against the background of economic globalisation, the development of human capital very much depends on the internationalisation of education services.

#### *India*

In India, the technical and higher education sector is regulated by the *All India Council for Technical Education (AICTE) Act* and the *University Grants Commission (UGC) Act*. Foreign investment is allowed in institutes of higher education and technical training, but only on a franchisee and affiliation basis.

The AICTE has released a set of regulations for entry and operation of foreign universities in India. At present, technical institutions need to obtain accreditation from AICTE, and AICTE through procedures set out in legislation which provides for the procedures and conditions for the entry of foreign universities in India. There is no current regulatory framework in India which allows foreign tertiary education providers to deliver courses in India (apart from in relation to technical education). The Government of India is yet to allow any foreign higher education institution to establish a branch campus or create a legally recognised degree program in India.

The AICTE issued regulations to govern foreign providers of technical education in India in April 2003. Foreign investment and collaboration with foreign institutes has proliferated in India in professional and vocational courses (i.e. areas such as business and hotel management, engineering, medicine, fashion design and in very limited numbers in general education) on a franchisee and affiliation basis.

The Ministry of Human Resources Development has actively encouraged foreign students to come to India to pursue higher studies.

Primary and secondary education in India is controlled by the Government. However, 100 per cent FDI is allowed for international schools under the automatic route, subject to certain domestic regulations and norms being followed.

#### *Australia*

Australia views India as a natural education partner and there is significant potential to expand academic and commercial opportunities. India is already Australia's fastest growing export market for education services. Indeed, total student enrolments in Australia from India reached just over 120,000 for calendar year 2009, representing an increase of 25 per cent in a single year (from 2008), and making India Australia's second largest source of foreign students (see chart 3.2 in section 3.1.2.2 "Services Exports"). Australia's broader economy and education sector significantly benefit. There is an increasing interest in delivery offshore of education, particularly for the strongly-growing vocational education market.

Foreign education and training service providers are able to enter the Australian market and supply services providing they comply with Australia's non-discriminatory regulatory requirements for establishment and operation including:

- . National Protocols for Higher Education Approval Processes (2007), which provide the criteria and standards to assess applications for recognition of higher education institutions and courses;
- . Legislation for the provision of vocational education and training and for primary and secondary schooling within Australia, which is maintained by State and Territory Governments. All accredited vocational education and training within Australia must also conform to the Australian Qualifications Framework and the Australian Quality Training Framework (2007); and
- . Measures for provision of education and training services to overseas students studying in Australia under the *Education Services for Overseas Students (ESOS) Act 2000*.

Australia's schools sector is currently open and foreign providers are able to establish schools in Australia subject to meeting the relevant legislative requirements. The establishment and funding of primary and secondary schools in Australia is controlled by legislation of the Commonwealth Government and State and Territory Governments.

To assist cooperation between Australia and India for education, the Joint Working Group on Education and Training has been established. It meets regularly at officials-level (a bilateral Agreement for an Education Exchange Programme on Cooperation in Education and Training was signed in 2003).

A possible bilateral FTA could:

- . facilitate access for researchers engaged in short/long term work of a collaborative nature;
- . explore the ways to facilitate the recognition of qualifications in both countries by their concerned organisations;
- . and
- . facilitate greater transparency in approval and accreditation processes for education service providers.

### **6.3.5 Professional services**

Professional services include, among others, fields such as law, accountancy, engineering, architecture and medical services. Professionals from one country can notionally deliver services to the other country either cross border (e.g. by mail or the internet); in the other country (either by visiting temporarily or establishing a commercial presence); or to customers who visit from the other country. Further, advancements in information and communications technologies have resulted in trade in professional services occurring via less traditional modes of delivery – such as service delivery via telephone lines and the internet. Trends towards an increasing globalisation of professional services have been seen in all GATS modes.

Expanding trade in professional services is one of the most powerful means of intensifying the commercial relationship between countries, and one of the more powerful ways of enhancing productivity. This is partly because some key professions are often facilitators of trade and investment (such as lawyers and accountants), but it is also because the transfer of

best-practice professional expertise from one country to another can help drive innovation and accelerate the adoption of new practices and technologies.

Historically, trade in professional services between countries has been limited. This is often due to the requirement to be registered as a professional in a particular jurisdiction before being allowed to practise. For instance, for lawyers in either country to be able to practise in the other they must generally be registered with the Bar Council of India (for practise in India) or with one of the state legal professional bodies (for practise in Australia). Such professions tend to be largely self-regulating with government playing a limited role. However, governments perform a policy function and can contribute to liberalisation of professional services through changes to legislation or regulation, facilitating choice and promoting the efficient delivery of services. Governments also decide whether individuals from another country can enter the host country and whether they will be given a visa which would allow them to work (though for a professional this may be contingent on being registered and accredited by the appropriate domestic registration and accreditation body).

Increasingly, professional bodies in different countries seek to simplify the assessment of qualifications from elsewhere through mutual recognition arrangements (MRAs). MRAs can be very complex, but a simple example is where registration with the relevant professional body in one country would be recognised for the purposes of automatic registration with the counterpart in the other country. For example, in 2009 a mutual recognition arrangement was concluded between the Institute of Chartered Accountants of India (ICAI) and CPA Australia which facilitate recognition of accounting qualifications.

In Australia's FTA with the US (AUSFTA), a Working Group on Professional Services (WGPS) was established to facilitate profession-led initiatives aimed at developing mutually acceptable standards and criteria for the licensing and certification of professional services suppliers. The WGPS has supported profession-led initiatives in three initial priority professions - accounting, engineering and law.

Australia has also addressed the issue of professional services through ambitious Domestic Regulation provisions, such as were included in the Australia-Chile Free Trade Agreement (ACI-FTA). The domestic regulation provisions of the ACI-FTA build on and strengthen the GATS disciplines. The FTA also includes an Annex on Professional Services in which the Parties agree to support profession-led initiatives that facilitate recognition of qualifications and registration/accreditation/licensing of professionals of the other party.

India has similarly included domestic regulation provisions in its Comprehensive Economic Cooperation Agreement with Singapore, which contains articles which mirror the relevant GATS provisions (Article VI.2-4). In sectors where specific commitments regarding professional services are undertaken, India and Singapore agreed to provide for adequate procedures to verify the competence of professionals of the other country.

#### *6.3.6.1 Legal services*

Legal services help define rights and responsibilities and contribute to certainty in commercial transactions. They are a key business input in facilitating the growth of all cross-border trade and investment and usually involve the law of more than one jurisdiction.

The Australian and Indian legal sectors have much in common, including the English language and their British common law heritage. Further, the Indian legal system has drawn on Australian laws in fields such as monopolies, restrictive trade practices and consumer protection, and Indian precedents have been cited in Australian courts. However, there are also differences. Barristers or advocates, who appear in the courts on behalf of clients, account for around 10 per cent of Australian legal practitioners, while in contrast, they account for around 90 per cent of legal practitioners in India.

### *Australia*

The Australian legal profession is regulated by the states and territories through a combination of legislation and professional bodies. To practise Australian law it is necessary to be registered with the relevant state body. An applicant's eligibility is determined on the basis of prescribed examinations and areas of study, other criteria relating to practical legal training and an assessment of the applicant as a person of good character. Professional recognition does not have nationality or citizenship requirements.

The Law Council of Australia is the peak national body representing the legal profession. Although regulated at the regional level, a national legal services market is emerging, with agreement by all Australian states and territories to adopt uniform national legislation to create a single legal services market with nationally consistent regulations covering admission, professional standards, discipline and the administration of legal practices generally.

Indian and other foreign lawyers may currently practise foreign or international law (as distinct from Australian law) under a "fly-in fly-out" arrangement for a maximum period of 90 days in any 12 month period without the need to register as a foreign practitioner. An Indian firm or Indian lawyer may also establish an office in Australia to provide Indian or international legal services. Direct foreign investment in the legal services sector is permitted.

### *India*

The Bar Council of India (BCI) oversees regulation of the legal services sector in accordance with the *Indian Advocates Act 1961* and *Bar Council Rules 1975*. With certain limited exceptions, foreigners are restricted from offering legal services to the Indian market, including in the law of the foreign lawyer's home country. Foreign firms are not permitted to establish offices in India. Direct foreign investment in legal services is not permitted. The BCI recognises the law degrees of a number of Australian university law schools for the purpose of practising in India, subject to certain qualifications, but only for Indian nationals. In India there are also limits to the number of partners permitted in Indian law firms, the Indian Companies Act 1956 effectively limits partnership size to 20.

Demand for legal services in India has grown as the broader economy has expanded, creating areas of shortage of supply of legal professionals, especially for lawyers with international and cross-border commercial legal services expertise.

### 6.3.6.2. Accountancy services

#### *Australia*

A range of activities undertaken by accountants and auditors in Australia are subject to specific regulatory controls of several different federal statutory bodies including the Australian Securities and Investments Commission, the Australian Taxation Office and APRA . Accountants are only subject to licensing requirements, in respect of particular areas, namely audits, of companies, registered schemes, disclosing entities and certain other entities, as well as matters such as liquidations, investment advice and dealing in investments. Accountants who wish to prepare income tax returns must also register as a tax agent in order to provide such services. They may practise as sole practitioners, through trusts, partnership firms or through corporate entities (in respect of partnerships and corporate practices, at least one equity partner in a firm providing accounting, auditing and bookkeeping services must be a resident). There are conditions and restrictions for the use of corporate structures for auditors of companies, registered schemes and disclosing entities.

Relevant state and territory legislation may also apply to services provided by accountants, including auditing and financial reporting, investment advice, taxation advice, financial planning, insolvency and liquidation.

No specific restrictions apply to general participation in the sector by foreign service providers. All of the major international accountancy firms operate in Australia. However, to satisfy the licensing requirements for particular roles as described above, a recognised professional qualification or an accredited qualification is required (ASIC class order CO 02/551.) Furthermore, to be an approved auditor of an APRA regulated entity there are certain additional requirements which are set out in the Fit and Proper Standard for the relevant industry (for example note paragraph 19 of <http://www.apra.gov.au/ADI/upload/APS-520.pdf>).

Although membership of a professional association is not mandatory, the majority of accountants are members of the Institute of Chartered Accountants in Australia or CPA Australia or the National Institute of Accountants, and in practice an accountant could not undertake an audit unless they belonged to one of these recognised bodies. These bodies are professional associations that undertake self-regulation of their members through the issuance of professional codes, the enforcement of professional standards and the disciplining of members. Members must meet certain academic and professional standards. These professional bodies have their own reciprocal membership arrangements with certain other overseas professional accounting bodies, and may also take into account overseas qualifications when considering membership applications. As noted previously in this section of the report, mutual recognition for accountants in the two countries has been facilitated by a recently concluded MRA between CPA Australia and ICAI.

#### *India*

Since 1991, growth in the accounting services sector in India has outpaced growth in other services sectors. Accounting service providers in India are self-regulated through a combination of legal and professional bodies such as the ICAI and the Institute of Cost and Work Accountants of India (ICWAI) and in accordance with applicable Indian laws, including the legislation which constitutes the ICWAI. Accounting professionals are only

permitted to operate either as a partnership firm or as a sole proprietorship firm. The number of partners in Indian accounting firms is limited to 20 as the *Partnership Act of India* permits no more than 20 professionals in any one firm. The number of statutory audits of companies per partner is also restricted to 20. Indian regulations also proscribe inter-disciplinary professional models, i.e. accounting firms are not allowed to hire management professionals to perform consulting/management services. As a consequence of the above restrictions, less than 200 firms (or 0.5 per cent of total accountancy firms) have more than 10 partners.

The 2009 MRA between ICAI and CPA Australia demonstrates the potential for such arrangements to ease restrictions. It gives CPA Australia members exemptions against ICAI's examinations, regardless of where they went to university.

This outline of accounting practices and regulation in the two countries demonstrates that there are a number of areas that could be considered in possible future FTA negotiations.

### **6.3.6 Tourism**

Tourism trade is already significant and is growing strongly in both directions, generating benefits for the Australian and Indian economies. Both countries have taken steps to encourage tourism in both directions. The Government of India has opened an Indian Tourism office in Australia (Sydney) in 2007, while the Australian Government opened a Tourism Australia office in Mumbai in 2008, and the Australian State of Queensland has also opened a tourism office in India. Cooperation is also assisted by the *Joint Working Group on Tourism* (led by Australia's Department of Resources, Energy and Tourism and India's Ministry of Tourism with an MOU signed in 2002).

