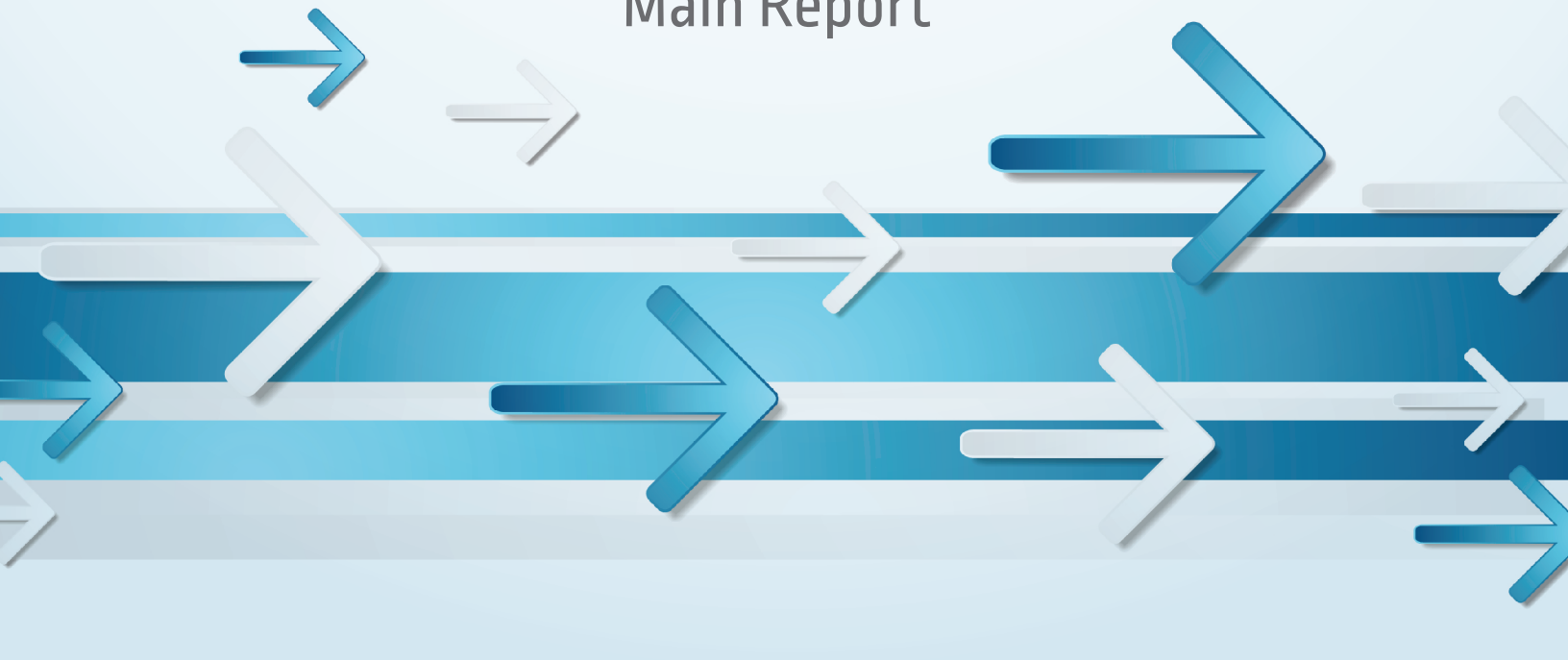


India's Services Trade Liberalisation
and Export Promotion
Main Report



Export-Import Bank of India

India's Services Trade Liberalisation and Export Promotion

A Study for Government Policy Making

This Study has been undertaken by Export-Import Bank of India [EXIM Bank] in collaboration with Dr. H.A.C. Prasad, Former Senior Economic Advisor, Ministry of Finance, Government of India

This paper is an attempt by EXIM Bank to disseminate the findings of research studies carried out in the Bank. The results of research studies can interest exporters, policy makers, industrialists, export promotion agencies as well as researchers. However, views expressed do not necessarily reflect those of the Bank. While reasonable care has been taken to ensure authenticity of information and data, EXIM Bank accepts no responsibility for authenticity, accuracy or completeness of such items.

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IEI (Institution of Engineers India), AHPI (Association of Healthcare Providers India), HFI (Healthcare Federation of India), INSA (Indian National Ship Owners Association), ACTO (Association of Container Train Operators), AITWA (All India Transporters Welfare Association), BIF (Broadband India Forum), COAI (Cellular Operators Association of India), FAITH (Federation of Association in Indian Tourism and Hospitality), IATO (Indian Association of Tour Operators) and professionals like Dr Devi Shetty (Narayana Healthcare), Raju Bhatnagar (former Secretary General, BCIC), Ramachandra Bhatt (SRC Bhat & Associates), etc for their valuable inputs and suggestions. Our sincere thanks also to the OECD for clarificatory inputs provided to us.

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India's Services Sector Performance and Restrictiveness in the International Context

Importances of Services in the Indian Economy

India's services sector is a key driver of the Indian Economy with a share of 54.2 percent in Gross Value Added (GVA) and a growth of 7.4 percent contributing nearly 58.7% of the overall GVA growth in 2018-19. While services GDP growth was modest, services export growth, after a fall in 2015-16 and a lull in 2016-17 rebounded with a robust 18.8% growth in 2017-18. Net services also grew robustly at 13.5% after two consecutive years with negative growth. While many initiatives have been taken by the Government and Industry to accelerate services growth and trade, some inherent restrictions in the form of domestic regulations and procedures in India and domestic regulations in key markets impacting market access, have been affecting India's services exports.

International Comparison

As per the National Accounts Statistics of United Nations, India's ranking improved from 12th position in 2007 to 7th position in 2017, among the world's 15 largest economies in terms of overall GDP. Among these top 15 economies, China (8.0 pp) recorded the highest increase in services share to Gross Value Added (GVA) during 2007-17, followed by India (5.8 pp) and Spain (5.0 pp). In 2017, services GVA growth rate (at constant prices), was highest in China at 8.3 per cent followed by India at 7.9 per cent (Table 1.1). As per the ILO's estimates, among the top 15 economies, the services sector accounted for more than two-thirds of total employment in 2016 in most of them

except India and China, with India's share of 33.5 per cent being the lowest. While China had the highest increase in the share of services employment (171 pp) during the period 2007 to 2017, increase in India was only 7.8 pp (Figure 1.1)

Services export growth, both World and India, which had dipped to negative territory in 2015 after an interregnum of 6 years from 2009, returned to positive territory in 2016 and further accelerated in 2017. As per the latest World Trade Organization (WTO) data for the first half of 2018, services export growth for the World was 12.4 per cent (average of Q1 and Q2) and robust at 13.7 per cent for India, though the highest growth was registered by China at 22.5 per cent (Figure 1.2).

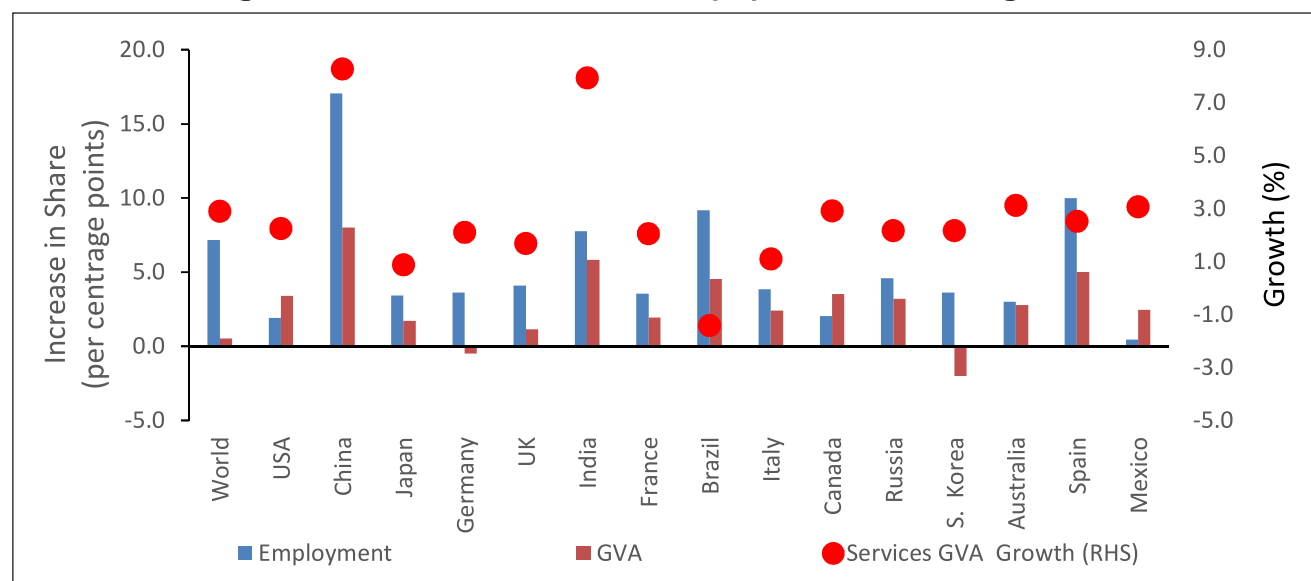
As per the World Investment Report 2018 published by United Nations Conference on Trade and Development (UNCTAD), Global foreign direct investment (FDI) flows fell by 23 per cent to US\$ 1.43 trillion in 2017. This is in stark contrast to the accelerated growth in GDP and trade. The fall was caused in part by a 22 per cent decrease in the value of cross-border mergers and acquisitions (M&As). But even discounting the large one-off deals and corporate restructurings that inflated FDI numbers in 2016, the 2017 decline remained significant. The value of announced greenfield investment – an indicator of future trends – also decreased by 14 per cent. FDI flows to developing economies remained stable at US\$ 671 billion, seeing no recovery following the 10 per cent drop in 2016. FDI flows to developing

Table 1.1 : Performance of Services Sector: International Comparison

Rank	GDP	Countries	2017 Value (US\$ Trillion)		Share of Services in [%]						Growth Rate [%]						
					GVA		Employment		Exports		Services GVA Growth [%]			Services Exports Growth [%]			
			GDP	Ser. GVA	2007	2017	2007	2017	2007	2017	2007	2016	2017	2007	2016	2017	H1 2018
		World	80.5	51.7	67.0	67.5	43.9	51.1	11.3	23.0	2.8	2.4	2.9	19.6	0.6	7.9	12.4
1		USA	19.5	15.7	77.3	80.7	77.5	79.4	28.9	33.0	2.9	2.0	2.2	17.6	0.2	3.8	6.0
2		China	12.2	6.1	42.4	50.4	38.8	55.9	9.3	9.1	8.3	7.7	8.3	33.6	-4.3	8.7	22.5
3		Japan	4.9	3.4	69.1	70.8	67.5	70.9	14.3	20.5	0.9	0.4	0.9	11.4	6.6	6.6	6.0
4		Germany	3.7	2.3	68.6	68.1	67.8	71.5	13.5	17.2	1.4	1.3	2.1	17.3	3.1	8.5	13.9
5		UK	2.6	1.9	78.0	79.2	76.4	80.5	41.5	44.1	2.6	1.9	1.7	17.8	-5.0	5.9	15.6
6		France	2.6	1.8	76.9	78.8	73.2	76.8	25.9	31.7	1.1	1.6	2.1	19.0	-1.9	5.8	9.8
7		India	2.6	1.3	48.0	53.9	25.7	33.5	36.5	38.0	9.5	7.5	7.9	24.7	3.5	13.7	13.7
8		Brazil	2.1	1.3	67.7	72.2	59.7	68.8	12.3	13.4	-2.7	-2.6	-1.4	33.2	-1.3	3.4	-0.7
9		Italy	1.9	1.3	71.4	73.8	65.9	69.8	18.7	17.9	0.9	1.0	1.1	13.9	2.4	10.4	15.2
10		Canada	1.6	1.1	67.3	70.9	76.4	78.4	14.1	16.9	2.2	2.2	2.9	6.8	1.1	5.8	9.3
11		Russia	1.6	0.9	59.1	62.3	61.8	66.4	10.9	13.9	-2.6	-0.6	2.2	22.8	-2.3	14.5	14.4
12		S. Korea	1.5	0.8	60.3	58.3	66.7	70.3	15.9	13.1	2.9	2.5	2.2	25.7	-2.8	-8.0	13.2
13		Australia	1.4	1.0	69.8	72.6	75.3	78.3	23.3	21.7	3.7	2.9	3.1	23.7	5.8	12.2	4.7
14		Spain	1.3	0.9	67.9	72.9	66.4	76.4	32.1	30.2	3.1	2.2	2.5	15.9	7.4	9.7	16.1
15		Mexico	1.2	0.7	61.5	63.9	60.7	61.1	6.0	6.2	4.3	3.9	3.1	9.5	7.6	10.1	11.7