#### *India*

India is currently experiencing robust inbound tourism growth from many countries including Australia. India's travel services exports to Australia have been rising consistently, increasing by 12 per cent in 2008-09. They represent India's largest services export to Australia. Indian companies are also investing in the Australian tourism sector – the Indian Hotels Company which is part of the Tata Group has invested in the hotel market in Sydney.

India's schedule of GATS commitments cover tourism with private participation and foreign investment permitted in many non-core areas and activities including hospitality (tourism and catering), although restrictions remain on travel agency, hotel and tourist guide services.

#### *Australia*

Similarly, growth in Australian tourism-related exports to India is significant. Visitor numbers have grown to over 97,000 in 2008. Total inbound economic value (TIEV) has increased from US\$342 million to US\$600 million over the same period. The Tourism Forecasting Committee estimates that Indian visitation will reach 440,000 annually by 2017, with TIEV expected to be US\$1.5 billion. The strong growth in India's outbound travel market to Australia - and other countries - has been attributed to improved client service initiatives for Indian citizens (expanded access to online tourist applications to Indian agents and the preferred Australian Specialist Scheme which delivers improved processing times for agents trained by Tourism Australia and the Department of Immigration and Citizenship



(DIAC)), as well as to India's strong economic growth and the rising levels of disposable income for Indian middle-class families.

Under Australia's schedule of WTO General Agreement on Trade in Services (GATS) commitments, the cross-border supply of travel agents and tour operator services are limited to supplying cross-border (that is, securing bookings via telephone or the internet) only where they have a commercial presence in the other country. Australia provides national treatment, that is, there are no sector specific requirements which differentiate between domestic and foreign services suppliers.

In Australia, any regulation of the tourism industry is largely the responsibility of the state and territory governments which have primary carriage for the administration of matters relating to licensing and operation. Because tourism is defined by the consumption of goods and services, it encompasses a number of sectors of the economy, and in turn a range of government agencies may regulate tourism businesses. An example of regulatory requirements that apply at the state and territory level to both domestic and foreign suppliers of tourism services is travel agents.

Travel agents are licensed in their state or territory of operation and need to maintain a commercial presence. Relevant legislation is administered by the Fair Trading portfolio in each state and territory. All state and territory travel agents, with the exception of the Northern Territory (which has its own insurance scheme), also participate in the Travel Compensation Fund. The Travel Compensation Fund is Australia's primary means of providing compensation to eligible travellers who suffer a loss as a result of the financial collapse of a participating travel agency business.

Companies with a commercial presence in Australia providing services to the inbound tourist market can sponsor skilled overseas workers to work in Australia for up to four years through the Subclass 457 Business Long-Stay visa provided they meet the requirements as skilled workers under the *Migration Regulations 1994*. Overseas workers must work in the position they were nominated for and satisfy minimum skill levels. The occupation must be in the list of 'gazetted' occupations - the list of occupations and minimum salary levels overseas workers must be paid are published in a public gazette notice.

Given the fact that both India and Australia give importance to tourism, a possible FTA could enhance linkages between the two countries.

### **6.3.7 Air Services**

Within the broader framework of air services, some services, namely international air transport services are covered by bilateral air services agreements – and therefore not included in the GATS or part of bilateral FTAs. Those air services, between Australia and India, are governed by an Air Services Agreement signed in 2006 supplemented by a Memorandum of Understanding between aeronautical authorities signed in 2004.

#### *India*

India liberalised the civil aviation sector in 2000, as a result of which FDI was allowed for greenfield airports, with foreign equity participation permitted up to 100 per cent with

automatic approval. However FDI beyond 74 per cent in existing airports requires prior permission of the government. The recent 'open skies' policy for liberalisation has promotion of tourism as the key agenda, as shown by the freedom provided to International Tourist Charters to use all airports linking places of tourist interest. At airports managed by the Airports Authority of India (AAI), new private investors have been allowed to undertake ground handling. This will increase competition and result in improved services and reduced costs. At private airports, at least limited competition has been made mandatory. AAI has well established training colleges at Delhi, Allahabad and Kolkata imparting training on airport management, CNS (Communication, Navigation and Surveillance) maintenance, air traffic control, and fire services procedures. AAI colleges would be interested to provide training to aviation personnel in both countries.

India's Directorate-General of Civil Aviation does not currently recognise pilot training qualifications apart from those from India. In part because domestic private airlines in India are now allowed to operate internationally, and also because of projected strong growth of the domestic aviation market, civil aviation in India is set for rapid growth in coming years. A number of Australian architectural firms are active in the design of airports and expansion of India's air transport infrastructure.

### *Australia*

The Australian Government is in the process of developing a comprehensive National Aviation Policy Statement or Aviation White Paper which is expected to be finalised soon.. The Aviation White Paper will provide greater planning and investment certainty for the industry and provide clear commitments for users of aviation services and communities affected by aviation activity. More information on this can be found at the Department of Infrastructure, Transport, Regional Development and Local Government website: [www.infrastructure.gov.au/aviation/nap/](http://www.infrastructure.gov.au/aviation/nap/).

Aviation safety and security issues are the responsibility of the Australian Government. However, the economic regulation of intra-state aviation (that is between the Australian states) is a state responsibility.

Domestically, key Australian legislation includes the following: the *Air Navigation Act 1920*; the *Air Services Act 1995*; the *Aviation Transport Security Act 2004*; the *Civil Aviation Act 1988*; the *Civil Aviation (Carriers Liability) Act 1959*; the *International Air Services Commission Act 1992* and the *Airports Act (1996)*.

In respect of foreign participation in the airline services industry, foreign persons (including foreign airlines) can generally expect approval from the Foreign Investment Review Board (FIRB) to acquire up to 100 per cent of the equity in an existing Australian domestic airline, or to establish a new domestic airline, unless FIRB deems any such acquisition to be contrary to the national interest. Australia's open door policy for foreign investment in the aviation industry has seen the recent entry into the purely domestic market of airlines such as Tiger Airways, Regional Express and Sky West, all of which are majority foreign owned. In addition, the Virgin Group commenced operations in Australia in 2000 with Virgin Blue listed on the Australian Stock Exchange in 2003 – it is now the second-largest provider of domestic air transport services in Australia.

Under the *Air Navigation Act 1920*, foreign persons (including foreign airlines) can generally expect approval to acquire up to 49 per cent of the equity in an Australian international carrier (other than Qantas) individually or in aggregate provided the proposal is not contrary to the national interest. In the case of Qantas, under the *Qantas Sale Act 1992*, total foreign ownership is restricted to a maximum of 49 per cent in aggregate, with individual holdings limited to 25 per cent and aggregate ownership by foreign airlines limited to 35 per cent. In addition, a number of national interest criteria must be satisfied, relating to the nationality of Board members and operational location of the enterprise.

Foreign investment proposals for acquisitions of interests in Australian airports are subject to case-by-case examination. In relation to the airports previously owned by the Commonwealth, the *Airports Act 1996* stipulates a 49 per cent foreign ownership limit, a 5 per cent airline ownership limit and a 15 per cent cross ownership limit between Sydney airport (together with Sydney West) and Melbourne, Brisbane and Perth airports. Supporting services such as ground handling are open to foreign participation in most cases.

### **6.3.8 Movement of natural persons, including visas for Mode-4**

#### *Overview*

Movement of natural persons is necessary for enhancing international trade and investment. Access to professional, specialist and skilled services providers can deliver strong economic benefits and improve services for all segments of the economy, as well as for consumers. In addition, facilitating movement of natural persons promotes international trade and supports the development of ‘business infrastructure’ type services that can act as a strong inducement to investment. Movement of natural persons can have a positive role in encouraging foreign investment flows as investors highly value the ability to engage the best possible services providers in the management and operation of their investments.

Movement of skilled professionals, specialists and other business persons has become an increasingly prominent component of trade agreements. They also include improvement of the administration and management of factors impacting on movement of natural persons, including the simplification of visa-issuing procedures.

Parties to FTAs generally include substantive commitments in this area. This is in line with the rules relating to FTAs contained in the GATS that require no mode of supply should be excluded a priori.

Given the sensitivities that can surround the movement of natural persons to supply a service, movement of natural persons has been approached in a variety of ways in FTAs. Most FTAs limit their coverage to facilitating movement of skilled professionals and specialists for specific business related activities.

FTAs can also facilitate greater transparency for business people regarding the application processes for business visas and the rights and obligations attached to them. They can establish the right conditions to ensure that parties expeditiously process temporary entry applications.

## *Australia*

Immigration legislation and policy, including Australia's universal visa system, are administered by DIAC. Australia has a broad range of visa options available for the temporary entry of India's citizens for business purposes.

Australia's current temporary entry regime is transparent and non-discriminatory, and Australia has made commitments based on its GATS Mode 4 (supply through the presence of natural persons) schedule, which apply to all scheduled services sectors. The two key visa options for business people are:

- . The Subclass 456 Short Stay Business visas for those intending to visit Australia on business for three months or less. This Visa is for business people who wish to:
  - . explore business opportunities in Australia;
  - . conduct business negotiations, site visits, equipment inspections;
  - . sign business contracts; and/or
  - . attend conferences or meetings in relation to their field of employment.
- . The Subclass 457 Temporary Entry Long Stay visa for those intending to enter and work in skilled employment in Australia on business for periods up to four years. Under this visa, arrangements have been streamlined, including off-shore processing and a single application process, to ensure entry procedures are efficient and transparent for intra-corporate transferees and contractual service suppliers. This visa is based on sponsorship by the employer, who will be responsible for their nominee. India-based companies are able to sponsor personnel to establish an operation in Australia. Australian companies are able to sponsor professional and skilled personnel as needed. The subclass 457 Business Temporary Entry Visa provides permission to enter and work for an initial period of up to four years. Australian-based businesses may apply for further periods of up to four years at a time. Under this visa, spouses and dependants are granted similar periods of stay and work rights as the principal applicant. There is no upper limit to the number of Subclass 457 visas granted.

In April 2009, the Australian Government announced changes to the skilled temporary migration program aimed at addressing concerns about the efficiency and integrity of the Subclass 457 visa program. The reforms will ensure that overseas workers are not being exploited and are provided the same wages and conditions as Australian workers.

In recent years, there has been a significant increase in the number of Indians accessing the Australian labour market through temporary entry for business purposes. In 2007-08, India was the second largest source of Subclass 457 visas.

## *India*

In India, immigration legislation and policy, including India's visa system, are administered by the Bureau of Immigration in India's Ministry of Home Affairs. India's current visa system allows foreign businesses to secure an Indian visa for their employees for up to 12 months once they have an established business in India. To advance cooperation on visas and related matters, Australia and India have established a joint officials-level Working Group on Visa, Passport and Consular Matters which held its first meeting in 2009.

Temporary movement of people to deliver services is an area of great importance for India given the growing work-age population and increasing potential to supply services through movement of skilled persons. India identifies several domestic laws and regulations that apply to free movement of natural persons to Australia, including in relation to the ability of Indian service providers to visit Australia for providing different types of services. There exist other issues including the requirement for recognition of the qualifications and experience of professionals, and other licensing/registration requirements

### *Conclusion*

In an FTA both sides would need to address the issue of market access for the temporary movement of natural persons in various sectors in accordance with relevant provisions of the GATS, particularly in the categories often used by WTO members under GATS “Mode 4” (temporary movement) provisions, such as Intra Corporate Transferees , Business Visitors , Contractual Service Suppliers and Independent Professionals . Parties would also need to consider applying commitments on the temporary movement of business persons to non-services businesses, such as goods traders and investors.

Australia and India could specifically consider the following:

- Facilitate enhanced mutual recognition of qualifications by authorities and professional registration bodies in Australia and India (see also sections 6.3.6 and 8.4 of this report - Professional Services, Mutual Recognition).
- India would seek relaxation of various services-related visa issues,
- Enhancing transparency on information and policies, and that immigration and visa issuing authorities should make information on their regulatory and visa regimes more conveniently available to enterprises and business people. Mechanisms could also be established to enhance communications between relevant authorities of the two countries.
- Increasing the application of electronic methods, especially through the internet, to manage business entry.
- Ensuring that procedural arrangements for visa application, processing and granting of visas and/or temporary entry rights are transparent and administered in a timely and uniform manner.
- Facilitating the entry and stay for work purposes of skilled temporary service suppliers and their immediate families - of companies with a commercial presence.
- Consideration of mechanisms to ensure that contractual service suppliers and skilled people of an enterprise of one party of the possible FTA are granted entry to allow them to enter, stay and work in the other party for a reasonable period of time, and that multiple entries within the period of stay, including for researchers engaged in short term work.

### 6.3.9 Agricultural services

Services are a key component in the structure of agricultural value chains. As outlined in Chapter 5, both countries are significant agricultural producers and there are complementarities in bilateral agricultural trade.

India's agriculture sector has grown less strongly than other parts of the Indian economy. Logistical impediments, such as limited supply of cold storage and weaknesses in transport infrastructure, have contributed to high levels of wastage and loss. As a major food producer and exporter, Australia has developed expertise in a range of agricultural and agri-business services, some of which are already being provided in India. In particular, Australian agri-services companies have considerable strength in logistics, including storage, transport and cold chain management. Australian firms also deliver services that focus on improving yields and productivity of farmers through information technology and animal and plant based biotechnologies, including in pasture and improved animal and plant genetics. In a range of areas, therefore, Australian services expertise could help enhance the export capabilities of the Indian agriculture and food industries.

A possible bilateral FTA could therefore assist the agricultural sectors of both countries by examining the potential for improved access in agricultural services.

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#### Box 5: Report on Agricultural Cooperation

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In June 2007, Rabo India Finance released a report entitled '*Strengthening the India-Australia corridor in select Food and Agribusiness sectors*'. The report was based on consultations and research carried out in India by Rabo India Finance. It noted a number of areas of potentially mutually advantageous agricultural cooperation. Examples of opportunities noted in the report include:

- . know-how for better agronomic practices for stone fruit production;
  - . partnering in the setting up of cost efficient cold chain logistics and cold storage infrastructure;
  - . technology transfer in the areas of advanced freezing process and equipments, for example for peas and green peas based snacks;
  - . opportunities to partner on new processed products and processing technologies for berries and stone fruits - to be used in fruit fillings and ice creams; and
  - . partnering to develop wheat based products markets such as biscuits and pasta.
- 

### 6.3.10 Audio-Visual

Australia and India both have vibrant audiovisual sectors. Bilateral contact and trade, especially in film production, has increased in recent years.

#### *India*

One of the services sectors that has seen fast growth in India is the audiovisual sector. India is one of the largest film producing countries in the world, producing on an average 800

features film and 900 short films annually in 52 different languages. Given the fact that Indian films and television news and sports channels have generated great interest by viewers all around the world, their export potential to Australia is very high.

The Government of India permits FDI up to 49 per cent in Indian companies that uplink from India. Total foreign investment has been restricted to 49 per cent with an FDI ceiling of 20 per cent on investments by broadcasting companies and cable companies. There is no cap in motion picture and video tape production and distribution services and motion picture projection services. In radio and television services, FDI is allowed subject to FIPB approval, although foreign equity investment and FDI is only permitted up to a level of 26 per cent in the news and current affairs media, while foreign investment in FM radio broadcasting is restricted to 20 per cent. In addition, operational control of editorial content must be in Indian hands. The Indian government has also announced other minimum capitalization requirements.

### *Australia*

Australia has an open audiovisual market. Australia produced 29 feature films and five feature co-productions in the 2007-08 financial year, as well as 690 hours of television drama. Australia is a net importer of audiovisual products. In 2008, foreign films accounted for 89 per cent of all films screened in Australian cinemas and accounted for over 96 per cent of gross Australian box office revenue.

The main legislation relevant to Australia's audiovisual sector is the *Broadcasting Services Act 1992*, the *Radiocommunications Act 1992*, the *Australian Communications and Media Authority Act 2005* and the *Income Tax Assessment Act 1997*. The Migration Regulations 1994 are also relevant to the sector.

The Department of the Environment, Water, Heritage and the Arts (DEWHA) has portfolio responsibility for the production and cultural aspects of Australia's audiovisual policy. Australia regulates a range of audiovisual services to achieve cultural objectives and to maintain the broad matrix of support measures for Australian culture. These measures are maintained in the national interest to sustain Australian creative resources and production. They ensure that Australians have access to their own images and stories in the cinema and through other media.

DEWHA and its portfolio agencies administer various measures for film and television production in Australia, including the International Co-production Program, and the Foreign Actor Certification Scheme for foreign actors entering Australia for employment in film and television productions.

Policy responsibility for the broadcasting section of Australia's audiovisual sector rests with the Department of Broadband, Communications and the Digital Economy (DBCDE). DBCDE has responsibility for the regulation of Australia's commercial television and commercial radio broadcasting industries, including the conversion to digital television and the launch of digital radio, the regulation of media ownership, and Australia's local content quotas for television and radio. DBCDE also has policy responsibility for the Internet section of Australia's audiovisual sector.

All direct (that is, non-portfolio) proposals by foreign persons to invest in the Australian media sector irrespective of size are subject to prior approval. Proposals involving portfolio shareholdings of 5 per cent or more must also be submitted for examination. The Australian Government may also reject foreign investment proposals which are determined to be contrary to the national interest under the *Foreign Acquisitions and Takeovers Act 1975*.

India's strength in this sector, especially for post-production activities including editing, sound mixing dubbing, animation and computer graphics has the potential for enhancing bilateral links in this sector. Other areas of interest to India are animation, video gaming, broadcasting and telecasting services. Australia has state-of-the-art facilities at Fox Studios Australia (New South Wales), Warner Roadshow Studios (Queensland) and the Melbourne Central City Studios (Victoria). Australia's post/digital/visual effects infrastructure has supported many internationally acclaimed films from development to delivery in every format.

Both countries offer diverse and interesting scenery for the production and post-production of films. The locations for film shootings also have the potential for creating tourism flows. Both sides may pursue negotiations for a film co-production agreement to expand bilateral trade in film industry services.

### **6.3.11 Healthcare services**

Australia and India consider that further liberalisation of health services would provide consumers in both countries with tangible benefits. However, health care is a sensitive sector and thus health services is one of the least-committed sectors in the WTO. Less than 50 WTO members have undertaken commitments – with most commitments concerning hospital services.

#### *India*

The Indian healthcare services sector is now getting worldwide attention due to its quality and its competitive advantage in various areas, with health tourism an emerging area. India is in a position to tap the top end of the US\$3 trillion global healthcare market because of the quality of its services and the brand equity of Indian healthcare professionals across the globe. The Indian Government places top priority on the healthcare sector and is focusing on indigenous research and development and the further creation of human capital.

It is expected that the Indian laws and procedures relating to recognition of intellectual property and foreign investments will allow global pharmaceuticals and biotechnology companies to set up partnerships with Indian counterparts. India spends 5.2 per cent of its GDP on healthcare, comparable with most other developing countries. The healthcare industry is expected to grow from US\$19 billion in 2001 to US\$60 billion by 2012. Australian companies in the health sector are currently active in the Indian market, including ResMed which supplies sleep apnoea products, and IBA Health (see box under Section 7.2 Impact of Investment Liberalisation")

In India the Ayurvedic/Herbal healthcare industry is growing and is now being globally recognised. Investments for providing specialised health facilities and services is another potential area for growth. The availability of world class health facilities - invasive and non-



invasive – in India at competitive prices as compared to other parts of the world may be considered for further co-operation and collaboration by tie up between hospitals and health insurance providers of both sides.

### *Australia*

In Australia, restrictions on who is able to own health professional practices, and how many they are permitted to own is governed by state and territory legislation. For example, only qualified pharmacists are permitted to own a pharmacy, and the location and number of pharmacies that a pharmacist is permitted to own varies amongst the states and territories. Each of the states and territories has boards which set standards for pharmacists. There are also national guidelines for standards, but each state and territory in practice determines its own requirements.

Individual states and territories are also responsible for the regulation of health professions. The recognition of overseas health qualifications and assessment of suitability to practise as a health professional in Australia are the responsibility of a number of different bodies, depending on the particular health profession and whether specialist training or qualifications are involved. In some cases, different bodies regulate different aspects of a profession. For example, the Australian Medical Council administers national examinations of overseas-trained doctors seeking to practise medicine in Australia, and undertakes an initial assessment, while overseas trained specialists must have specialist qualifications and experience assessed by a relevant national specialist medical college.

In Australia, all nurses and midwives are required to meet Australian nursing and midwifery competency standards. Nurses and midwives from other countries, such as India, may need to complete a competency program approved by the relevant state or territory regulatory authority to meet those standards. The competency standards of a small number of countries, although not India, are recognised by the Australian Nursing and Midwifery Council and state and territory nursing and midwifery authorities.

Foreign service providers may establish and operate private hospitals, aged care and nursing home facilities as well as medical clinics in Australia, providing that the owners meet all relevant legislative requirements at Commonwealth and state/territory level and subject to foreign investment approvals processes which apply to all sectors. Individual states and territories are responsible for licensing and/or registration of hospitals, and clinics. They may also impose requirements on aged care facilities, including in relation to building standards, staffing and food and drug handling. The Commonwealth Department of Health and Ageing has responsibility for ‘declaring’ private hospitals and day hospital facilities for health insurance purposes following licensing by states/territories. More information on licensing requirements and procedures may be obtained through the websites of the state/territory health departments.

While the previous paragraphs set out current regulation of health practitioners in Australia, changes are scheduled to be made. The Council of Australian Governments (COAG – comprising Australia’s Commonwealth and State and Territory governments) recently took major steps towards improving Australia’s health system by signing an Intergovernmental Agreement on the health workforce. The new system, which is planned to be implemented from July 2010, will for the first time create a single national registration and accreditation system for health professions: chiropractors; dental (including dental hygienists, dental prosthetists and dental therapists); medical practitioners; nurses and midwives; optometrists;

osteopaths; pharmacists; physiotherapists; podiatrists; psychologists and medical radiation practitioners.

There is potential for cooperation between Australia and India in joint training programmes for human resource development and sharing of information and experience in respect of health industry best practice. To facilitate movement of healthcare students both countries may investigate the feasibility of facilitating mutual recognition arrangements for the recognition of degrees in the field of doctors, nurses and trained health technicians. The FTA would also provide opportunities for cooperation in healthcare services.

### **6.3.12 Architecture, construction and engineering services**

India and Australia have developed a capacity to deliver cutting-edge architectural, construction and engineering services. Australian architects and engineers, and companies providing construction services have developed extensive expertise in many countries and have much to offer India because of the great need for quality infrastructure as a result of the growth of the Indian economy. Both countries are in a position to benefit from liberalisation from an FTA in architecture, construction and engineering services.

#### *6.3.16.1 Architecture*

##### *India*

India has a large well-trained human resource base for providing architectural services. The low-cost high-skill services that can be provided by India have the potential to add value to architecture services provided by Australian firms in all modes of supply.

In India, the Council of Architecture regulates the architectural profession and is governed by the *Architects Act, 1972*. Under the Act, foreign architects are allowed to practice in India if they are resident in India and are registered with the Council for Architecture.

##### *Australia*

The high quality of Australian architects has allowed them to play a leading role in many construction projects around the world. A number of Australian architectural firms are active in the Indian market, including in the design of airports and expansion of its air transport infrastructure.

Architecture is a regulated profession in Australia. In order for a foreign architect to provide architectural services in Australia (in addition to any visa or immigration requirements), registration as an architect is required. Each state and territory in Australia has separate but similar legislation covering the registration of architects. The legislation is administered by an Architects Registration Board in each state and territory. For registration, they require:

- . a recognised academic qualification in architecture or a pass in Australia's National Program of Assessment or a pass in the relevant Registration Board Prescribed examinations where offered; and
- . two years of work experience, of which at least one year must be in Australia (possibly working under the direction of a registered architect), followed by successful

completion of the Architects Accreditation Council of Australia Architectural Practice examination.

Once registered, architects must adhere to standards of professional conduct enforced by the Australian Institute of Architects.

In addition, anyone (foreign or local) providing architectural services must comply with the relevant regulatory standards required for building construction applicable in each state and territory.

#### *6.3.16.2 Engineering*

##### *India*

In the case of engineering and integrated engineering services India has technically qualified and trained manpower with the potential to operate in the international market.

Engineering services is a growth market in India. Spending on engineering services of approximately US\$750 billion in 2004 is projected to increase to US\$1.1 trillion by 2020. The market is highly fragmented by industry, with automotive engineering accounting for 19 per cent of the total, aerospace at 8 per cent and utilities at 3 per cent in 2004. High-tech/telecommunications sector is the current dominant and fastest growing sector, with 30 per cent of the market.

A number of Australian construction and engineering firms have been active in infrastructure projects in India, including through joint ventures with Indian firms.