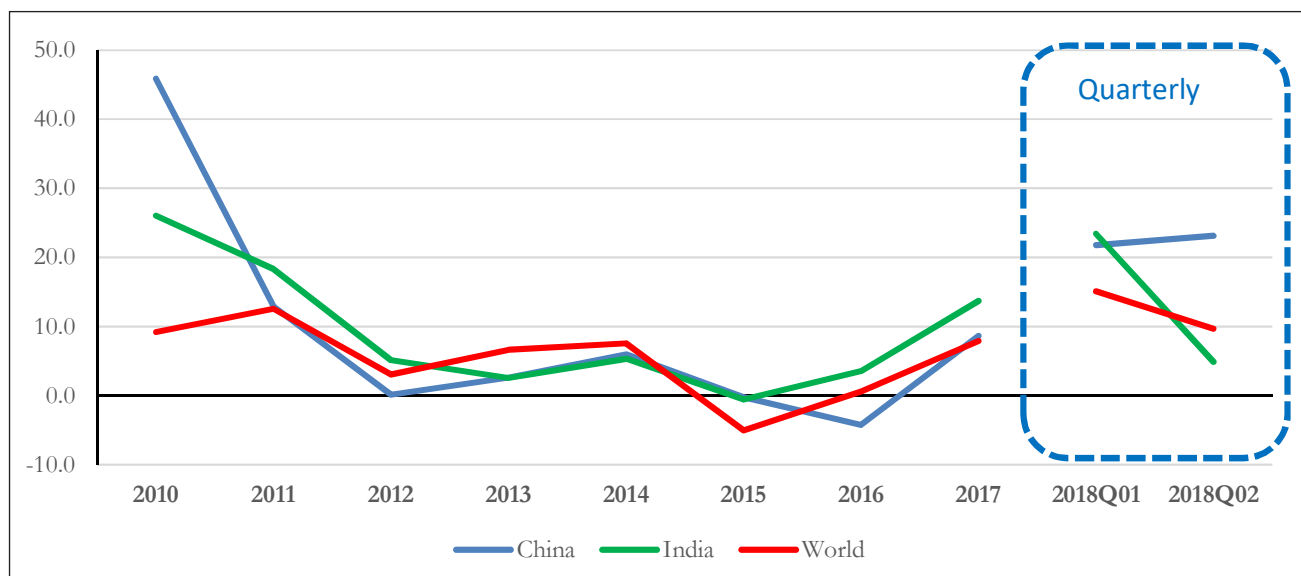
Source: GDP and GVA based on UN National Accounts Statistics data accessed on 31st January 2019. Employment (ILO estimate) based on World Bank data. Exports figures are based on WTO data accessed on 13 January 2019.

Note: For data points not available, nearest available preceding year figures are used.

Fig 1.1: Increase in Share of Services in Employment and GVA during 2007-17


Source: Computed from UN National Accounts Statistics data and World Bank database

Figure 1.2 : Commercial Services Export Growth Y-o-Y (Per cent)



Source: Based on WTO data

Asia remained stable, at US\$476 billion. The region regained its position as the largest FDI recipient in the world. Projections for global FDI in 2018 show fragile growth. Global flows are forecast to increase marginally, by up to 10 per cent, but remain well

below the average over the past 10 years. FDI activity was lower across all sectors. M&A values were down in the primary, manufacturing and services sectors. The fall in value of greenfield projects announced in 2017 was concentrated in services [Table 1.2].

Table 1.2 : Sector Wise- Performance of Global FDI Inflows

Value and number of net cross-border M&As						
	Value (US\$ Bn)		Growth 2017 (%)	Number		Growth 2017 (%)
	2016	2017		2016	2017	
Total	887	694	-21.8	6607	6967	5.4
Primary	83	24	-71.1	206	550	167.0
Manufacturing	406	327	-19.5	1745	1690	-3.2
Services	398	343	-13.8	4656	4727	1.5
Value and number of announced FDI green field projects						
	Value (US\$ Bn)		Growth 2017 (%)	Number		Growth 2017 (%)
	2016	2017		2016	2017	
Total	833	720	-13.6	15766	15927	1.0
Primary	54	21	-61.1	52	63	21.2
Manufacturing	295	338	14.6	7703	7678	-0.3
Services	484	362	-25.2	8011	8186	2.2

Source: UNCTAD: World Investment Report 2018

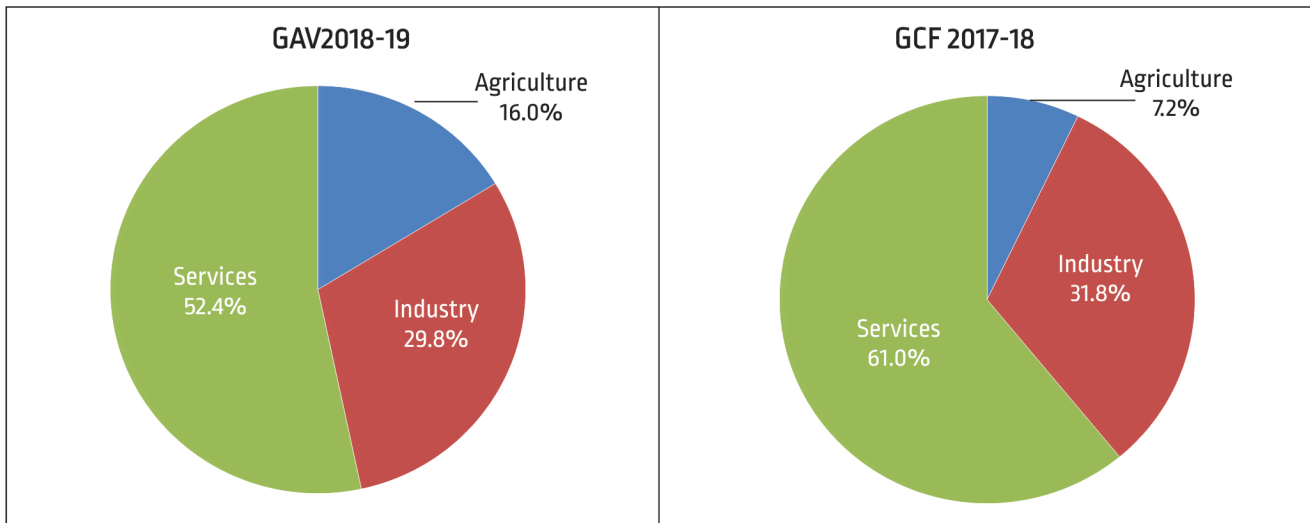
India's Services Sector

Services GVA/GCF

The services sector with a share of 54.2 per cent in India's GVA in 2018-19 as per the second advance estimate continued to be the key driver of India's economic growth contributing 58.7 per cent of gross value-added growth in this period. While the

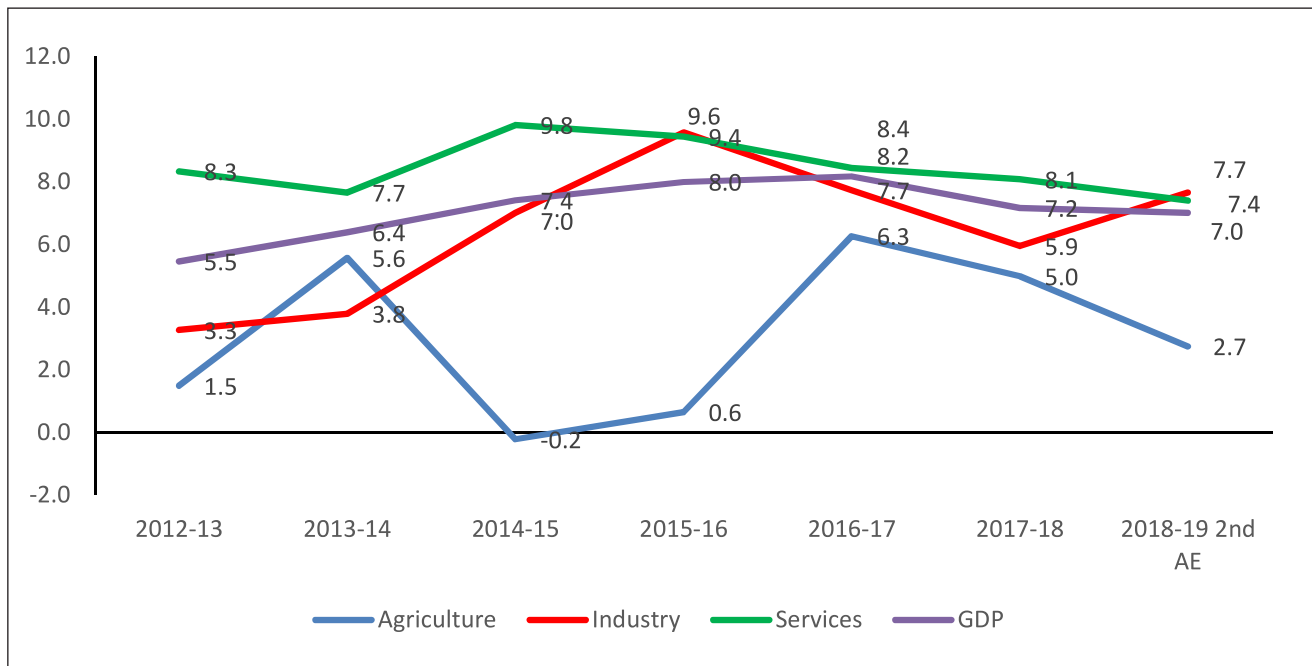
growth (GVA at 2011-12 basic prices) of this sector in 2017-18 decelerated to 8.1 per cent from 8.4 per cent in the previous year, it further decelerated to 7.4 per cent in 2018-19, as per the second advance estimate of CSO. The overall GDP growth also decelerated to 7.2 per cent in 2017-18 and further to 7.0 per cent in 2018-19 as compared to 8.2 per cent achieved in 2016-17. (Figure 1.3 and 1.4).

Figure 1.3 : India's Sectoral Share: GVA (2018-19) and GCF (2017-18)



Source: Based on CSO data

Figure 1.4 : GDP and Sectoral GVA Growth (%)



Source: Based on CSO data released on 28th February 2019.