##### *Australia*

For foreign engineers seeking to work in Australia, there is no single regulatory regime in Australia governing the engineering profession and no national legislative restrictions on the use of the title 'professional engineer'. However, Queensland has different requirements from the other Australian states. A foreign engineer in any engineering discipline would need to be registered in Queensland by its Board of Professional Engineers. In other Australian states and territories registration is not required as a rule, although some specific industries, such as the building and construction industry (see below), have registration requirements.

In all states and territories of Australia (except Queensland), the principal instruments governing the practice of engineering include:

- . self-regulation by Engineers Australia, the principal professional body for engineers in Australia which accredits engineering qualifications and sets national standards that are supported by the profession; and
- . self and co-regulation by the National Engineering Registration Board which establishes and maintains national, voluntary, non-statutory registers such as the National Professional Engineers Register.

For the purposes of general skilled migration to Australia, assessment of engineering credentials is carried out by Engineers Australia.

### *6.3.16.3 Construction and related engineering services*

#### *Australia*

The Australian building and construction industry is required to comply with regulations at the federal, state and local government levels. The key regulations for building and construction that apply nationally include the Building Code of Australia (BCA), the relevant standards referenced by the BCA and State building regulations, which are administrative in nature. The BCA is a set of performance guidelines for the design and construction of new buildings and for new building work in existing buildings such as additions and alterations. There is no Commonwealth legislation relating to the registration or licensing of building practitioners in Australia. Building practitioners, including relevant engineers, are required to be registered at the state and territory level with the appropriate state/territory board. The requirements for registration are not limited to formal training and qualifications; they also include practical experience and financial capacity.

#### *India*

Growth in the Indian economy has created a huge need for quality infrastructure. The Government is focusing on public infrastructure and at the same time offering opportunities for private participation in the creation of infrastructure to support and sustain the rapid economic growth. The Indian Government recently permitted 100 per cent FDI in construction and development projects, especially in construction of townships, housing, commercial premises, hotels, resorts, hospitals, educational institutions, recreational facilities, and city and regional level infrastructure. Both sides are in a position to benefit. This creates opportunities for enhanced trade in the construction services sector.

In India, FDI is selectively permitted in the real estate sector. There is no cap on some sub-sectors of the construction sector and FDI is allowed through the automatic route. Thus, opportunities for Australian infrastructure companies exist in India in the construction sector. Engineering and consultancy companies of Australia have developed extensive expertise in sectors such as oil and gas, construction and telecommunications and specifically in areas such as planning, feasibility studies, cost benefit analysis, surveys, design and project management. The potential for enhancing trade in these services can therefore be explored by Australian companies.

## **6.4 Conclusion**

Both countries can make gains through further services liberalisation and with this in mind could undertake to make substantive, high-quality commitments. To maximise the potential gains India and Australia should aim for:

- . Liberalisation which delivers meaningful commercial outcomes in services
- . Substantial sectoral coverage measured in terms of number of sectors, volume of trade and modes of supply
- . Basing rules and disciplines on trade in services on GATS provisions and improving them further wherever possible including, potentially, domestic regulations

- . Giving priority to areas with greater potential and complementarities between both the countries, such as computer-related services, financial services, tourism services , professional services and educational services
- . Maximising trade through Movement of Natural Persons
- . Committing to work towards a mutual recognition of professional qualifications by authorities and professional registration bodies in Australia and India.
- . Maximise trade in services to the benefit of the economies of the parties.

## 7 Investment Liberalisation

### 7.1 Current measures applying to investment

Foreign investment is a key source of capital and expertise, contributing to higher productivity and economic growth. This study demonstrates that Australia-India investment flows are modest. An FTA between Australia and India could address barriers to investment flows between the two countries by reducing impediments to investment, enhancing transparency and providing appropriate protection for investors.

#### *Bilateral Investment and Taxation Framework*

India has undertaken negotiations with a number of countries to enter into Bilateral Investment Promotion and Protection Agreements (BIPPAs) to promote and protect investment on a reciprocal basis. The Government of India has so far signed BIPPAs with 72 countries and 26 are under negotiation. The Australian Government has concluded a total of 22 BIPPAs.

BIPPAs generally provide for: national treatment for foreign investors; MFN treatment for foreign investors; free repatriation/transfer of returns on investment; recourse to domestic dispute resolution and international arbitration for investor-state and state-to-state disputes; and nationalisation/expropriation only in the public interest on a non-discriminatory basis and with compensation.

India and Australia entered into a BIPPA on 4 May 2000. It provides both national treatment and MFN treatment for investments. It also provides security for investments against expropriation, safeguards for transfers and a mechanism for settlement of disputes between an investor and the government.

India and Australia signed a Double Taxation Avoidance Agreement in 1991. Besides providing for avoidance of double taxation, it provides for non-discrimination in relation to taxation, the settlement of disputes and the exchange of relevant information. The two countries are currently reviewing this Agreement.

#### 7.1.1 Australian investment regime

The Australian Government actively supports foreign investment and Australia has an open foreign investment regime. Foreign investment plays a significant role in the national

economy across almost all aspects of activity. The stock of FDI in Australia has increased significantly in recent years, rising from US\$112 billion at the end of 2001 to US\$271 billion at the end of 2008, FDI (ie. FDI flows) made up about 3.7 per cent of GDP in financial year 2007-08.

Processes required for establishing a business in Australia are not onerous. According to the World Bank, regulatory procedures associated with starting a business in Australia take just two days (compared to the OECD average of 13 days in 2008).

Australia's foreign investment policy operates on the presumption that foreign investment proposals are generally in the national interest and should go ahead. However, to ensure foreign investment in this sector is consistent with the national interest, the Treasurer has the power under Australia's foreign investment screening arrangements, to review, on a case-by-case basis, foreign investment proposals and investment proposals from foreign governments. In such cases, the Treasurer has the power to reject an investment or to allow it to proceed (with or without conditions). The types of foreign investment proposals which are subject to the *Foreign Acquisitions and Takeovers Act 1975* and Australia's foreign investment policy or both and hence should be notified to the Government for approval include:

- acquisitions of a substantial interest in an Australian business or corporation which is valued above A\$100 million (US\$70 million);
- takeovers of offshore companies whose Australian subsidiaries or gross assets exceed A\$200 million (US\$140 million) and represent less than 50 per cent of global assets;
- proposals to establish new businesses involving a total investment of A\$10 million (US\$7 million) or more;
- acquisitions of interests in Australian real estate; and
- direct investments by foreign governments and their agencies irrespective of size.

Foreign investment in certain sectors, including urban land, banking, the media, shipping, civil aviation, airports, international air services, and telecommunications are subject to special provisions (for example, in the telecommunications sector there are special limits on ownership of Telstra, Australia's largest telecommunications company).

The overwhelming majority of foreign investment proposals which are considered are approved. In 2007-08, for example, 8,548 proposals were considered under Australia's foreign investment policy. Only 14 applications were rejected - less than 0.2 per cent of the total - all involving the acquisition of residential real estate.

According to the World Bank, regulatory procedures associated with starting a business in Australia take just two days (compared to the OECD average of 15 days).

Australia has continued to liberalise its investment regime. The general screening threshold for foreign investment in Australian businesses was raised from A\$50 million (US\$35 million) to A\$100 million (US\$70 million), and the threshold for offshore takeovers of Australian businesses was increased from A\$50 million (US\$35 million) to \$200 million (US\$140 million) in 2006. Under Australia's FTA with the US, the threshold above which US investors must seek approval for acquisitions of significant interests in Australian

businesses and prescribed corporations in non-sensitive sectors, as well as developed commercial real estate, was raised from A\$50 million (US\$35 million) to A\$800 million (US\$560 million). Furthermore new greenfield investments by US investors in non-sensitive sectors do not need to be notified to the FIRB. In other FTAs Australia has bound its existing threshold, effectively guaranteeing that while our treatment of foreign investors from the partner countries may become more liberal, it cannot be made more restrictive.

### 7.1.2 Indian investment regime

As part of India's economic reform programme, the foreign investment policy of the Government of India has been progressively liberalised. The basic rationale for opening up the regime for overseas investment in India is the need to provide Indian industry with access to new markets and technologies with a view to increasing competitiveness globally and helping boost the country's exports.

FDI policy in India is the responsibility of the Department of Industrial Policy and Promotion (DIPP) in the Ministry of Commerce and Industry. There are two routes for FDI approval in India:

- through an 'automatic route' which requires only a notification to the regional office of the Reserve Bank of India (RBI) within 30 days of receipt of the investment and within 30 days of issuing shares to foreign investors; or
- through prior approval, which requires proposals to be considered (in most cases) by the Foreign Investment Promotion Board (FIPB) based in the Department of Economic Affairs (DEA).

Approval by the FIPB is subject to clearance being obtained where required by applicable national and state laws and regulations. Once that approval has been granted, the investor must obtain clearance from other relevant central or state government agencies.

The Foreign Investment Implementation Authority (FIIA), which is based in the DIPP, provides assistance to foreign investors encountering approval or operational difficulties. The FIIA is assisted by a Fast Track Authority in each sector, and includes representatives across the Government, including state governments, and agencies involved in the particular project being considered.

Reforms undertaken by India which further facilitate investment include ceasing to apply excessively stringent regulatory processes to industry; simplification of investment procedures; liberalisation of exchange controls; rationalisation of taxes and public sector divestment. As a result of the various rationalisation measures, India's FDI Policy has become progressively more liberal, transparent and investor-friendly. The Government has put in place a liberal and transparent FDI policy for industrial, services and infrastructure sectors under which up to 100 per cent investment is permitted in most sectors automatically.

Investment in an Indian company under India's Portfolio Investment Scheme is not covered by the FDI policy and requires prior approval from the Securities and Exchange Board of India, while foreign investors setting up branches, liaison or project offices would need to comply with the provisions of India's *Foreign Exchange Management Act*.

Some features of the current policy are summarised below.

#### *Industrial sector*

Progressive liberalisation of India's industrial policy has removed the requirement for industrial licences in almost all sectors except for a few that are retained for public health safety and security considerations.

This means that in the *Manufacturing sector*, FDI is permitted up to 100 per cent automatically for all manufacturing activities, except for:

- . manufacture of cigars and cigarettes of tobacco products where FDI up to 100 per cent is permitted with prior Government approval;
- . manufacture of defence items where FDI up to 26 per cent is permitted with prior Government approval;
- . for domestic companies engaged in the manufacture of items reserved for micro & small enterprises (that is companies with investment in plant and machinery up to 5 crores Indian rupees, about US\$ 1 million), FDI is only permitted up to a level of 24 per cent;
- . circumstances in which the proposed location attracts locational restrictions (ie: it is within 25 kilometers of the standard urban area limit of 23 towns with a population of one million in the 1991 census.

*In the Mining sector* (covering the exploration and mining of coal and lignite, diamonds, precious stones, gold, silver and minerals):

- . FDI up to 100 per cent is permitted in coal and lignite mining for captive consumption by power projects, iron and steel, cement production and some other mining sectors;
- . FDI up to 100 per cent is permitted automatically for exploration and mining of diamonds, precious stones, gold, silver and minerals; and
- . FDI up to 100 per cent is allowed for mining of titanium bearing minerals and ores, though it requires prior approval by the Government and is subject to some additional conditions.

*In the Electricity sector:* FDI up to 100 per cent is permitted automatically for generation, transmission and distribution of electricity and also for power trading.

#### *In the infrastructure sector*

- . FDI up to 100 per cent is permitted automatically for roads and highways, ports and greenfield airport projects; and
- . FDI up to 100 per cent is allowed automatically for the setting up of industrial parks and also for investment in industrial parks that have already been established, subject to certain conditions.

*In the Financial infrastructure sector:*

- . *Credit Information Companies:* up to 49 per cent foreign equity is allowed, although prior approval of the Government is required as well as regulatory clearance from the Reserve Bank of India (RBI); and



- . *Commodity Exchanges*: FDI up to 49 per cent with prior government approval is allowed subject to some conditions

*In the services sector*

- . In the telecommunications sector, foreign investment is limited to 74 per cent for fixed line, cellular national and international long distance calls service (investment in excess of 49 per cent needs to be approved by the FIPB), and the majority of directors on the Board must be resident Indian citizens.
- . Foreign equity restrictions in audiovisual services range between 20 per cent FDI (in FM radio broadcasting) to 100 per cent FDI (in up linking of non-news and current affairs' TV channels).
- . FDI in the insurance sector is limited to 26 per cent (of a firm's paid up capital).
- . FDI in the private banking sector is limited to 74 per cent of the capital of the private bank, and there is a requirement for the RBI to approve ownership of 5 per cent or more of an Indian private bank (for more detail see section 6.3.1 – Financial Services).
- . In a large number of sectors, FDI up to 100 per cent is allowed automatically subject to sectoral regulations and licensing requirements, where applicable. Services and related sectors where FDI up to 100 per cent is allowed subject to certain conditions include:
  - *development of airports*, although FDI beyond 74 per cent in existing airports requires Government approval;
  - *maintenance and repair organisations, flying training institutes and technical training institutions*;
  - *helicopter services seaplane services*, although approval from the Directorate General of Civil Aviation is required;
  - *publishing of scientific magazines/speciality journals/periodicals* is allowed with prior Government approval;
  - *trading of items sourced from the 'small scale sector' and test marketing of products* is allowed with prior Government approval;
  - *courier services* allowed with prior Government approval;
  - *internet service providers without gateway, infrastructure providers of dark fibre, electronic mail and voice mail*: FDI up to 100 per cent is allowed subject to divestment of 26 per cent equity after 5 years if the investing companies list in other countries;
  - *non-banking finance companies* FDI up to 100 per cent is allowed in 18 types of NBFCs automatically subject to minimum capitalization norms; and
  - *construction development projects (housing and real estate)* FDI up to 100 per cent is allowed automatically subject to minimum capitalisation norms, minimum area requirements and lock-in periods for the original investment.

*In the agricultural sector, including horticulture and floriculture:*

- . FDI is generally not allowed in agriculture and plantation activities. Exceptions include the tea sector, where FDI up to 100 per cent is allowed with prior Government approval, subject to the condition that 26 per cent of equity would be divested in favour

of an Indian partner or the Indian public within a period of 5 years, and subject to prior approval of the relevant state government for change in land use

- In addition, up to 100 per cent foreign equity is permitted automatically in: floriculture, horticulture, development of seeds, animal husbandry, pisciculture, aquaculture and cultivation of vegetables and mushrooms under controlled conditions as well as services related to agriculture and allied sectors.

#### *Foreign technology transfer policy*

FDI brings along with it access to capital, modern technologies and best practices. The Government of India's policy on foreign technology transfer is regulated on the basis of the quantum of payments allowed for technology transfers.

At present, foreign technology collaborations involving payment of lump-sum amounts of up to US\$2 million and/or royalty at the rate of 5 per cent on domestic sales and 8 per cent on exports are allowed automatically. In addition, the current policy also allows payment of royalties of up to 2 per cent on exports and 1 per cent on domestic sales automatically for the use of trademark and brand names of a foreign counterpart without technology transfer. Cases involving payment of lump-sum amounts or royalties beyond the limits prescribed under the automatic approval route are considered on a case by case basis by the Government.

#### *Modes of Establishing Presence in India*

A foreign company can operate in India as an incorporated entity (company with FDI) or as an un-incorporated entity (branch/liaison office/project office) depending on the nature of its activities. Branches and liaison offices can perform only specified functions. To undertake other activities a company has to be incorporated under the *Indian Companies Act, 1956*.

#### *Acquisition and Transfer of Immovable Property in India for Carrying On a Permitted Activity*

A foreign investor who establishes a company or a branch, other than a liaison office, can acquire immovable property in India which is necessary for or incidental to carrying on his business activity in India. The acquisition is subject to compliance with all applicable laws and must be reported to the RBI within ninety days from the date of acquisition

#### *Prohibition on investment*

FDI is prohibited in:

- *general retail trade*: (although single brand product retailing investment is permitted up to a level of 51 per cent);
- *atomic energy*: FDI is not permitted in atomic energy (though FDI investment in relation to proposals from certain countries is allowed with prior Government approval);
- *lottery businesses*: no foreign investment or technical collaboration is permitted in these activities; and

- . *betting and gambling*: no foreign investment or technical collaboration is permitted in these activities.

### *India's Outward Investment Policy*

Indian Government policy on overseas investment by Indian corporations has been progressively liberalised with the objective of boosting India's exports efforts and providing Indian industries with access to new markets and technologies, to increase their competitiveness,. Indian corporations can invest overseas through the following routes:

- . *Automatic Route*: Indian corporations/registered partnership firms can invest in entities abroad with up to 400 per cent of their net worth in a year, without prior approval of the RBI or the Government of India. Such investments would only be reported retrospectively to the RBI.
- . *Normal Route*: Proposals which are not covered under the automatic route are considered by the Special Committee on Overseas Investments in the RBI.

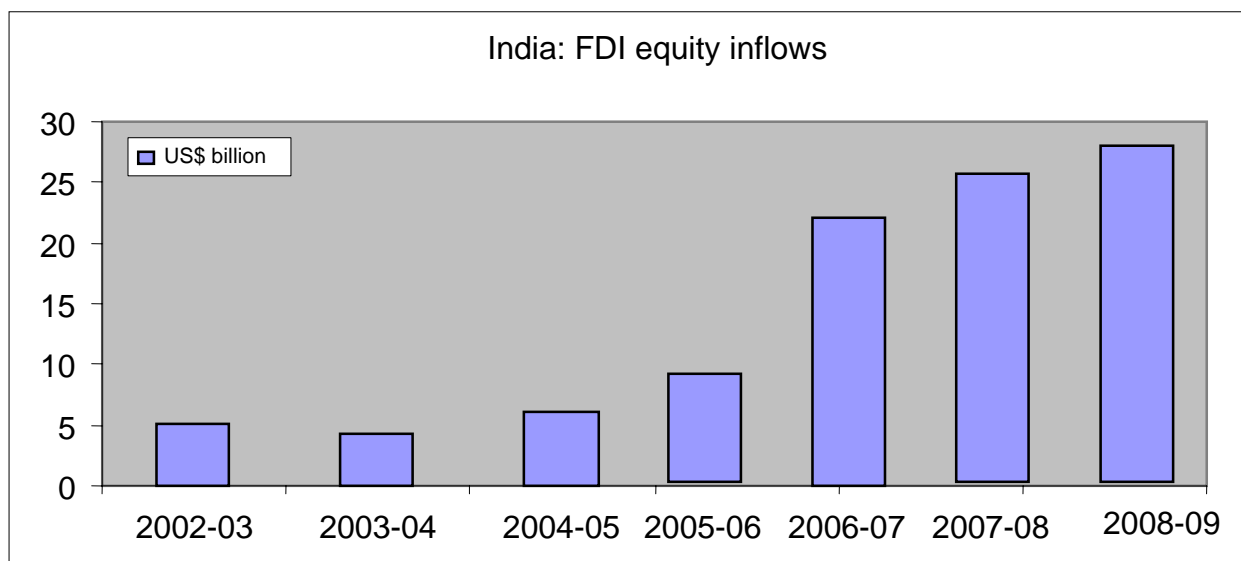
## 7.2 Impact of investment liberalisation

As has been the case for other countries the impact of liberalisation of investment in recent years in India has been consistently positive. Opening up an economy to greater FDI brings new capital, technical expertise and supply and marketing networks. This normally leads to greater employment, as well as greater choice for consumers. It also results in enhanced competition, leading to pressure to improve quality (for both goods and service delivery) and downward pressure on price. While these pressures can challenge incumbents, they stand to benefit directly from joint ventures with foreign partners, or indirectly as competition forces them to improve their efficiency and quality. The 'pie' often grows as higher quality leads to greater market uptake, or new products/services create entirely new markets.

FDI normally brings with it global best practice which leads to globally competitive domestic production which can compete effectively for export market share. Employment then expands beyond what is required to supply the domestic market only.

These trends are quite evident in India. As a result of India's increasingly liberal FDI policies, FDI inflows to India have risen sharply since the early 1990s and made a major contribution to growth and economic development in India, reaching around US \$27 billion in 2008-09. (see chart 7.1).

Chart 7.1



Source Government of India

In its analysis of global FDI trends, the World Investment Report (UNCTAD, 2007) noted that India was the second most attractive location for FDI for 2007-09. India has also improved its position by two places in the World Economic Forum's Global Competitive Index (GCI) rankings for 2006-07, coming 43rd.

Top sectors attracting FDI inflows to India (from April 2000 to April 2009) are the services sector (22.96 per cent), computer hardware and software sector (10.46 per cent), telecommunications sector (8.21 per cent) and housing and real estate (6.72 per cent) as shown in table 7.2.

Rank	Sector	cumulative inflows (2000 to 2009)	percentage of total inflows
1	Services sector	19828.95	22.96
2	computer software and hardware	9019.59	10.46
3	Telecommunications	6956.34	8.21
4	Housing and real estate	5872.98	6.72

**Source:** India FDI Fact-sheet, DIPP, GOI, April 2009

Australian direct investment in India is increasing but remains low relative to other destinations. For instance, the stock of Australian outward direct investment in India was US\$371 million at the end of 2008. This compares with the stock of outward direct investment in China (US\$2.7 billion), Indonesia (US\$1.5 billion) and in the Republic of Korea (US\$500 million). The greater certainty and new opportunities for investment which an FTA could potentially generate would have a positive impact for both India and Australia.

The profile of Australian investors overseas is diverse. In mining, for instance, certain Australian firms are among the biggest in the world and their reputation as world leaders is widely established. In many other areas, Australian firms are equally well known within their specific fields. All Australian investors overseas, however, share the same competitive domestic environment which shapes their approach to quality, customer-focus and product/service improvement. In an open economy, such as Australia's, companies must stay at the forefront of international best practice to remain viable.

Whether big or small, Australian companies take their globally competitive approaches with them when they invest abroad. Frequently they partner with local leading businesses which facilitate the wider distribution of the Australian company's expertise and highly productive managerial and business practices throughout the other country's economy. This pattern has been seen in Australian investment throughout the Asian region in sectors such as mining, agri-business, logistics (including agricultural transport and storage), telecommunications, financial services, legal services, infrastructure, construction and environmental management, among a host of others. Often Australian firms have brought a competitive export capability to their joint venture overseas.

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#### **Box 6: Australia's IBA Health Group Limited – Global Player in India**

IBA Health Group Limited is the largest health information technology company listed on the Australian Securities Exchange. Its core business involves developing advanced information systems for healthcare entities around the world. Over 13,000 provider organisations in 35 countries across five continents use its software solutions to manage patient information. IBA Health's business is driven by the collective talent, experience and commitment of over 3800 skilled staff around the globe, of which around 2000 are based in India.

The acquisition by IBA Health of Bangalore-based MEDICOM Solutions in 2005 provided an entry into the fast-growing Indian market – which is supported by a strong research and development capability. In 2007, with the acquisition of iSOFT, the company added another major development centre in Chennai.

IBA Health is developing the Chennai and Bangalore offices into global centres of excellence to cater to the growing international business of providing 'end-to-end' healthcare software solutions and associated services. Staff strength in these two businesses constitutes around 50 per cent of the company's global staff strength.

IBA Health decided to enter the Indian market for a range of reasons, including the availability of a large pool of highly-skilled English speaking IT professionals and significant cost benefits - with the assurance of guaranteed quality.

The rapid growth of the Indian economy combined with the liberalisation of foreign investment over recent years is helping produce unprecedented economic growth in all areas of the economy including healthcare. Growth in the healthcare sector has also been boosted by a paradigm shift towards higher quality and affordable healthcare driven by the demands of India's expanding middle class.

In the course of this study it was found that Australian firms were keen to boost their investment in the Indian economy.

Several existing concerns relating to the investment policy regime are being addressed actively by the Indian Government and some improvements are being made. In particular, the quality of the business environment in India has improved noticeably in recent years. Goods, labour and financial markets are making gains in efficiency and there have been substantial improvements in the quality of public institutions and in such areas as property rights, the operation of the judicial system and other indicators, which contribute to building a more attractive investment climate. An FTA would nevertheless provide the opportunity to address remaining issues which impede stronger growth in the investment relationship.

Australia's experience with investment liberalisation extends over recent decades and the economy is now substantially open. The recent increase in Indian investment in Australia (albeit off a low base), ranging from software services to mining provides evidence of the potential for further such integration between the two economies.

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#### **Box 7: Gujarat NRE Minerals Limited – Major Player in Australian Resources**

Gujarat NRE Minerals Limited owns and operates two coalmines near Wollongong in the NSW region of Australia. High-grade coking coal is shipped from these mines to India. In India the company's parent Gujarat NRE Coke Limited is the largest listed independent (non-captive) manufacturer of low ash metallurgical coke.