The deceleration in growth of services in 2018-19, is mainly due to the slowdown in two major categories viz. 'trade, hotels, transport, communication and services related to broadcasting' and 'public

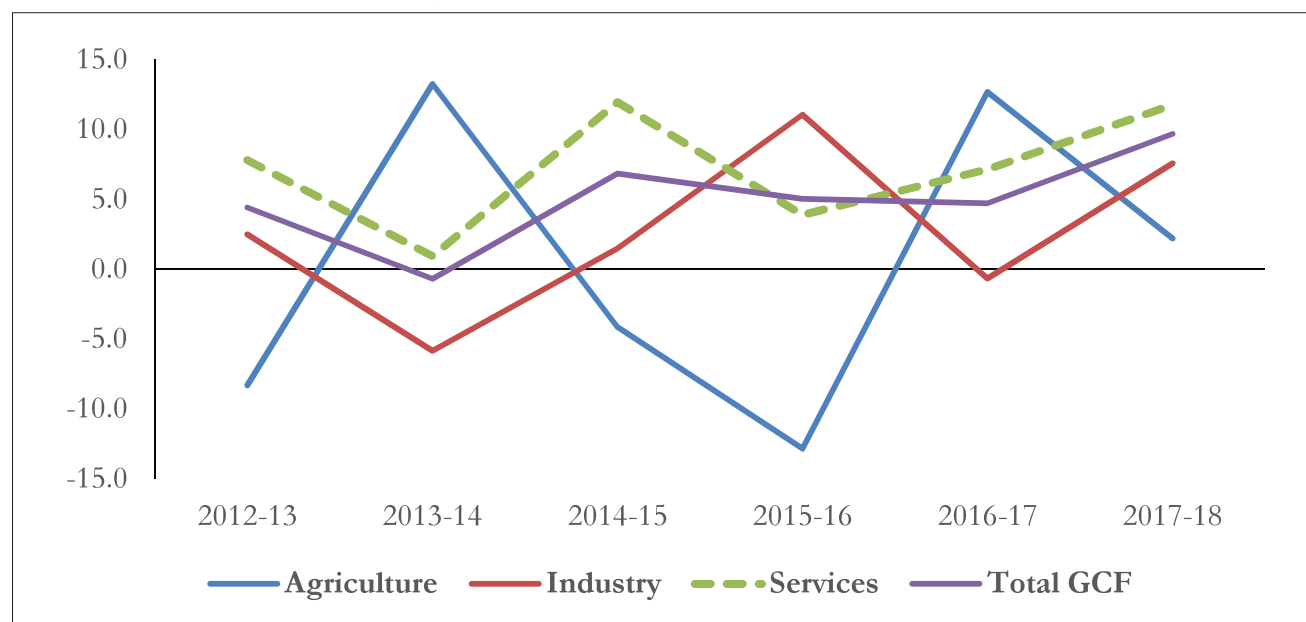
administration and defence & others category'. Growth in "financial, real estate & professional services" in 2018-19, was marginally higher. [Table 1.3].

Table 1.3 : Share and Growth of India's Services Sector (GVA & GCF at basic prices)

	GVA				GCF		
	Share (%)	Growth Rate (%)			Share (%)	Growth Rate (%)	
	2017-18	2016-17	2017-18	2018-19	2017-18	2016-17	2017-18
Total Services	53.5	8.4	8.1	7.4	61.0	7.2	11.8
Trade, repair, hotels and restaurants	11.8	10.1	10.0	6.8*	10.1	11.1	7.4
<i>Trade & repair services</i>	10.8	10.3	10.4		9.2	16.0	10.0
<i>Hotels & restaurants</i>	1.0	8.7	5.9		0.9	-18.1	-14.0
Transport, storage, communication & services related to broadcasting	6.4	3.4	3.6		9.3	7.1	15.8
<i>Railways</i>	0.7	-3.9	7.8		1.5	5.4	0.3
<i>Road transport</i>	3.1	5.6	6.1		3.7	40.5	27.6
<i>Water transport</i>	0.1	5.8	6.6		0.1	-7.9	45.6
<i>Air transport</i>	0.1	18.5	17.6		0.1	168.4	80.8
<i>Services incidental to transport</i>	0.8	7.0	7.5		0.7	26.4	-3.9
<i>Storage</i>	0.1	-2.9	9.9		0.1	-43.3	16.8
<i>Communication & services related to broadcasting</i>	1.6	1.0	-4.8		3.2	-16.1	13.5
Financial services	5.4	3.6	4.2	7.3^	2.4	-60.6	322.6
Real estate, ownership of dwelling & professional services	15.6	10.8	7.0		21.9	7.0	1.9
Public administration and defence	6.2	8.6	11.4	8.5#	10.2	11.9	12.3
Other services	8.1	9.7	12.3		7.1	12.7	16.9
Construction	7.8	6.1	5.6	8.9	5.2	10.1	8.4
GVA and GCF at Basic Prices	100.0	7.9	6.9	6.8	100.0	4.7	9.7
GDP at MP	--	8.2	7.2	7.0	--	--	--

Source: Computed from CSO data.

Note: Shares are in current prices and growth in constant 2011-12 prices; 2017-18 is First Revised Estimates; 2018-19 is Advance Estimates; * Also includes transport, storage, communication & services related to broadcasting; ^ Also includes Real estate, ownership of dwelling & professional services; # included other services.

Figure 1.5 : Sectoral GCF Growth- Y-o-Y (%)

Source: Based on CSO data.

The share of services sector in total gross capital formation (GCF), at current prices had increased over the last five years from 53.3 per cent in 2011-12 to 61.0 per cent in 2017-18. The growth rate of services GCF at constant (2011-12) prices accelerated from 3.9 per cent in 2015-16 to 7.2 per cent in 2016-17 and further to 11.8 per cent in 2017-18, mainly due to the good growth in GCF of 'trade, repair, hotels and restaurants'. The category 'real estate, ownership of dwellings & professional services' having share of 21.9 per cent in total GCF also grew by only 1.9 per cent in 2017-18. The services GCF growth became higher than the total GCF growth in the last two years. (Figure 1.5).

India's Trade in Services

In 2017-18, services exports recorded a positive growth of 18.8 per cent with robust growth in travel (22%), and good growth though with slight

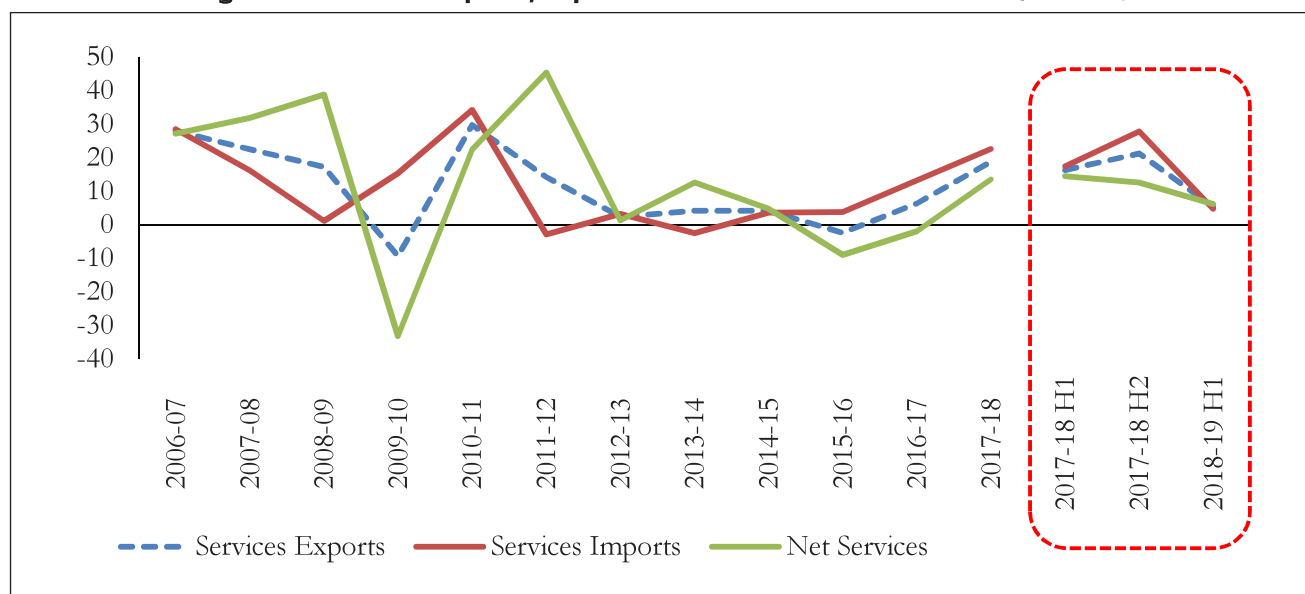
deceleration in transportation (10%) and Business services (13.4%) which has the second highest share in services sector at nearly 20%. Software services with a share of nearly 40% in India's services exports, saw some pickup in growth compared to the tepid growths in the previous 2 years. Interestingly, software services import growth has been very high since 2016-17.

In 2018-19 H1, services exports grew by only 5.3 per cent with a sharp deceleration in export growth of travel (2.1%) and also business services (7.4%). However, there was a further pickup in software services export growth (7.4%) and good growth in transportation (13.6%). Net services growth was at 6.2 per cent in 2018-19 H1 financing 40.6 per cent of Merchandise Trade Deficit. In 2017-18, Net services surplus financed around 48.5 per cent of India's merchandise trade deficit. (Table 1.4).

Table 1.4 : Sub-Sector-wise Growth Rate of Services Exports and Imports

Year / Item	US\$ Bn 2017-18	Share [%] 2017-18	Growth Rate [%]					
			Annual			Half Yearly		
			2015-16	2016-17	2017-18	2017-18 H1	2017-18 H2	2018-19 H1
Services Exports	195.1	100.0	-2.4	6.4	18.8	16.3	21.2	5.3
Travel	28.4	14.5	4.6	9.3	22.0	27.7	17.4	2.1
Transportation	17.4	8.9	-19.9	13.2	10.0	6.9	13.1	13.6
Insurance	2.5	1.3	-9.1	10.2	13.6	15.0	12.3	-0.4
Miscellaneous	146.1	74.9	-0.9	5.0	19.5	15.6	23.3	5.0
<i>Software Services</i>	77.3	39.6	1.4	0.3	4.0	2.7	5.3	7.4
<i>Business Services</i>	37.3	19.1	2.0	13.6	13.4	7.6	19.0	7.4
<i>Financial Services</i>	5.2	2.6	-12.7	3.1	1.3	-13.4	20.4	-2.9
<i>Communication Services</i>	2.1	1.1	8.7	9.4	-11.7	-5.8	-17.2	4.1
Services Imports	1175	100.0	3.7	13.3	22.6	175	278	4.7
Travel	19.5	16.6	-3.4	11.2	18.6	12.1	26.7	15.1
Transportation	17.6	15.0	-6.8	-6.3	24.6	15.0	34.5	19.6
Insurance	1.7	1.4	2.9	29.9	13.7	39.0	-5.4	-14.1
Miscellaneous	77.9	66.3	9.8	19.8	23.3	19.4	27.1	-1.6
<i>Software Services</i>	5.1	4.4	-0.3	32.9	43.3	47.6	39.5	21.4
<i>Business Services</i>	36.6	31.2	12.5	3.9	13.3	11.4	15.3	7.4
<i>Financial Services</i>	5.5	4.7	-12.4	86.7	-5.4	-0.2	-10.2	-32.8
<i>Communication Services</i>	1.0	0.8	-2.1	-9.1	4.8	-4.8	15.3	12.8
Net Services	0.1	100.0	-9.0	-1.9	13.5	14.5	12.6	6.2

Source: Calculated from RBI data

Figure 1.6 : Services Exports, Imports and Net Services Growth Y-o-Y (Per cent)


Source: Calculated from RBI data.

FDI in India's Services Sector

Though there is ambiguity in the classification of FDI in services, it is the combined FDI share of the top 10 service sectors such as financial and non-financial services falling under the Department of Industrial Policy & Promotion (DIPP)'s services sector definition; as well as telecommunications; trading; computer hardware & software; construction; hotel & tourism; hospital & diagnostic centres; consultancy services; sea transport; and information & broadcasting that can be taken as the best estimate of services FDI, though these could include some non-service elements. The share of these services is 57.1 per cent of the cumulative FDI equity inflows during the period April 2000-Sept 2018 and 58.8 per cent of FDI equity inflows during 2018-19 H1. If the shares of another 5 services/service-related sectors

like retail trading, agriculture services, education, book printing and air transport are included, then the total share of FDI equity inflows to the services sector would increase to 59.1 per cent and 61.5 per cent respectively for the above two periods. In 2017-18, FDI equity inflows to the services sector (top 10 sectors including construction) grew by 17.4 per cent to US\$ 31.0 billion compared to the growth of overall FDI equity at only 3.2 per cent. During 2018-19 (April-Sept), the FDI equity inflows to these top 10 services sectors grew by a negative 25.6 per cent with total FDI equity inflows also growing at a negative rate of 15.4 per cent. Trading and Services Sector (DIPP definition) including financial and non-financial services are the major sectors showing high growth in 2018-19 H1 (Table 1.5).

Table 1.5 : FDI Equity Inflows to the Services Sector

	Sector	Value (Bn \$)		Share (%)	Growth (%)		
		2017-18	2018-19 H1	Apr 2000 Sept 2018	2016-17	2017-18	H1 2018-19
1	Services Sector (DIPP definition)*	6.7	3.7	17.6	26.0	-22.7	27.6
2	Construction #	3.3	1.0	9.6	-57.5	66.3	-18.4
3	Telecommunications	6.2	2.2	8.1	320.1	11.6	-64.2
4	Computer Software & Hardware	6.2	2.5	8.4	-38.2	68.5	-16.6
5	Trading	4.3	2.1	5.2	-39.2	85.9	47.5
6	Hotel & Tourism	1.1	0.3	2.9	-31.3	23.6	-26.7
7	Information & Broadcasting	0.6	0.1	1.8	50.3	-57.9	-84.0
8	Hospital & Diagnostic Centres	0.7	0.3	1.4	0.7	-5.3	-30.6
9	Consultancy Services	0.8	0.1	1.1	-49.5	190.9	-66.1
10	Sea Transport	1.1	0.1	1.0	71.2	43.0	-78.4
	Top 10 services (1-10)	31.0	12.6	57.1	-0.9	17.4	-25.6
	To 15 services	32.5	13.1	59.1	-1.7	19.3	-26.6
	Grand Total	44.9	21.3	100.0	8.7	3.2	-15.4

Source: Based on Department of Industrial Policy and Promotion (DIPP) data accessed from <http://dipp.nic.in/publications/fdi-statistics>.

Note: * Financial, banking, insurance, non-financial business, outsourcing, R&D, courier, technology testing and analysis; #Combined with infrastructure activities and townships, housing, built-up infrastructure and construction-development projects.

State-wise Comparison of Services

Out of the 33 states and union territories (UTs) for which data are released for new base 2011-12 series by CSO, the services sector is the dominant sector contributing more than half of the gross state value added (GSVA) in 15 states and UTs. The major services in most of the states are trade, hotels and restaurants, followed by real estate, ownership of dwellings and business services. However, there is wide disparity in terms of share and growth of services GVA. Out of the 33 states and UTs for which data are available for 2017-18 (or latest year for which data are available), in terms of services GVA share, Delhi and Chandigarh are at the top with over 80 per cent share, while Sikkim is at the bottom with 30.2 per cent share. (Figure 1.7).

In terms of services GSVA growth, Nagaland is at the top with 15.7 per cent followed by Bihar with 14.6 per cent and Manipur at the bottom with 3 per cent growth in 2017-18. While the growth in Nagaland is mainly due to the base effect, in Bihar, the high growth in 2017-18 is mainly driven by two major categories viz “trade, repair, hotels and restaurants”,

and “transport, storage, communication & services related to broadcasting”. In Manipur, the low growth is mainly due to negative growths in “Trade & repair services” and “Real estate, ownership of dwelling & professional services”.

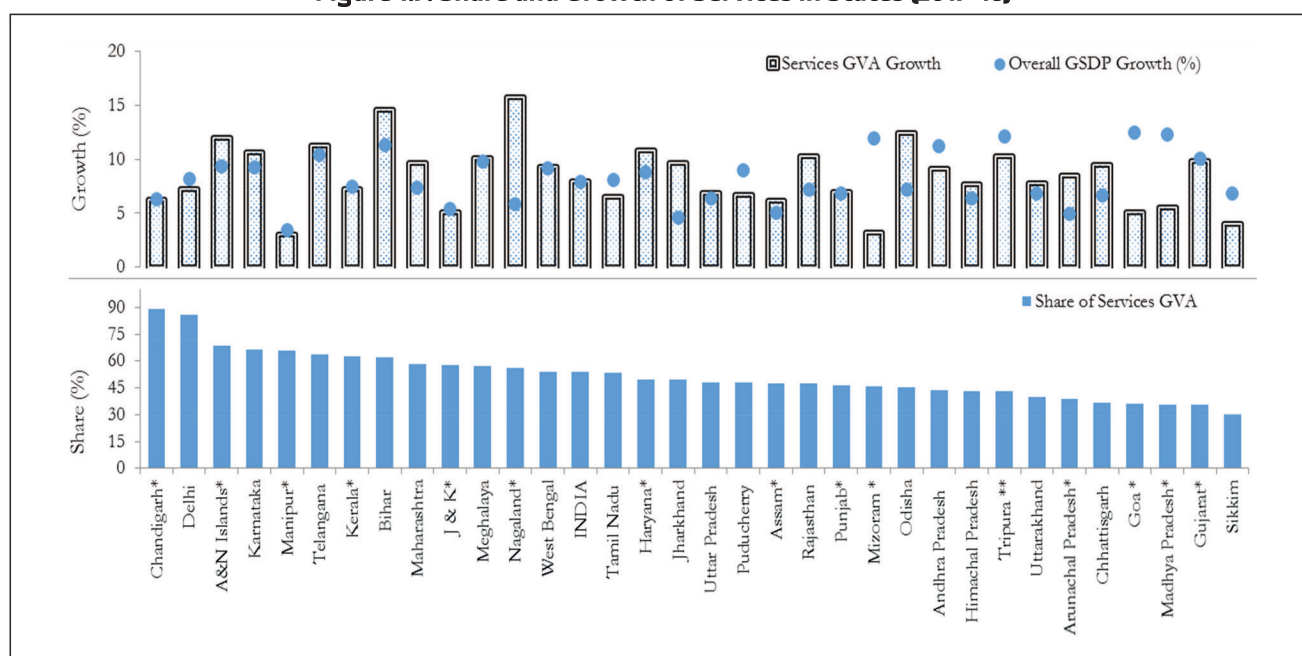
Services Negotiations and Services Trade Policies : Recent International Developments

Recent international developments in services negotiations and services trade policies are both multilateral and bilateral/regional/plurilateral.

a) Multilateral: These are basically related to the WTO negotiations. Though of late, the discussions on trade issues are taking place at different forums like G20 and OECD, negotiations have to take place only in WTO.

WTO and India-Recent Developments : Negotiations in WTO in Services are conducted on two tracks, Multilateral and Bilateral / Plurilateral. With the multilateral negotiations stalled, some developments are taking place only at plurilateral/bilateral levels and some developments are only at the discussion level. India has been actively involved

Figure 1.7: Share and Growth of Services in States (2017-18)



Source: Computed from CSO data.

Note: * 2016-17, **-2015-16, Share in current prices and growth at constant prices (2011-12).

in negotiations in services and has submitted many proposals at WTO. Some of the recent developments related to India's participation in services negotiations at WTO are the following.

India's Submission on Trade Facilitation in Services (TFS) at WTO: India tabled the "Concept Note for an initiative on Trade Facilitation in Services" dated 27 September 2016 (S/WPDR/W/55) at the WTO. The objective behind India's proposal for an Agreement on Trade Facilitation in Services (TFS) is to initiate discussions at the WTO on how to comprehensively address the numerous border and behind-the-border barriers, across all modes of supply, which are impediments to the realization of the full potential of services trade. Like the Trade Facilitation Agreement (TFA), adopted by WTO Members in 2014 to facilitate trade in goods, a well-structured TFS will significantly enhance the potential for trade in services for all WTO Members. India has proposed that the TFS Agreement could be based on the TFA in goods, with suitable modification and adaptation to the services context, as required. India's proposal was initially discussed at the WTO on 6th October 2016. Many WTO Members expressed interest in India's proposal as a positive move to revive Services Negotiations at the WTO. Some of the key issues raised by members related to scope and coverage of India's proposal, mandate for a TFS and provisions related to Special and Differential Treatment. Some members sought greater detail about India's proposal. The response of the Government was that India's proposal for an Agreement on TFS is to comprehensively address the numerous border and behind-the-border barriers impeding trade in services across all modes of supply. India has taken the position that the mandate for TFS arises from the various provisions of the General Agreement on Trade in Services (GATS). Subsequently, India tabled a follow-up proposal dated 14th November 2016 on "Possible Elements of a Trade Facilitation in Services Agreement" (S/WPDR/W/57) at the WTO, which outlines the possible elements of the TFS

Agreement, as conceived by India, in a more detailed manner. India tabled a draft legal text on TFS at the WTO on 22nd February 2017 to facilitate discussions among WTO members and to take forward this agenda.

There have been comments on the proposal of India by different countries. While India has to hold firm on S&D issues, regarding domestic regulations, there is a need to see that there is no overlapping between negotiations on Domestic Regulation disciplines and Trade Facilitation in Services. This is because some issues in the TFS are related to domestic regulations. For example, disciplines on measures related to taxation, fees, charges, discriminatory salary requirements, social security contributions, etc. could overlap or be in the borderline.

India's Submission on Mode 4 (trade through movement of natural persons) at the WTO: India submitted a paper on "Mode 4: Assessment of Barriers to Entry", in March 2016 at the WTO highlighting the increasingly complex nature of barriers to mode 4 entry. These include subjective definitions of sub-categories under the Intra-corporate transferees resulting in rejection of bonafide applications and undermining the commitments, and non-portability of social security benefits.

Trade in Services Agreement (TISA) and India's stand: At present there are 23 members participating in the plurilateral TISA discussion with none of the BRICS and ASEAN member states participating. India and some other like-minded developing countries have expressed concern from time to time on this plurilateral agreement as it will endanger the conclusion of the Doha Round by disturbing the delicate balance arrived at between Agriculture, NAMA and Services after years of intense negotiations. With the withdrawal of the US from Trans-Pacific Partnership (TPP), the future of TISA, which is led by developed countries like the US has also become uncertain.

Developments in OECD : Meanwhile to help in WTO negotiations and also to help in the domestic reforms in services sector, the OECD has prepared a Services Trade Restrictiveness Index (STRI) for different countries including India. OECD's STRI helps to identify policy measures restricting trade, provide policy makers and negotiators with information and measurement tools to open up international trade in services and negotiate international trade agreements and also help governments identify best practices and then focus their domestic reform efforts on priority sectors and measures. It is intended to provide a quantitative measure of the level of trade restrictiveness in 22 services sectors and has been computed for 44 countries. The STRI scores are broken down on five policy areas: restrictions on market entry conditions, restrictions on the movement of people, other discriminatory measures, barriers to competition and regulatory transparency.

STRI is a new initiative for services by OECD and has a wealth of information in a sector where data and information are scarce. However, there are some inherent weaknesses related to STRI and its use which we will see in the subsequent chapters.

The suitability of STRIs for trade negotiations also needs to be examined as there are some concerns to be addressed. A certain degree of overlapping can also be seen in STRIs, Negotiations on domestic regulations and TFS.

b) Bilateral/ Plurilateral Agreements and India: India has signed comprehensive bilateral trade agreements, including Trade in Services, with the Governments of Singapore, South Korea, Japan, and Malaysia. The ASEAN-India Trade in Services Agreement (AITISA) was signed on 13 November 2014 at the sidelines of the 25th ASEAN Summit in Nay Pyi Taw, Myanmar and entered into force on 1 July 2015 for six ASEAN Member States, namely Brunei Darussalam, Malaysia, Myanmar, Singapore, Thailand, and Vietnam, as well as India.