The company made its maiden issue to the Australian public in July 2007, when it raised around US\$13 million from the issue, making this a true "joint venture" between Australian and Indian investors. It has since acquired another ASX-listed entity, Gujarat NRE Resources NL, to ensure the company enjoys the benefits of larger scale and synergies.

Gujarat NRE Minerals is making substantial investments in the opening of new mine entrances and installing state-of-the-art mining equipment in both its Australian mines to increase efficiencies and production.

By the year 2012-13 once the current round of infrastructure enhancements are complete, the company hopes to mine and ship to India around 7 million metric tones of coal from its Australian mines. This outcome would benefit the Australian economy. It flows directly from the success of investment by an Indian company in the Australian resources sector. Both countries are beneficiaries, with India also gaining greater access to the steel needed to meet its infrastructure needs.

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Australia's economy has gained from investment from India in areas based on India's comparative strengths such as IT, and areas of strong current mutual trade interest, such as the resources sector. Indian investment in Australia in areas such as IT allows Australia to benefit from Indian expertise and experience which drives higher standards. Indian investment also contributes to the Australian economy (see box on Gujarat NRE above). As is the case with Australia's investment in India, Indian investment in Australia could be boosted further as links between the two economies strengthen.

## 8 Other Matters for Consideration

### 8.1 Intellectual property

Both Australia and India recognise that the effective protection and enforcement of intellectual property (IP) rights is a key element in fostering creativity, innovation and technological reform, which facilitates trade and investment and promotes sound economic development. Both countries are parties to the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS). In addition to the TRIPS Agreement, Australia and India are common signatories to a number of other international conventions on IP protection and registration. IP cooperation between Australia and India is already strong. IP Australia and India's Department of Industrial Policy and Promotion signed a Memorandum of Understanding in May 2008 and have prepared an Action Plan to increase IP cooperation which will soon be signed. Australia was also able to play a significant role in the 2002 WIPO Expert Mission for Modernisation of the Indian Trade Marks Registry.

#### *India*

Industry in India is becoming increasingly conscious of the value of intellectual property rights.

In India, the Department of Industrial Policy and Promotion (DIPP) is concerned with legislation relating to Patents, Trade Marks, Designs and Geographical Indications. These are administered through the Office of the Controller General of Patents, Designs and Trade Marks (CGPDTM), subordinate office, in accordance with:

- . *The Patents Act, 1970* (through the Patents offices)
- . *The Designs Act, 2000* (through the Patents offices)
- . *The Trade Marks Act, 1999* (through the Trade Marks Registry )
- . *The Geographical Indications of Goods (Registration & Protection) Act, 1999* (through the Geographical Indications Registry).

An Intellectual Property Appellate Board (IPAB) has been set up to hear appeals against the decisions of Registrar of Trademarks, Geographical Indications and the Controller of Patents.

Other IP Legislation includes:

- . Copyright is protected through *Copyright Act, 1957* administered by the Department of Higher Education;
- . Layout of transistors and other circuitry elements is protected through the *Semiconductor Integrated Circuits Layout-Design Act, 2000* - administered by the Department of Information Technology;
- . New varieties of plants are protected through the Protection of Plant Varieties and Farmers' Rights Act, 2001 - administered by the Department of Agriculture and Cooperation;

India's IP administration has been improved and modernised in a number of ways. The Indian Patents Act was amended in 2005 in order to make it compatible with India's international obligations. E-filing facility for patent and trademark applications was introduced in July 2007. Enforcement of Intellectual Property has been improved - civil and criminal provisions exist in various laws for dealing with counterfeiting and piracy. The Department of IPP has also set up an inter-ministerial Committee to coordinate IP enforcement issues.

Improved Indian policies, laws and resourcing for IP have had a significant impact in India. For example, the filing of patent applications increased from 4824 in 1999-2000 to 28,882 applications in 2006-2007. The number of applications examined has gone up to 14,119 in 2006-07 from 2824 in the year 1999-2000.

India's strategy in the area of Intellectual Property has been-

- (i) to meet international obligations;
- (ii) to safeguard public interest
- (iii) to modernize her Intellectual Property Rights administration; and
- (iv) to create awareness about Intellectual Property Rights.

Indian IPR laws contain appropriate provisions to prevent domestically the grant or registration of copyrights, patents and trade-marks on Yoga related postures and accessories, Indian traditional medical practices and medicinal preparations, and other traditional knowledge. India considers that much remains to be achieved globally in this area. India therefore attaches importance to international discussions on the relationship between the WTO's TRIPS Agreement and the Convention on Biological Diversity (CBD).

India has also established a Traditional Knowledge Digital Library (TKDL) consisting of about 150,000 formulations in the field of traditional medicines, with a view to prevent patenting of such knowledge. This library is also being extended to yoga. India is keen to provide access to TKDL to other countries/ agencies, after signing a disclosure agreement. EPO, USPTO, UKPTO have expressed interest in access to TKDL.

India has in place a domestic regime to protect geographical indications for goods, including handicrafts, and so also attaches importance to international discussions on ways to increase the protection given to geographical indications, for such products, including on registration of GIs and extension of enhanced GI protection.

Given the importance of the subject, and in order to enhance cooperation in the field of Intellectual Property Rights, an FTA between India and Australia may address issues of capacity building, human resources development, public awareness, and outreach activities.

### *Australia*

Australia has laws covering patents, trade marks, designs, plant breeder's rights, copyright and circuit layouts, and geographical indications (GIs). In Australia, two Commonwealth Government departments carry primary policy and administrative responsibility for intellectual property: IP Australia for industrial property and the Attorney-General's Department for copyright and related rights and circuit layouts.



Australia provides a well-developed system for enforcing IP rights through both administrative and judicial (criminal and civil) processes. Administrative authorities such as the Commissioner for Patents, Registrar of Plant Breeder's Rights, Registrar of Trade Marks and Registrar of Designs can make decisions on the granting of patents, plant breeder's rights, trade marks and designs. The Registrar of Trade Marks also has responsibility for certification of trade marks, which include GIs, while the Australian Wine and Brandy Corporation has responsibility for enforcement of wine GIs. The Copyright Tribunal is a specialist administrative body dealing with disputes regarding statutory licences. Collective management of copyright (management by groups representing individual copyright owners) is also an integral aspect of the copyright system in Australia. In addition, the Australian Customs Service, the Australian Federal Police and the Commonwealth Director of Public Prosecutions have important enforcement roles. Other protections are available at common law, and through state and territory and Commonwealth laws. There are criminal offences in Australia's Copyright Act, Trade Marks Act, and Plant Breeder's Rights Act in addition to private civil remedies.

All Australian FTAs, except the Australia New Zealand Closer Economic Relations agreement, which is an older agreement, include a separate IP Chapter.

## 8.2 Competition policy

### *Australia's framework*

Australia has established a strong competition policy framework. In 1995, as part of the microeconomic reforms undertaken by Australian Governments (federal, state and territory), a comprehensive national competition framework was established, overseen by an independent national regulator, the Australian Competition and Consumer Commission. The principles underpinning the national competition framework are enshrined in Australia's intergovernmental Competition Principles Agreement and related agreements, and they are expressed in legislation in the *Trade Practices Act*.

Competition reforms in Australia have delivered significant economic benefits. In its 2006 economic survey of Australia, the OECD said that reforms in Australia, particularly competition reform, were instrumental in the steady improvement in Australian living standards since the beginning of the 1990s. Australia's Productivity Commission research shows that lower domestic production costs arising from competition policy reforms have also enhanced Australia's export competitiveness.

Australia has included competition policy chapters in its FTAs with Singapore, Thailand, the US and Chile. Australia's approach to competition policy in its FTAs varies, depending on the negotiating partner – from clauses encouraging Parties to adopt, maintain and apply competition law, to legally binding language regarding the legal frameworks available in Australia and the other country. The agreements also recognise the importance of cooperation between the Parties and their competition agencies on the enforcement and avoidance of conflict in the application of their competition laws.

### *India's framework*

The Competition Commission is now fully constituted in accordance with the provisions of the *Competition Act*. The Indian Competition Law (*The Competition Act, 2002*) provides for setting up a Competition Commission of India for the purposes of the Act. The Competition Commission of India has been fully constituted in accordance with the provisions of the Act.

The Competition Act inter-alia provides that the Competition Commission of India set up under the Act may, for the purpose of discharging its duties or performing its functions under this Act, enter into any memorandum or arrangement with the prior approval of the Central Government, with any agency of any foreign country.

India's CECA/FTA with Sri Lanka and Singapore has not included a Chapter on Competition Policy. India's CEPA with Korea includes a Chapter on Competition Policy wherein it was agreed to enter into consultation and cooperation.

It is recommended that consultations between India and Australia may be undertaken as appropriate on various matters relating to competition policy, including capacity building, exchange of information and notification procedures.

## 8.3 Government procurement

### *Australian Government Procurement Framework*

Since the mid 1990s, the Australian Government has implemented a number of broad ranging and integrated reforms to its resource management and governance arrangements which have resulted in significant improvements to the efficiency and responsiveness of the procurement practices of Australian Government departments and agencies.

Value for money is the core principle governing procurement by the Australian Government, and is usually assessed on price and non-price criteria to ensure that the Government gets the best performance outcome relative to price. Consistent with this core principle, the Australian Government procurement framework generally does not discriminate between domestic and foreign suppliers. Exceptions to this non-discrimination include policies to ensure small and medium enterprises are not discriminated against in procurement processes and, in limited circumstances, policies to assist indigenous Australians.

The Australian Government does not control or regulate procurement by state and territory governments or local governments. Each state and territory government manages its own arrangements and is responsible for ensuring compliance with any international agreements to which it has agreed to be bound.

Given its significance, in terms of the proportion of total trade it accounts for, Australia seeks coverage of government procurement in its FTAs. Australia has entered into five international agreements with substantive provisions on government procurement. The Australia-New Zealand Government Procurement Agreement established a single government procurement market covering all central and state level governments. The Singapore-Australia FTA provides for non-discriminatory access to the government

procurement market of each country at the central government level. The government procurement chapter of the Australia-United States FTA and the Australia-Chile FTA provide for access to government procurement at the central and state government levels. The Thailand-Australia FTA provides for future negotiations to include a substantive government procurement chapter.

#### *Indian Government Procurement Framework*

India is willing to engage in dialogue on various aspects of government procurement. However, India has not included government procurement as a negotiating subject in its bilateral FTA negotiations to date.

### 8.4 Mutual Recognition

A mutual recognition agreement is an international agreement by which two or more countries agree to recognise one another's procedures for assessing the conformity of goods with technical regulations and standards. The World Trade Organization (WTO) Agreement on Technical Barriers to Trade provides for countries to develop and apply three important trade facilitation devices: harmonization, equivalence, and mutual recognition of conformity assessment procedures.

In the treatment of goods in a possible future FTA, trade linkages between the two countries could be intensified not only through tariff liberalisation, but also by facilitating goods trade through measures in relation to technical regulations, standards and conformity assessment procedures.

Additionally, for services trade, an important tool to facilitate the movement of professional service providers in a possible future FTA would be to encourage mutual recognition of professional qualifications by professional bodies in both countries.

In this regard, the following areas could be considered in negotiations for an FTA between the two countries.

#### *Trade in Goods*

To facilitate trade in goods both sides could explore opportunities in the area of technical regulations, standards and recognition of conformity assessment.

Existing voluntary sector arrangements between conformity assessment and accreditation bodies could provide a basis for exploring opportunities for recognition of conformity assessment at a regulatory level in the two countries.

In possible future FTA negotiations, both sides could consider mechanisms to facilitate:

- (i) agreement on the recognition of conformity assessment procedures on products of their export interest;
- (ii) approval procedures, inspection requirements, testing and certification; and
- (iii) acceptance of conformity assessment including inter alia recognition of each others' testing laboratories or certification bodies.

Other issues that could be discussed are cooperation for the development of capacity of institutions and comprehensive confidence-building process to demonstrate equivalence of regulatory standards, inspection competence and effective enforcement in both countries in identified priority areas.

### *Trade in Services*

Given the existing synergies between the two economies, India and Australia should work towards encouraging the mutual recognition by relevant professional bodies of professional qualifications with the aim of facilitating easier movement by them between the two countries. Governments could also support easier certification norms and accreditation of professional service providers in fields such as health care, engineering, and architecture.