The agreement has also entered into force for Lao PDR and Philippines on 15 September 2015 and 6 December 2016, respectively. India has one Schedule of Commitments (SOC) with 8 ASEAN Member States and a separate SOC for Indonesia and the Philippines. The AITISA contains provisions on transparency, domestic regulations, recognition, market access, national treatment and dispute settlement. India's offers cover professional services, medical and dental, computer related services, communication, construction, financial, healthcare, tourism and transport services. India has also joined the Regional Comprehensive Economic Partnership (RCEP) plurilateral negotiations which is the only mega-regional FTA of which India is a part and includes services also. India is also engaged in bilateral FTA negotiations including trade in services with different countries though the India-EU FTA negotiations have not made much headway.

Relative Restrictiveness of India's Services Trade policy

A preliminary examination of the restrictiveness of India's Services Trade Policy can be made by looking at the various reports on India's Services Trade restrictiveness. A selective list of Restrictive Services Trade Policies of India is given here based on the reports of the OECD, USTR, METI, EC, and WTO.

OECD's STRI

The relative restrictiveness of Indian services trade policy can be compared using the Services Trade Restrictiveness Index (STRI) developed by the OECD.

The STRI for India shows that there is a large variation in trade restrictiveness across sectors, and also as far as the relative importance of the five policy areas are concerned. India has relatively high scores on the STRI largely because of a general regulatory framework which controls the flow of capital and natural persons. The general framework amounts to a floor for the STRI score in all sectors

before sector-specific restrictions are added. The sector-specific requirements are mainly related to licensing, foreign equity caps and prior approval of FDI.

The Indian government has a strong ownership presence in major services industries such as banking and insurance. Foreign investment in businesses in certain major services sectors, including financial services and retail, is subject to limitations on foreign equity. Foreign participation in professional services is significantly restricted, and in the case of legal services is prohibited entirely. Some of the regulations recorded in the STRI database apply to all sectors in the economy, while others apply to specific services sectors. Leaving Road Transport and Engineering services, all other sectors are restricted.

USTR's National Trade Estimate Report on "Foreign Trade Barriers" 2018

The USTR has also listed out the restrictions or trade barriers in India's services sector. As per the USTR, the Indian government has a strong ownership presence in major services industries such as banking and insurance. Foreign investment in businesses in certain major services sectors, including financial services and retail, is subject to limitations on foreign equity. Foreign participation in professional services is significantly restricted, and in the case of legal services is prohibited entirely. In the case of information and communications technology sector, in India, in-country testing requirements and data-and server-localization requirements are frequently cited by US industry as inhibiting market access and blunting innovation. Some of the listed restrictions pointed out by USTR in different sectors are given below.

Insurance: As per the USTR, The Insurance Laws (Amendment) Act, 2015, lifted the statutory cap on foreign investment in Indian insurance companies from 26 percent to 49 percent, but subjected it to a new requirement that all insurance companies

be Indian "controlled". Subsequent guidelines promulgated by the Insurance Regulatory and Development Authority of India (IRDAI) prescribed conditions for satisfying the Indian "control" requirement. These include: (1) a mandatory requirement that a majority of directors be nominated by Indian investors; (2) limitations on the rights of foreign nominated board members; (3) requirements for how "key management persons" are to be appointed; and (4) requirements on the manner in which control over "significant policies" of the enterprise must be exercised. As the new guidelines apply to all companies operating in the insurance sector (whether or not they received injections of new foreign investment following lifting of the 26 percent equity cap), the net impact of India's reforms since 2015 for many investors has been to create more negative conditions for doing business in the insurance sector.

In the case of reinsurance, the amendment to regulations in January 2016 by IRDAI governing the operation of foreign providers of reinsurance services in India requires that local Indian reinsurers be afforded a mandatory first order of preference (or right of first refusal) for reinsurance business in India, a requirement that severely restricts the business for which foreign reinsurers can compete, with resulting negative impacts to the supply and cost of reinsurance services in the Indian market. IRDAI's Reinsurance Expert Committee also issued its report in November 2017 and noted concerns regarding the mandatory first order of preference.

Banking: As per the USTR, although India allows privately held banks to operate in the country, the banking system continues to be dominated by state owned banks, which account for approximately 72 percent of total market share and 84 percent of all Indian bank branches. Under India's branch authorization policy, foreign banks are required to submit their internal branch expansion plans on an annual basis, and their ability to expand is hindered

by non-transparent limitations on branch office expansion. Total foreign investment in an Indian private bank cannot exceed 74 percent.

Audio-visual Services: Under India's "Downlink Policy", international content providers that transmit programming into India using satellite must establish a registered office in India or designate a local agent. India also requires that foreign investors have a net worth of Rs. 50 million (approximately \$800,000) in order to be allowed to downlink one content channel. A foreign investor must have an additional Rs.25 million (approximately \$400,000) of net worth for each additional channel that the investor is allowed to downlink. The Telecommunications Regulatory Authority of India has also introduced new regulations on content aggregation and distribution that eliminate bundling of channels and certain types of distribution partnerships. Content aggregation is commonly used internationally, as it allows niche and foreign content to be bundled into and sold by domestic partners without a large local presence or sales force. The new regulations are particularly difficult for small and international content providers because these companies must now interact with each of the 60,000 local cable operators, radio, and TV broadcasters that they seek to target. There are also a number of limits on foreign investment in enterprises in the audio-visual and media sectors, including FM radio (49 percent); news broadcasting (49 percent); and newspapers dealing with news and current affairs (26 percent). Additionally, pending litigation related to audio-visual services, including the acquisition of content and telecasting rights and advertising revenue of foreign telecasting companies, is causing uncertainty for companies considering market entry.

Legal Services: At present, membership in the Bar Council of India (BCI), the governing body for the legal profession, is mandatory "to practice law" in India and is limited to Indian citizens. Foreign law

firms are not allowed to open offices in India. In June 2016, BCI published draft rules that would liberalize the legal services sector in India. The rules proposed opening India's market to non-litigation services (i.e., services in foreign and international law) and advisory, arbitration, and other services relating to domestic law. However, on September 29, 2016, the BCI rescinded the draft rules on liberalization.

Telecommunications Services and Equipment: The USTR report has pointed out that there are barriers to entry in this sector with India's one-time licensing fee (approximately \$500,000 for a service-specific license, or \$2.7 million for an all India Universal License) for telecommunications providers serving as a barrier to market entry for smaller companies; and the Government of India continuing to hold equity in multiple telecommunications firms. There is also a Remote Access Policy as India requires the telecommunications service providers to receive pre-approval of each of their network operations centers (NOCs) before those NOCs may remotely access networks in India. Many global telecommunications service providers routinely provide network services from numerous NOCs distributed globally, requiring providers to seek numerous approvals from the government of India resulting in bureaucratic delays and other obstacles to receive the required approvals.

Satellite Services: Ministry of Information and Broadcasting (MIB) guidelines establish a preference for Indian satellites in the provision of Direct-to-Home (DTH) subscription television services. Authorized DTH licensees have not been permitted to contact directly with foreign satellite operators. Instead, DTH licensees must procure any foreign satellite capacity through Antrix, the commercial arm of the Indian Space Research Organization (ISRO), which, in turn, only permits such procurements if it does not have available capacity on its own system for purchase. Foreign satellite operators are thus prevented from developing direct relationships

with DTH licensees. India also imposes onerous licensing requirements on foreign satellite-based personal communications services and licensees must construct local ground station facilities before offering service.

Distribution Services: The USTR has pointed out that though in January 2018, India allowed 100 percent FDI through the automatic route for single brand retail, there are many conditions including sourcing from Indian sources at least 30 percent of the value of products, preferably from small and medium sized enterprises. A temporary exception to this local sourcing requirement was previously possible for enterprises engaged in retail of “state-of-art” or “cutting edge” technology and where local sourcing is “not possible”, but the revised policy requires that companies source 30 percent of their global operations from Indian sources. India permits up to 51 percent foreign ownership in companies in the multi-brand retail sector, but leaves to each Indian state the final decision on whether to authorize such FDI in its territory. In addition, where FDI is allowed, it is subject to certain conditions, including local sourcing requirements and conditions on foreign investment. Indian states also have periodically challenged the activity of direct selling (i.e., the marketing and selling of products to consumers away from fixed locations) as violations of the Prize Chits and Money Circulation Schemes (Banning) Act of 1978 (Prize Chits Act), creating uncertainty for companies operating in this sector. India approved new guidelines governing direct selling that established clear legal definitions of direct selling, but enforcement and application of the new guidelines is still left to state authorities.

Education: The USTR has pointed out that Foreign suppliers of higher education services interested in establishing a presence in India face a number of barriers, including a requirement that representatives of Indian states sit on university governing boards; quotas limiting enrolment; caps

on tuition and fees; policies that create the potential for double-taxation; and difficulties repatriating salaries and income from research.

Barriers to Digital Trade: In this regard the USTR has pointed out the issue of Data Localization. While it has not yet been implemented, India’s 2015 National Telecom M2M [machine to machine] Roadmap would require all M2M gateways and application servers serving customers in India to be located within India. The Roadmap also recommends that foreign subscriber identity modules (SIMs) be permitted in devices to be used in India only if they fulfil traceability criteria, and that machines sold and manufactured in India should only be equipped with SIMs of Indian telecommunications providers. The 2012 National Data Sharing and Accessibility Policy, issued by the Ministry of Science & Technology, requires that all data collected using public funds be stored within the borders of India. Data and server localization requirements are also imposed by different regulatory bodies and procurement contracts. For example, 2015 guidelines require that cloud computing service providers must store all data in India to qualify for government contracts.

Another issue in Digital Trade is related to Technology issues. Indian Internet providers must obtain government approval from the Telecom Regulation Authority of India (TRAI) to employ encryption stronger than 40-bit encryption. This requirement continues to create regulatory uncertainty for providers of ICT services and equipment seeking to use strong encryption. Most other countries allow the use of strong encryption standards to ensure the security of sensitive information exchanged via the Internet and other networks. Regarding, Internet Services Intermediary Liability, India’s 2011 Information Technology Rules also fail to provide a robust safe harbour framework to shield online intermediaries from liability for third party user content. Any citizen can complain that certain content is “disparaging” or “harmful”, and

intermediaries must respond by removing that content within 36 hours.

Digital Trade Taxation is another issue. India imposes a six percent withholding tax on foreign online advertising platforms on income generated in India, to equalize the playing field between resident service providers and non-resident service providers. However, India does not provide credit for taxes paid in other countries for the service provided in India. This “equalization levy” will result in taxes on business income even when a Foreign Service provider does not have a permanent establishment in India or when underlying business activities are not carried out in India.

Electronic commerce: India allows for 100 percent FDI in business-to-business (B2B) electronic commerce, but largely prohibits foreign investment in business-to-consumer (B2C) electronic commerce transactions. The only exception is for single brand retailers that meet certain conditions, including the operation of physical stores in India.

Other issues: The USTR has also pointed out the lack of uniform notice and comment procedures and inconsistent notification of these measures to the WTO which inhibit the ability of traders and foreign governments to provide input on new proposals or to adjust to new requirements.

METI Japan's Report on Compliance by Major Trading Partners with Trade Agreements, June 2018

METI report does not have references to barriers in services sector except on IT products. The report has pointed out the tariff increase on IT products by India, particularly, the Indian Government raising the tariff rate in March 2016 by 10% on certain IT products (communication equipment under HS8517.62.90 and 8517.69.90) which was not in conformity with India's binding commitment of 0% under its GATS schedule based on ITA-1 agreement. In July 2017, India also raised the tariff rate from 0% to 10% on

IT products including mobile phone, ink cartridges and others (other printers under HS8443.32.90, ink cartridges under HS8443.99.51 and 8443.99.52, ink spray nozzles under HS8443.99.53, mobile phones under HS8517.12.10 and 8517.12.90, base stations under HS8517.61.00, and parts of mobile phones, etc. under HS8517.70.90). In addition, India raised the tariff rate on mobile phones from 10% to 15% in December 2017 and further increased it to 20% in February 2018. In these cases, Japan considers that the applied tariffs exceed India's binding commitment to WTO. However, India considers these products as “new” products that are not covered by the ITA, under which India is subject to the commitment of tariff elimination.

Report from European Commission to Parliament and Council on Trade and Investment Barriers, January 2017

This report also does not have references to services except ICT products. It has pointed out the re-introduction of customs duties on certain ICT products such as 3G telecom equipment by India in 2014.

WTO's India Trade Policy Review, April 2015

TPR 2015 has also pointed out some restrictions in India's services sector related to domination by public sector banks (PSBs) and need for license for domestic and foreign banks in the case of the banking sector. It has also pointed out some of the restrictive policies in Insurance, Securities, Telecommunications, Maritime Transport and ports, Air Transport, Road Transport, Tourism and Professional Services. However these are dated and many changes have taken places in India in 2015.

Thus, India has many restrictions in different services. Some of these are found in other countries as well. Some may be needed from the regulatory angle and some to meet social obligations. However, there are many restrictions which need to be considered for liberalization in the different sectors. We will deal with these in the following chapters.

Methodology of Services Trade Restrictiveness Index (STRI)

Introduction

The services sector makes an important contribution to GDP in most countries and constitutes a significant and growing share of the world economy. Trade in services will be increasingly important for both developed and developing countries in the coming years and holds the potential to improve economic performance and provide a range of traditional and new export opportunities around the globe. However, services liberalisation also has risks and appropriate regulation and other complementary policies are needed to ensure that liberalisation delivers the expected benefits. Reforms in Domestic regulations are important both for domestic production and export of services. Domestic regulations should however not act as restrictive trade barriers.

Historically, the work on services trade restrictiveness was pioneered by C. Findlay and T. Warren from the Australian Productivity Commission (APC). APC compiled information on regulations that potentially restrict trade in services in the late 1990s, covering a wide range of sectors in both developed and developing countries in all regions of the world. Information on regulation was assigned scores and a weighted average was calculated using expert judgement for assigning weights. The restrictiveness indices were, however, only calculated for one year (published in 2000).

Later on, the World Bank presented research on services trade indices in the Global Monitoring Report 2008. These were estimated for 32 developing and 24 OECD countries in the following sectors: financial services, telecommunications, retail trade, transport and professional services. However, indices are published by country groups classified according to income level rather than individual countries. Later it was published for 103 countries. The indicators are based on a questionnaire filled in by law firms in each country. Later these were further expanded to cover 103 individual countries (Table 2.1).

In June 2007, the OECD Services Trade Restrictiveness Index (STRI) project was launched by the Trade Committee as a tool for quantifying barriers to trade in services at the sector level. The STRI is a composite index derived from a regulatory database compiled for the project, which covers potentially trade restricting regulation. The objective of the project was to develop indices that can serve as a tool for trade policy analysis comparing countries' openness to trade within sectors, across time and across sectors. The OECD Services Trade Restrictiveness Index (STRI), was launched in 2014. It provides an up-to-date snapshot of services trade barriers in 22 sectors across 44 countries (35 OECD and 9 non-OECD), representing over 80% of global services trade. For the first time, comprehensive

and comparable information has been made available for policymakers to work out reforms options and benchmark them relative to global best practice. The OECD has also indicated that it can help in assessing the likely effects of STRIs for trade negotiators and to classify those restrictions that most impede trade; and for businesses to shed light on the requirements that traders must comply with when entering foreign markets.

The STRI composite indices are derived by quantifying the qualitative information in the regulatory database as binary scores. The resulting sectoral indices take values between zero (complete openness to trade and investment) and one (total market closure to foreign services providers).

The STRI is intended to serve as a useful tool for identifying areas for further trade liberalisation and for benchmarking best practices. The purpose of the restrictiveness index is also to provide a basis for comparing performance and policy reforms efforts across services sector within the national economy. Restrictions on services trade are usually related to behind the border regulations and often take the form of fixed costs that cannot be meaningfully translated into tariff equivalents. Given the characteristics of the services sector, the major approach to measuring restrictiveness in services trade in the literature is the construction of composite indices in which qualitative information on explicit trade barriers as well as trade-restricting domestic regulations are converted into a numerical index.

Table 2.1: Services Trade Restrictiveness Index: The World Bank vs OECD

Indicators	World Bank	OECD
Index available for the year	2008, 2009, 2010, 2011 (data availability varied country to country, for India, data is available for 2008 only)	2014, 2015, 2016, 2017 (data is available for all these four years and for all 43 countries)
Countries Covered	103 countries	44 countries
Sectors and Key Modes of Supply Covered	5 Sectors (Telecommunications, Finance, Transportation, Retail and Professional services) and the key modes of service supply	22 Sectors (Accounting services, Air transport, Architecture services, Broadcasting, Commercial banking, Computer services, Construction, Courier services, Distribution services, Engineering services, Insurance, Legal services, Logistics cargo-handling, Logistics customs brokerage, Logistics freight forwarding, Logistics storage and warehouse, Maritime transport, Motion pictures, Rail freight transport, Road freight transport, Sound recording, Telecommunication)
Indices	Initially Country groups classified according to income levels. Later available for 103 individual countries.	Available for individual countries (44 countries)

Source: Compiled from the various reports & publications of the World Bank and OECD.

Methodology of the World Bank STRI

The World Bank STRI Database collects and makes publicly available information on services trade policy assembled in a comparable manner across 103 countries, five sectors (telecommunications, finance, transportation, retail and professional services) and the key modes of service supply. It contains richly textured policy information as well as a preliminary quantification of policy measures. The methodology used by the World Bank for constructing this database and also calculating the STRI index are as follows.

Data Collection Process

Policy information for non-OECD countries was collected through questionnaires over the period of 2008-2010 and comparable policy information for OECD countries was obtained from publicly available sources. The questionnaires were developed drawing upon the existing literature on services trade, model questionnaires that had been used in the context of WTO services negotiations, and related work at other institutions such as the Australian Productivity Commission and the OECD. Most importantly, extensive consultations with the private sector representatives and government officials (especially trade negotiators and regulators) helped identify the key policy barriers for each sector. The questionnaires were completed by local law firms that were familiar with the policy regime in the respective countries and sectors and had experience in working on similar projects. One law firm was tasked with administering one questionnaire for each country. A series of pilot surveys were conducted in early 2007 for 8 countries for which more than one law firm was used in each country. The process of data collection and data evaluation was iterative and interactive; once the law firms had completed the surveys, responses

were checked for consistency both within and across questionnaires, and follow-up clarifications were sought if necessary.

Policy measures covered in the database

The primary focus of the database was on policies and regulations that discriminate against foreign services or foreign service providers, as well as certain key aspects of the overall regulatory environment that have a significant impact on trade in services. Measures that can be found in each of the sectors and those which are specific to certain sectors are distinguished. Thus, the questionnaire contains a core set of standardized questions that are relevant for each subsector-mode combination; for example, whether there is a limit on foreign equity participation in mode 3. In addition, the questionnaire includes sector-specific questions; for example, whether there is a restriction on locations of outlets in retail services, or whether there is a restriction on the establishment of an international gateway in basic telecommunications. Table 2.2 provides an overview of all standardized questions in mode 3. With regard to mode 3, the set of standardized measures can be divided into the following broad categories:

- i. Legal form of entry and restrictions on foreign equity;
- ii. Licensing limits and transparency of licensing requirements;
- iii. Restrictions on operations;
- iv. Relevant aspects of the regulatory environment.

Measures governing mode 1 are slightly different from measures related to mode 3 in that they typically stipulate conditions under which cross-border trade may take place. Mode 4 measures,

covered only in professional services, also cover immigration rules and qualification requirements that significantly affect this mode.

Table 2.2 Standardized Measures for all Sectors in Mode 3

Sections	Survey questions
I. Foreign Equity Limit	a. FDI limit in a subsidiary? b. FDI limit in acquiring a private entity?
II. Legal Form Of Entry	a. Is subsidiary allowed? b. Is acquisition of private entity allowed?
III. Licensing	a. Is there a limit on the number of licenses? b. Are the licensing criteria discriminatory?
IV. Operations	a. Nationality requirement for board of directors? b. Nationality requirement for employees? c. Restrictions on repatriation of earnings?

Source: World Bank

Quantification of Services Policy Information

As per the World Bank, the STRI is a measure of the restrictiveness of a country's policy regime based on the policy information alone. This method depicts the overall patterns in policy across countries and sectors, keeping in view that methods that assign fixed weights to all types of restrictions (entry, operational, regulatory) and that treat the restrictions as additive are flawed in certain respects. For instance, if foreign suppliers are not allowed to enter in the first place, then that restriction is binding and other restrictions on operations and regulatory environment simply do not matter. Similarly, a foreign equity limit of 49 percent already precludes foreign corporate control and so adding to it a further (frequently encountered) requirement that the majority of board of directors be nationals would amount to double counting.

The World Bank constructed a single measure of overall openness for any subsector-mode combination, for example, one for the cross-border supply of bank loans and another for accepting bank deposits by establishing commercial presence abroad. This measure of openness remains subjective but is relatively simple and transparent, and avoids the pitfalls of the approaches mentioned above. Essentially, the World Bank assesses policy regimes for each subsector-mode combination in their entirety and assign them into five broad categories: completely open, i.e. no restrictions at all; completely closed, i.e. no entry allowed at all; virtually open but with minor restrictions; virtually closed but with very limited opportunities to enter and operate; and a final residual "middle" category of regimes which allows entry and operations but imposes restrictions that are neither trivial nor stringent. It assigns a value to each of these five regimes on an openness scale from 0 to 100 with intervals of 25, which we call an STRI. As the example in Table 2.3 shows, most policy regimes have more than one provision in place per subsector and mode of supply, in which case the assigned score (shown in the right-most column) reflects the overall restrictiveness of all measures evaluated simultaneously. The STRI focuses on a narrow set of measures which discriminate against foreign services and providers. In the absence of such discriminatory measures, the STRI takes the value of zero, which is associated with the greatest level of openness.

Table 2.3 Scores used in World Bank STRI

Category of openness:	Scores
Open	0
Virtually open	25
Significant restrictions	50
Virtually closed	75
Closed	100

Process of arriving at an aggregate country STRI

The process of obtaining a country STRI score involves three steps. The first step is to select the policy measures that go into building the STRIs for each subsector-mode combination. For each subsector-mode, they focus on the measures that affect entry and operation of foreign entities most significantly. These key measures are a subset of all measures covered by the questionnaire. The second step is to determine the level of restrictiveness imposed by a particular measure in place; that is, a decision whether e.g. a limit on number of licenses deserves a restrictiveness score of 25 or 50. To determine the level of restrictiveness of certain

measures, private sector representatives were consulted. For example, a global bank representative was asked whether a restriction on entry through a branch is perceived to be as severe a restriction on entry as is a restriction on acquisition, and which restriction would have a larger impact on the entry decision. To standardize the scoring process and to reduce subjectivity, a scoring rule sheet was set up in order to provide a guideline used to score restrictiveness of particular policy measures. The third step was to aggregate subsector–mode scores to modal and sector scores using a set of weights. The complete weighting schemes used to aggregate modes, subsectors and sectors, respectively, is given in Table 2.4.

Table 2.4: World Bank STRI Construction: Sector and Modal Weighting Schemes

Sr	Aggregate sectors	By mode of supply	Modal weights	Sector weights
1	Banking	Mode 1: [1] Deposit acceptance [2] Bank lending Mode 3: [3] Deposit acceptance [4] Bank lending	0.15 0.15 0.85 0.85	0.149
2	Insurance	Mode 1: [5] Life [6] Automobile [7] Reinsurance Mode 3: [8] Life [9] Automobile [10] Reinsurance	0.10 0.10 0.80 0.90 0.90 0.20	0.095
3	Telecommunications	Mode 3: [11] Fixed-line [12] Mobile	1.00 1.00	0.095
4	Retailing	Mode 3: [13] Retail distribution	1.00	0.239
5	Transportation	Mode 1: [14] Air passenger international [15] International shipping Mode 3: [16] Air passenger international [17] Air passenger domestic [18] International shipping [19] Maritime auxiliary [20] Road freight [21] Rail freight	0.70 0.70 0.30 0.30 0.30 1.00 1.00 1.00	0.223 [0.037] [0.037] [0.050] [0.062] [0.037]

Table 2.4: World Bank STRI Construction: Sector and Modal Weighting Schemes (contd...)