In a possible future FTA, the two Governments should therefore facilitate increased dialogue between the regulatory/professional bodies, with the aim of facilitating mutual recognition of qualifications between them.

## 8.5 Consultation

A potential bilateral FTA could include a chapter on consultations and dispute settlement which would establish fair, transparent, timely, and effective procedures to settle disputes arising under the Agreement. A robust dispute settlement mechanism could borrow from the WTO dispute settlement architecture and may incorporate other 'best practice' elements.

An institutional structure that reflects the strong relationship between Australia and India would also be a key feature of a bilateral FTA. For example, consideration could be given to a joint committee which reports – with some measure of flexibility – to the regular Joint Ministerial Commission meeting of Trade Ministers. An appropriate institutional structure would recognise that an FTA was a platform for ongoing and increasing bilateral interaction in the economic field.

## 9. Economic Modelling

Economic modelling was employed to gain some insights into how an Australia-Indian FTA might impact on bilateral trade and investment flows, economic welfare and specific sectors in both countries.

### *Centre for International Economics*

The independent Centre for International Economics (CIE) in Australia undertook the modelling using the CIEG-Cubed global economic model. In interpreting the modelling results, it is important to recognise that economic models simplify reality, depend on the quality of data inputs, and rely on numerous assumptions regarding economic parameters, behaviour and relationships. All results should therefore be regarded as illustrative estimates. Modelling can be useful, however, in inferring the outcome of trade liberalisation (positive or negative impact on output) and the magnitude of such impacts (large or small). The Executive Summary of the economic modelling is at Annex B<sup>13</sup>.

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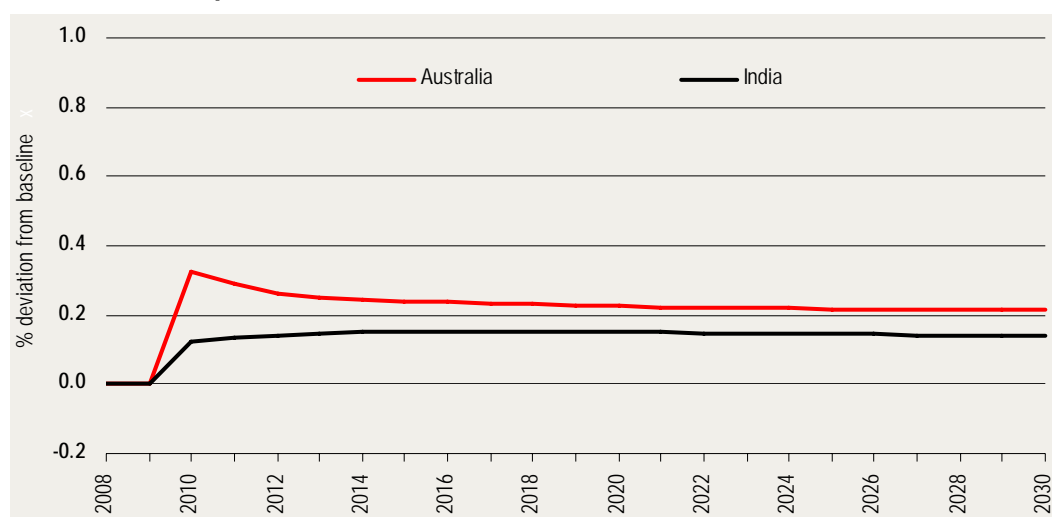
<sup>13</sup> Modeling was calculated in 2008.

Without prejudice to any subsequent negotiations, the modelling was premised on the hypothetical scenario where all barriers to bilateral trade and investment between Australia and India were removed immediately on commencement of an agreement.

Countries achieve allocative efficiency gains through trade and investment liberalisation. As seen in Chart 9.1, CIE’s modelling indicates an FTA between Australia and India could result in a net positive impact on the GDP of both countries. Ten years after the hypothetical FTA came into force, Australia’s GDP could be 0.23 per cent higher in net terms than without an FTA. India’s GDP could be 0.15 per cent higher. While Australia was estimated to gain more in relative terms from an FTA, India would benefit slightly more in absolute terms. The somewhat higher impact on Australian GDP is due to two main factors – India’s higher tariff levels prior to an FTA, and the greater importance India currently represents as a destination for Australian exports than Australia is for Indian exports. Over a period of 20 years, an FTA could lead to Indian GDP gaining in net terms an additional US\$34.4 billion in (2009 prices) net present value (NPV) terms, compared to US\$32.4 billion in Australia.

Chart 9.1

### 1 Estimated impact of the FTA on real GDP



Data source: CIEG-Cubed modelling simulation.

Modelling was undertaken to estimate the impact on 57 specific sectors in each economy to determine the net change in output for each sector. A net increase in output under an FTA could be expected for 39 Indian sectors, with a corresponding figure of 40 for Australia. Dynamic productivity gains arising from greater import competition, learning by doing in export markets and greater foreign investment are key factors in the high proportion of sectors benefiting in net terms from an FTA.

The modelling estimates that an Australia-Indian FTA could result in a modest positive impact on total global economic output.

In addition to the modelling carried out by the CIE, which envisaged a modest welfare gain for both economies, India's RIS carried out economic modelling on the benefits of a bilateral FTA, which has concluded that the gains could be much greater. A more liberal and optimistic CGE Modelling exercise was employed (Details are given in Annex C).

Modelling of welfare and trade gains from the proposed India-Australia FTA was undertaken by RIS in an alternative scenario which included full tariff liberalisation on manufactured products and with import-augmenting technical change denoting trade facilitation effects. This was done on the latest (2009) GTAP 7 database. These assumptions together explain the optimistic estimates presented in Table 9.1.

Table 9.1: Welfare and Trade Gains under Full Tariff Liberalisation and Trade Facilitation Scenario (GTAP database (version 7:2009))

I. Welfare Gains	US \$ Million	% of GDP
Australia	10650.05	1.17
India	12533.04	1.14
II. Bilateral Exports	% Increase	
Australia	13.38	
India	14.54	

The proposed FTA could, based on the more optimistic modelling assumptions noted earlier, yield welfare and trade gains for both the countries that could be as high as 1.14 per cent of GDP (welfare gain) and 14.54 percent (bilateral export gain) for India and 1.17 per cent of GDP (welfare gain) and 13.38 percent (bilateral export gain) for Australia. These gains could accrue with full FTA implementation as they have been estimated under a 'static scenario'. Other things remaining the same, these gains could be translated into per annum benefits with full implementation of tariff liberalisation and trade facilitation.

### *Conclusion*

The modelling commissioned during the feasibility study indicates an FTA between Australia and India could result in a significant net positive impact on the GDP of both countries.

## 10 Conclusion and Recommendations

### Introduction

The JSG has presented a comprehensive review of bilateral economic linkages between Australia and India, covering trade in goods and services, investment flows, and other areas of economic cooperation. . This report analyses the feasibility of a comprehensive FTA which will include agreements on goods, services, investment and other trade and investment facilitation cooperation measures between Australia and India.

- A Free Trade Agreement (FTA), for the purposes of this Study, has a wide coverage including goods, services and investment. In India, FTAs are commonly understood as goods-only agreements whereas a Comprehensive Economic Cooperation Agreement (CECA) includes goods, services, investment and other areas of cooperation. In Australia, FTAs are understood as comprehensive agreements.

The total amount of trade (in goods and services) between Australia and India has been rising rapidly in recent years, reaching almost A\$19 billion (about US\$ 16 billion) in 2008. Bearing in mind the two countries' economic size, there is further potential for growth in bilateral trade flows owing to the complementarities of the two economies.

Major findings of the JSG are summarised below:

**Trade in Goods:** Analysis of the bilateral trade in goods suggests substantial increases are possible through a comprehensive FTA, including coverage of resources (mining), agricultural and manufactured goods trade. The JSG also noted that the trade links between the two countries could be intensified not only through tariff liberalisation, but also by adopting other measures. Some observations of the JSG are:

- . an FTA will mutually benefit both countries by removing tariff and non-tariff barriers;
- . agreement on rules of origin would enhance bilateral preferential trade;
- . consultation and co-operation in sanitary and phytosanitary matters, technical barriers to trade and other similar measures could be enhanced;
- . a mechanism for enhanced customs cooperation could be considered; and
- . trade remedies cooperation could be enhanced.

**Trade in Services:** The services sector is an important part of both Australian and Indian global exports. It contributes to about 37 per cent of India's exports and about 21 per cent of Australia's exports.

The JSG found that there is further potential in services trade between India and Australia including in the sectors of financial services, software, telecommunications, IT and ITeS/computer related services, education, professional services (including accounting and legal services), tourism, air services, agricultural services, audiovisual services, healthcare, architecture and engineering, and movement of natural persons including visas for Mode-4. The JSG also discussed Mining & Energy, Environmental and Sporting & Recreational Services and agreed that, if FTA negotiations were to commence, no services sector would be excluded *a priori* from consideration in the negotiations.

**Investment:** The JSG noted that Australia-India investment flows are modest relative to bilateral trade and there is considerable scope for enhanced investment links between Australia and India. There are considerable investment opportunities in India and Australia in sectors such as mining and resources, agricultural processing, infrastructure, banking and telecommunications. In order to encourage investment inflows both countries have liberalized their investment regimes. Some observations of the JSG in relation to investment are:

- . an FTA would facilitate bilateral investment in many sectors;
- . interaction between governments (including state governments), industry and business on an institutional basis would be boosted; and
- . exchange of information on investment laws and regulations would be further facilitated.

**Cross-cutting issues:** A range of cross-cutting issues, such as intellectual property, competition policy, government procurement and technical barriers to trade, were also considered in the study.

## 10.1 Conclusions on feasibility of an FTA

Negotiation of a comprehensive WTO-consistent and WTO-plus FTA covering goods, services, and investment between Australia and India is feasible. Cooperation, capacity building and exchange of information on other issues such as the protection of intellectual property rights (covering all issues including TRIPS & CBD, and GIs inclusive of non-food GIs), SPS & TBT matters, competition policy and government procurement could also be considered during FTA discussions..

India and Australia produce highly competitive and largely complementary goods for export to international markets. While economic activity in each country has led to substantial growth in bilateral goods trade, tariffs and non-tariff barriers continue to raise the cost of imports, imposing implicit taxes on businesses and consumers alike.

A comprehensive FTA between Australia and India would cover substantially all goods trade allowing the two countries to take maximum advantage of the considerable complementarity between the two economies. Such liberalisation would provide impetus to economic activity and economic welfare in each economy.

An FTA would also cover a substantial range of services sectors, including sectors of export interest to both the countries, covering all the four modes in a GATS-consistent and GATS-plus framework, and including enhanced cooperation to assist the recognition of professional services.

Liberalising investment regimes would result in valuable economic benefits for both countries.

Economic modelling indicates that GDP in each country should increase as a result of an FTA and could result in a modest positive impact on total global economic output. However, the indicative nature of any economic modelling needs to be borne in mind (due to the inherent assumptions that underlie any economic modelling exercise).



## 10.2 Recommendations

On the basis of this Report and its conclusions, the Joint Study Group finds a bilateral FTA feasible and recommends that the Indian and Australian Governments may consider negotiation of a comprehensive bilateral FTA that includes trade in goods, trade in services, investment and other trade and investment facilitation and cooperation measures as a single undertaking.

## **Terms of Reference**

- i. to identify the strategic and economic benefits that India and Australia can derive from the establishment of an FTA;
- ii. to develop a comprehensive policy framework for enhancing the bilateral economic relationship, including by assessing the feasibility of achieving desired outcomes through a comprehensive FTA covering trade in goods, services, and investment; as well as other issues such as the protection of intellectual property rights (covering all issues including TRIPS & CBD, and GIs inclusive of non-food GIs), SPS & TBT matters, competition policy and government procurement;
- iii. to review the existing institutional framework, infrastructure and mechanisms in bilateral trade, investment and economic relations to enhance closer cooperation and recommend measures to facilitate and optimise such cooperation;
- iv. to expedite the expansion of trade in goods through liberalisation of tariffs, consistent with WTO principles, and removal of other impediments to trade;
- v. to expedite the expansion of trade in services, by liberalising trade in services, consistent with WTO principles, with substantial sectoral coverage including visas related to Mode-4, and MRA issues;
- vi. to evolve an appropriate framework and modalities for investment cooperation with a view to creating a favourable climate for encouraging cross border investment flows;
- vii. the JSG will be required to produce a Joint Report, with recommendations, for consideration by the Governments of India and Australia in the first half of 2009 or earlier.