6	Professional Services	Mode 1:		0.199
		[22] Accounting	0.20	
		[23] Auditing	0.20	
		[24] International law	0.20	
		Mode 3:		
		[25] Accounting	0.40	
		[26] Auditing	0.40	
		[27] Domestic law	0.50	
		[28] International law	0.40	
		[29] Court representation	0.50	
		Mode 4:		
		[30] Accounting	0.40	
		[31] Auditing	0.40	
		[32] Domestic law	0.50	
[33] International law	0.40			
[34] Court representation	0.50			

Source: Based on World Bank Report "Guide to the Services Trade Restrictions Database", 2012

Notes: As an exception to the modal aggregation rule outlined above, air passenger transport subsectors are first aggregated within mode 3, i.e. air passenger domestic and air passenger international, then the resulting modal score is aggregated with mode 1 using the modal weights.

Methodology of OECD's STRI

As stated earlier, the OECD's STRIs are composite indices taking values between zero and one, zero representing an open market and one a market completely closed to foreign services providers. The scoring system is based on binary scoring. To reconcile the complexity of services trade restrictions with binary scoring, non-binary measures are broken down to multiple thresholds; complementary measures are grouped and scored as zero only if all measures in the bundle are not restrictive. Finally, in cases where one restriction renders others irrelevant, those measures that are rendered irrelevant are automatically scored one.

Methodology

The general methodology that applies to the core measures found in all sectors as well as sector-specific scoring are discussed here. The process includes the collection of data, selection of measures to include in the STRIs, scoring and weighting of measures. The policy measures are grouped under the following five policy areas in all sectors:

1. Restrictions on foreign entry
2. Restrictions to the movement of people

3. Other discriminatory measures
4. Barriers to competition
5. Regulatory transparency

The STRI methodology applied is as follows:

- Data on explicit barriers to trade and investment and relevant domestic regulation was compiled, adding questions to the 2007/08 Product Market Survey undertaken by the OECD Economics Department; surveys related to three services expert meetings; data obtained from the ITU (International Telecommunications Union) and various other sources of information.
- From the database compiled, variables were selected using expert judgement and statistical methods.
- Selected variables were classified according to five classification schemes. This creates flexibility and facilitates the use of the indicators for multiple trade policy analysis.
- Qualitative information was transformed to quantitative information using binary scores. As far as possible the scores have a time-invariant

reference point ensuring that the indicators can be compared across time. Continuous variables were in some cases transformed to multiple binary scores in order to preserve the variation in the raw data.

- The STRI was calculated using weighted average. The weights assigned were based on expert judgement for each category. Within categories measures were given equal weights. Each individual measure is assigned a unique weight which is the product of its weight within the category and the weight of the category.
- This unique weight is carried over to different classifications ensuring that the total STRI is the same for a country and sector, regardless of the classification.
- Alternative weighting schemes (equal weights also on categories; principal components analysis and random weights) were used for robustness checks. Most sectors showed a remarkable robustness to the weighting scheme.
- The relevance of the indicators was tested by introducing them into the gravity regression on cross-border trade, FDI and FATS. All indicators were statistically significantly and negatively correlated to at least one of these trade measures.

Scoring approach

The STRI scoring methodology uses binary scores. Most measures in the STRI database have binary answers (yes/no) and binary scores are applied directly. Measures that have numerical answers are broken down on thresholds to which binary scores are applied. Some measures constitute hierarchies where one or a combination of a few measures would close a market segment or a mode of supply to foreign suppliers. In other cases, a restriction on one measure would render others irrelevant. The scoring methodology captures such hierarchies by conditioning the scoring on measures on the

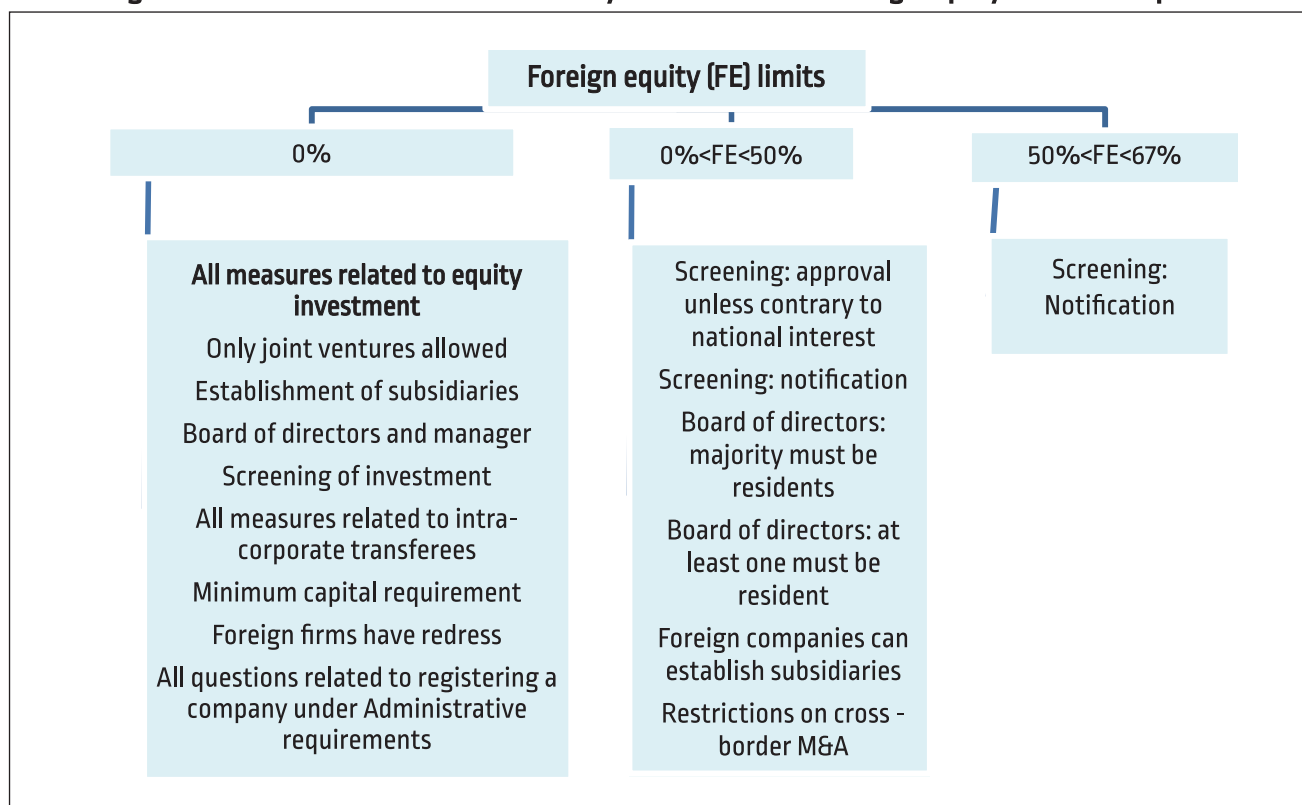
answers to questions higher up in the hierarchy of measures. In translating qualitative information into numerical values, the first step involved selecting a scoring strategy. Given the nature of the data of which 90% contain descriptive information regarding the presence of regulation, a binary approach was adopted. Transforming all measures into binary presented challenges: when a rich variety of possible outcomes is reduced to a binary score, some variation is lost, while simplicity and tractability are gained. The challenge was addressed by using multiple binary variables for important continuous measures, minimising the variation loss from the aggregation.

Horizontal measures common for all sectors

Maximum foreign equity share: This is the major horizontal measure. There are four thresholds here: Less than 100%, less than 50%, less than 33% and zero. If there is a foreign equity limit of 49%, there will be two scores of one: less than 100% and less than 50%. If foreign investment is not allowed at all, there will be four scores of one. Foreign equity restrictions have implications for other measures as well. In the extreme case where, foreign equity is not allowed at all, most trade through commercial presence (mode 3) is closed, but there is still the possibility that foreign firms may establish branches. The hierarchy implied by foreign equity restrictions is presented in Figure 2.1.

Statutory monopolies: If there is a statutory monopoly covering all activities under the definition of a sector, the STRI index is scored one, no matter what the other regulations are. If there is a statutory monopoly covering some activities in the sector, this is scored and weighted as follows:

- The measure recording whether there is a statutory monopoly is scored 1.
- This measure is given a weight corresponding to the share of the market covered by the monopoly

Figure 2.1. Measures that are automatically scored one when foreign equity limits are in place

[x%]. The share has been calculated as the average for all countries where possible to avoid endogeneity problems.

- The weights of all other measures are adjusted by $(1-x)$.

Duration of stay for temporary services suppliers:

There are three categories of temporary services suppliers: intra-corporate transferees, contractual services suppliers and independent services suppliers. Duration of stay longer than or equal to three years (36 months) is not considered a restriction and scored 0. There are two thresholds below that limit: less than 36 months and less than 12 months. There is one score of one if duration of stay is between 12 and 36 months and two scores of one if the duration is less than 12 months. The measure records the maximum duration of the first permit.

Public procurement: Public procurement is covered by one measure in sectors where public procurement

is a small share of the overall market. In sectors where public procurement is an important market, notably construction, restrictions on access to the public procurement market is covered in more detail. In such cases, if there is explicit access discrimination in favour of local firms, all other measures on public procurement are scored one.

Numerical measures under the Administrative procedures heading:

The administrative procedures heading contains measures on time, number of procedures and costs of establishing a business and obtaining a construction permit, and the time it takes to get a business visa. These are scored using one threshold as explained in Table 2.5. Visa processing days and procedures to establish a business are used in all sectors, procedures related to construction permits are used in construction and distribution services, procedures related to resolving insolvency are used in commercial banking, and custom procedures in distribution and courier services.

Table 2.5. Thresholds for continuous measures under policy heading “Regulatory transparency and administrative requirements”

Measure	Threshold above which the score is one
Range of visa processing time (days)	10 working days
Time to complete all official procedures required to register a company (in calendar days)	World Bank Doing Business Indicators – Starting a business: value of the 25th percentile for 183 countries taking the average over 2004-2011: 20 days
Total cost to complete all official procedures required to register a company (in USD)	World Bank Doing Business Indicators – Starting a business: value of the 25th percentile for 183 countries taking the average over 2004-2011: 8.6% of income per capita
Number of official procedures required to register a company	World Bank Doing Business Indicators – Starting a business: value of the 25th percentile for 183 countries taking the average over 2004-2011: 7 procedures
Time to complete all official procedures required to build a warehouse (in calendar days)	World Bank Doing Business Indicators – Dealing with construction permit: value of the 25th percentile for 182 countries taking the average for 2004-2011: 138 days
Total cost to complete all official procedures required to build a warehouse (in USD)	World Bank Doing Business Indicators – Dealing with construction permit: value of the 25th percentile for 182 countries taking the average for 2004-2011: 57.6% of income per capita
Number of official procedures required to build a warehouse	World Bank Doing Business Indicators – Dealing with construction permit: value of the 25th percentile for 182 countries taking the average for 2004-2011: 14 procedures
Time of resolving insolvency (in years)	World Bank Doing Business Indicators – Resolving insolvency: value of the 25th percentile for 137 countries taking the average for 2004-2011: 2 years
Cost of resolving insolvency (in % of the estate value)	World Bank Doing Business Indicators – Resolving insolvency: value of the 25th percentile for 137 countries taking the average for 2004-2011: 9% of the estate value
Time taken between the submission of an accepted customs declaration and customs clearance (days)	World Bank Doing Business Indicators – Trading across borders: 2 days
A de minimum regime is in place (in USD)	100 USD

Source: OECD

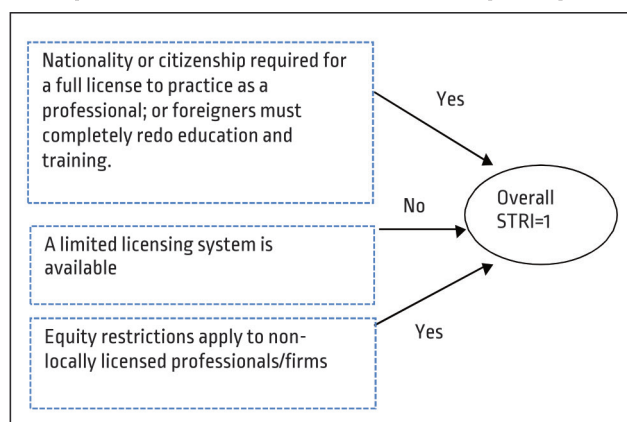
Note: While the cost to complete all official procedures for the registration of a company is collected in US\$, the threshold is calculated using the cost as a percentage of income per capita.