## Centre for International Economics

### Summary of the Economic Modelling for the Australia-India FTA Feasibility Study

The Australian and Indian Governments have announced that a joint feasibility study will be undertaken into the merits of a bilateral free trade agreement. As part of the feasibility study, economic modelling is to be undertaken to quantify the possible economic impacts of a trade and investment agreement between Australia and India.

This report provides an independent assessment of the possible economic impacts.

#### Barriers to merchandise trade

- The average applied Australian tariff in 2008 is a low 3.2, with nearly 52 per cent of tariff lines being duty free. The highest tariff during 2008 is 17.5 per cent (levied on some apparel and textile products). Australia has bound nearly 97 per cent of its tariff lines in the WTO, with the average bound tariff rate being 10 per cent.
- The average applied tariff in India during 2008 is a relatively higher 17.6 per cent, with nearly 3.7 per cent of tariff lines being duty free. The average tariff masks some substantial variation in tariff rates. For example, during 2008 over 400 tariff lines had a tariff equal to or in excess of 100 per cent. India has bound over 75 per cent of its tariffs in the WTO, with the average bound tariff rate being 48.6 per cent.
- India applies its MFN tariff rate to Australian imports, while Australia applies its developing country tariff rate to Indian imports. Hence Australia already affords India some tariff concessions relative to imports from an MFN country.

#### Barriers to services trade

- Barriers to services trade are nationalistic treatments that hinder or prevent market entry and price competition between ‘foreign’ and domestic service providers.
- Service barriers can comprise things such as restrictions on FDI, restrictions on the recognition of professional qualifications, residency/local presence obligations and limitations on the scope of activities that can be undertaken by foreigners.
- It is considered that there is little in the way of barriers to consumption abroad (such as barriers to Australians taking holidays in India, or to Indian students studying in Australia). Barriers to services delivered via commercial presence (Mode 3 delivery under the WTO’s General Agreement on Trade in Services) are typically barriers to foreign direct investment, and as such were dealt with when estimating the impact of investment liberalisation (see below).
- This leaves barriers to services delivered via cross border supply and movement of persons (such as professionals travelling temporarily to the economy into which they are delivering their services). While service barriers will be of a ‘behind the border’ and regulatory nature, the effect thereof will be similar to a tariff applied to merchandise

imports — the service barriers will act to increase the cost of those service imports and reduce competition in the local market.

- Drawing on published research, the tariff equivalents of barriers to services typically delivered via cross border trade and movement of persons — water transport, communications and professional services — were found to range between 0–10 per cent.

### Barriers to investment

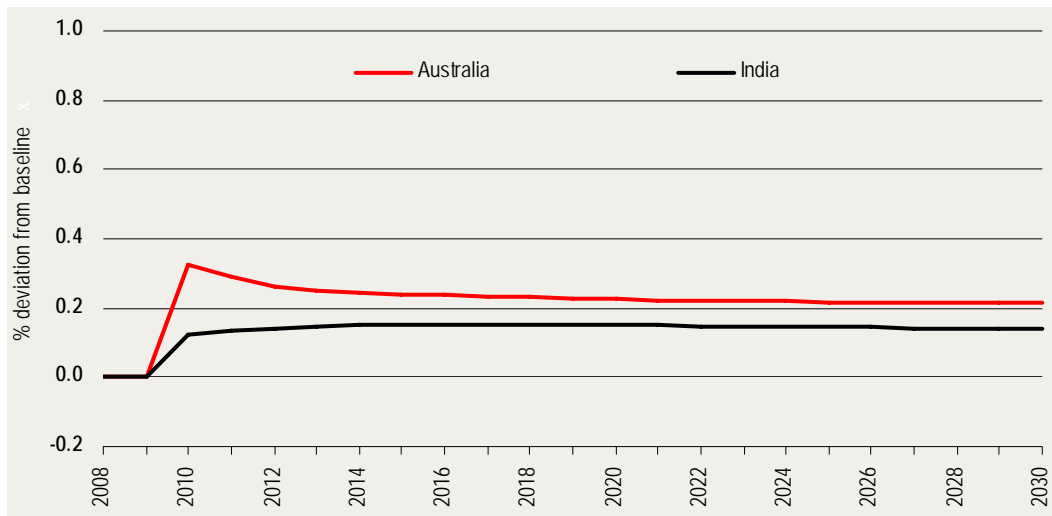
- Estimates of barriers to foreign direct investment (FDI) in the service sectors are available for 29 OECD countries and 46 other (largely developing) countries. On a scale of 0 (no restrictions) to 1 (totally restricted), Australia's investment environment is accredited with a 'score' of 0.32, while India is scored at 0.50. These ratings were used for the purpose of modelling the impact of investment liberalisation. They do not, however, capture informal barriers to investment, which can be significant.
- While FDI is important to Australia and of growing importance to India, bilateral FDI between Australia and India is currently modest. India is the destination for a small share (0.03 per cent) of Australia's outward FDI stock, with the value of Australia's FDI stock in India being valued at A\$106 million in 2006. Australia is the destination for 0.80 per cent of India's outward FDI stock, with the value of India's FDI stock in Australia estimated to be around A\$133 million in 2006.
- Comprehensive liberalisation of bilateral FDI is estimated to see India's stock of investment in Australia increasing by A\$291 million, while Australian investment in India is estimated to increase by some A\$228 million.
- Despite large barriers to FDI being removed, the estimated changes in the FDI stocks are quite small, reflecting the small underlying bilateral FDI base. Continued economic development in India and greater future integration of the two economies could see investment liberalisation having a much larger impact on bilateral FDI flows than that estimated here.

### Macroeconomic impacts of bilateral trade and investment liberalisation

- Given the uncertainty with respect to the pace and scope of (any) liberalisation, it has been assumed for the purpose of modelling that the bilateral trade and investment liberalisation will be comprehensive in scope with all barriers being removed immediately on commencement of the agreement, assumed to occur on 1 January 2010.
- As can be seen from chart 1, an Australia–India Free Trade Agreement is estimated to have a beneficial impact on the GDP of both economies. By 2020, 10 years after the FTA has come into force, Australia's GDP is estimated to be 0.23 per cent higher than otherwise, and 0.15 per cent higher in the case of India.
- The fact that Australia benefits relatively more from the FTA reflects the trading relationship and magnitude of trade barriers — India has higher trade barriers than Australia, and India is currently a more important trading partner to Australia than Australia is to India. Removal of high trade barriers in a market that is the destination for 5.3 per cent of Australia's exports provides Australia with relatively greater gains than does removal of already low Australian barriers in a market that is the destination for 0.5 per cent of India's exports.
- While Australia is estimated to benefit relatively more than India from the FTA, India benefits more in absolute terms. Over the period 2010–30, Australia is estimated to gain

A\$43 billion in real GDP in (2008) net present value terms, versus India’s real GDP gain of A\$46 billion.

## 2 Estimated impact of the FTA on real GDP



Data source: CIEG-Cubed modelling simulation.

### Sectoral impacts of the bilateral trade and investment liberalisation

- 70 per cent of Australian sectors and 68 per cent of Indian sectors are expected to experience an increase in output under the FTA.

Dynamic productivity gains, arising from greater import competition, learning by doing in export markets and greater foreign investment, are a key factor in seeing such a high proportion of sectors benefiting under the FTA. Indeed, Australian sectors are estimated to have experienced a productivity gain of 0.13 per cent by 2020 on average, versus 0.17 per cent in the case of the average Indian sector.

### Research and Information System for Developing Countries

#### Summary of the Economic Modelling for the Australia-India FTA Feasibility Study

Modelling of welfare and trade gains from the proposed India-Australia FTA was undertaken by RIS in an alternative scenario of CGE. The rationale for so doing needs to be explained briefly in non-technical terms.

Reduction or elimination of tariff barriers between India and Australia is important under the proposed FTA in order to step up bilateral trade flows. Considering that trade flows are a function not only of tariff reduction or elimination, but also of trade facilitation measures that may include simplification of customs clearance procedures, mutual recognition agreements for standards, technical cooperation and improvement in trade facilitation infrastructure, it was imperative to factor in both tariff liberalisation and trade facilitation while making any assessment of the possible trade and welfare gains.

With respect to tariff liberalization, the agricultural trade liberalization was excluded due to obvious reasons. Similarly, due to inherent difficulties in the GTAP database on services, this sector was also excluded. Therefore, the study attempted to examining scenarios of full trade liberalization in the manufacturing sector.

Trade facilitation measures were formulated in our simulation as an “import-augmenting technical change” to estimate the impacts. In the model, a positive “import-augmenting technical change” or an improvement in efficiency of importing products lowers the market price (domestic price) of imported products. Specifically, we investigate the effects of 10 percent exogenous change in this efficiency improvement. It should be noted that zero percent change in that efficiency improvement is applied to Australia on the assumption that its trade facilitating infrastructure is not only well-developed but it can also be considered as a benchmark vis-à-vis India. Trade facilitation is modelled as a shock to “ams”: import augmenting technical change, which lowers the effective price of imported products.

Thus, this exercise included full tariff liberalisation on manufactured products along with import-augmenting technical change denoting trade facilitation effects. This was done on the latest (2009) GTAP 7 database. In terms of country-aggregation, it was kept straight forward with three regions viz. India, Australia and Rest of the World. This was done due to the complexities that seep into the modelling due to any further disaggregation. In terms of sectoral aggregation, 57 sectors were mapped in terms of 10 sectors with five sectors capturing the manufacturing sector as a whole.. The solution method was adopted as 1-Step Johansen and the parameters were taken as default

## Annex D

<b>Currency Conversion Table</b>			
<b>Year</b>	<b>Exchange Rate: USD Rate (Period Average): Australia: ANNUAL</b>	<b>Year</b>	<b>Exchange Rate: USD Rate (Period Average): India: ANNUAL</b>
	<b>A\$1= USD</b>		<b>n.c./USD</b>
1990	0.7806	1990	17.504
1991	0.7790	1991	22.742
1992	0.7344	1992	25.918
1993	0.6800	1993	30.493
1994	0.7311	1994	31.374
1995	0.7413	1995	32.427
1996	0.7826	1996	35.433
1997	0.7422	1997	36.313
1998	0.6282	1998	41.259
1999	0.6452	1999	43.055
2000	0.5798	2000	44.942
2001	0.5172	2001	47.186
2002	0.5433	2002	48.610
2003	0.6485	2003	46.583
2004	0.7354	2004	45.317
2005	0.7637	2005	44.100
2006	0.7530	2006	45.307
2007	0.8368	2007	41.349
2008	0.8388	2008	43.505
Source: IMF, International Financial Statistics, on-line database from DX-Econdata 2009			

### Glossary of Acronyms and Abbreviations

AAI - Airports Authority of India  
AICTE - All India Council for Technical Education  
ASEAN - Association of South East Asian Nations  
ASIC - Australian Securities and Investments Commission ASX - Australian Securities Exchange  
AQIS - Quarantine and Inspection Service  
BCA - Building Code of Australia  
BIPPA - Bilateral Investment Promotion and Protection Agreements  
BIS - Bureau of Indian Standards  
BPO - Business Process Outsourcing CIE - Centre for International Economics  
CTC - Change in Tariff Classification  
CECA - Comprehensive Economic Cooperation Agreement  
DAFF - Department of Agriculture, Fisheries and Forestry  
DBCDE - Department of Broadband, Communications and the Digital Economy  
DFAT - Department of Foreign Affairs and Trade  
DIAC - Department of Immigration and Citizenship  
EIC - Export Inspection Council  
FATA - Foreign Acquisition and Takeovers Act  
FDI - Foreign Direct Investment  
FTA - Free Trade Agreement  
GDP - Gross Domestic Product  
ICAI - Institute of Chartered Accountants of India  
ICT - Information Communication Technologies  
ICWAI - Institute of Cost and Work Accountants of India  
IMF - International Monetary Fund  
IP - Intellectual Property  
IT - Information Technology  
JSG - Joint Study Group  
MFN - Most Favoured Nation  
MOU - Memorandum of Understanding  
MRA - Mutual Recognition Arrangement  
OECD - Organisation for Economic Cooperation and Development  
ROO - Rules of Origin  
RIS - Research and Information System for Developing Countries  
SPS - Sanitary and Phytosanitary  
SBI - State Bank of India  
TBT - Technical Barriers to Trade  
TCF - Textiles, Clothing and Footwear  
TRIPs - Trade Related Intellectual Property Rights