Sector-specific Measures for some select sectors:

Regulated professions: In regulated professions a license is required to provide a service. The sector-specific measures relate to conditions and requirements for obtaining a license, and the scope of activities reserved for licensed professionals.

If only nationals or citizen may obtain a license, only licensed professionals may own shares in companies and all activities covered by the definition of the sector are reserved for licensed professionals, then the sector is completely closed to foreign services providers and the STRI index value is one (Figure 2.2.) Excluding foreign services providers from obtaining a license does not preclude foreign professionals to enter the market through foreign investment, e.g. through establishing a firm and hiring locally licensed professionals.

Figure 2.2. Combination of restrictions that close professional services markets completely



Source: OECD

Other Sectors: There are also specific conditions related to sector-wise scoring for telecoms, Air transport services, establishment, Maritime transport services, Rail freight, Courier services, Commercial banking and Insurance.

Assigning Weights

The selection of a weighting scheme requires a great deal of judgement. Although a vast body of empirical and theoretical research on trade and investment provides evidence on which policy measures restrict trade the most, trade and investment data are still not sufficiently detailed that elasticities can be estimated precisely. These would be the ideal basis for calculating weights. In the absence of precisely estimated elasticities, a combination of weights based on expert judgement applied to categories of measures and equal weights for individual measures within each category is the best choice.

The weighting scheme for the STRI indices is derived from an online survey and relies on expert judgment. A large number of experts were asked to allocate 100 points among the five policy areas. These are translated into weights by assigning the points experts allocated to the policy area to each measure that falls under it and correct for differences in the number of measures under the policy areas. Such differences are not arbitrary, but reflect the relative importance of the policy category for each sector.

The formula for measure j under category i is the following:

$$w_{ji} = \text{score}_j w_i / \sum_i n_i w_i$$

where n_i is the number of measures under category i and w_i is the share of the total number of points allocated to policy area i by the experts.

Number of Policy measures

The number of policy measures considered in the STRI index and the number of restrictive policy measures found in India are given in Table no. 2.6.

Table 2.6: Number of Restrictive Policy Measures

Sr. No.	Sectors/Policy Area	Number of Restrictive Policy Measures Considered By OECD					Number of Restrictive Policy Measures found in India				
		1	2	3	4	5	1	2	3	4	5
1	Accounting services	34	26	7	7	10	32	22	7	6	7
2	Air transport	65	10	9	45	14	40	6	6	30	7
3	Architecture services	29	18	6	7	10	23	13	3	4	6
4	Broadcasting	30	10	19	9	16	16	6	3	4	7
5	Commercial banking	34	10	14	20	15	22	6	7	5	10
6	Computer services	22	11	5	8	10	7	6	3		6
7	Construction	24	16	11	8	10	7	6	7		6
8	Courier services	24	11	5	21	17	24	11	5	21	17
9	Distribution services	30	10	11	21	16	17	6	5	7	7
10	Engineering services	29	18	6	7	10	7	6	3		6
11	Insurance	67	16	15	26	13	40	8	8	17	7
12	Legal services	36	22	6	7	10	34	21	6	6	7
13	Logistics cargo-handling	25	10	6	22	24	9	6	3	10	9
14	Logistics customs brokerage	22	12	7	9	25	6	8	3		9
15	Logistics freight forwarding	24	10	7	8	24	6	6	3		9
16	Logistics storage and warehouse	26	10	7	14	24	10	6	3	6	9
17	Maritime transport	31	11	8	14	14	12	7	5	4	7
18	Motion pictures	28	11	16	9	15	10	6	3	1	7
19	Rail freight transport	27	11	6	18	11	27	11	6	18	11
20	Road freight transport	23	11	6	12	14	6	7	3	1	8
21	Sound recording	25	11	14	11	15	7	6	3		7
22	Telecommunication	36	11	5	40	12	19	6	3	21	6
	Grand Total	691	286	196	343	329	381	186	98	161	175

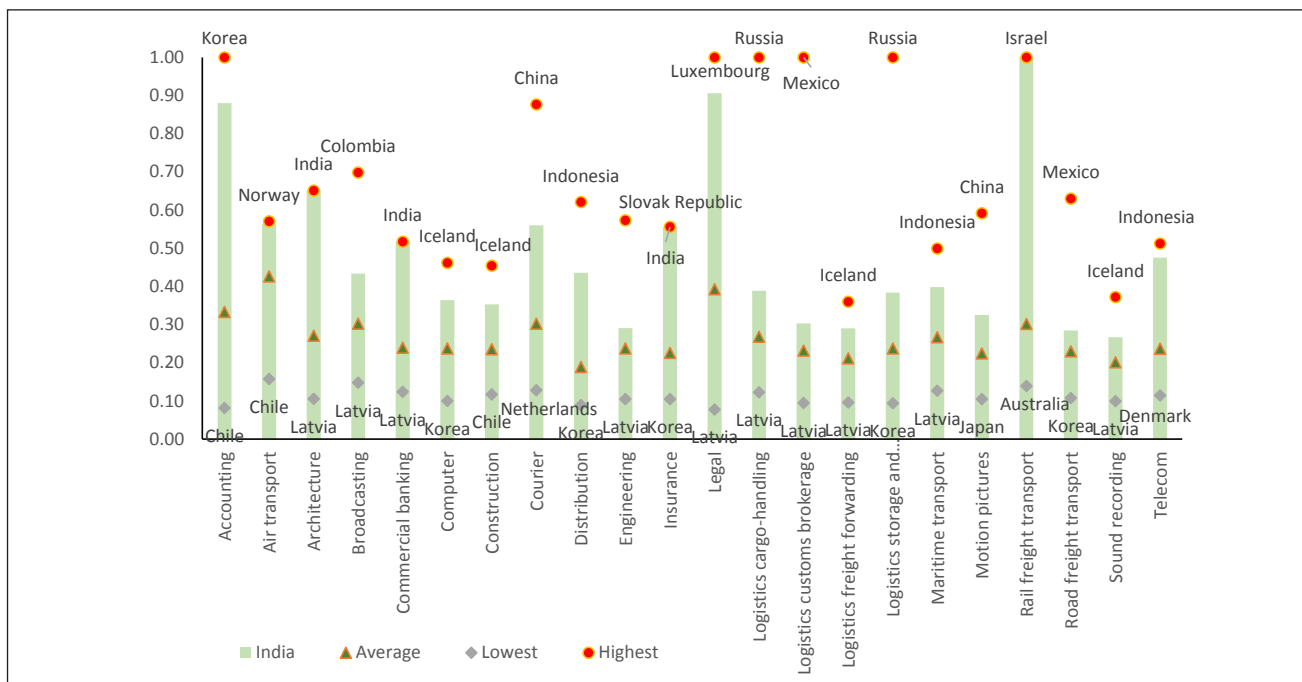
Source: calculated from data extracted from OECD STRI simulator. [<https://sim.oecd.org/>]

Critique of the OECD's STRIs

STRIs are intended to provide a quantitative measure of the level of trade restrictiveness in 22 services sectors and has been computed for 44 countries. The STRI scores are broken down on five policy areas: restrictions on market entry conditions, restrictions on the movement of people, other discriminatory

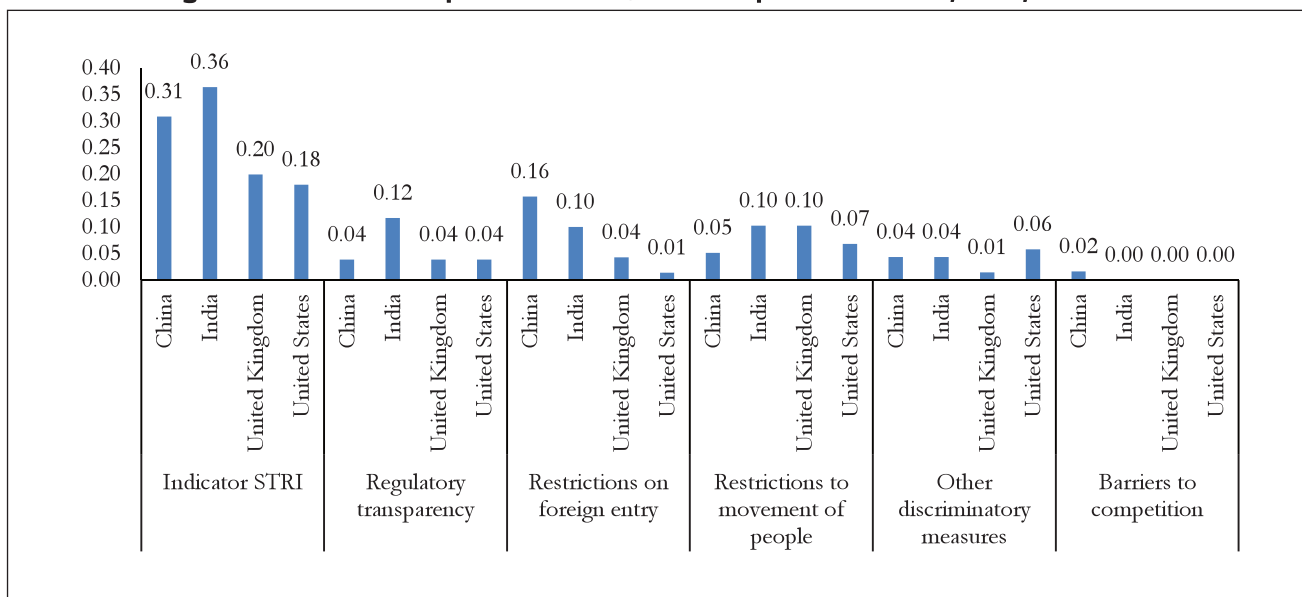
measures, barriers to competition and regulatory transparency. While the STRI indicators can help, there is a need for improvement in methodology, data collection and transparency. The OECD's STRI also does not include important services like Tourism, Healthcare and Real Estate Services though construction is included.

Figure 2.3: India's STRI compared with Highest, Lowest and Average STRIs (2017)



Source: Based on OECD STRI data extracted on 4 December 2018

Figure 2.4: STRI for Computer Services (2017): Comparison of China, India, US and UK



Source: Based on OECD STRI data extracted on 4 December 2018 from OECD.Stat

Table 2.7: STRI for Maritime Transport (2017): India and US

	Barriers to competition	Other discriminatory measures	Regulatory transparency	Restrictions on foreign entry	Restrictions to movement of people	Overall STRI Indicator
India	0.029	0.031	0.045	0.207	0.086	0.398
United States	0.021	0.025	0.026	0.225	0.074	0.371

Source: Based on OECD STRI data extracted on 4 December 2018 from OECD.Stat

As can be seen in Figure 2.3, among the 44 countries, India has a STRI score above average in all sectors and the highest in 3 services out of a total 22 services. Sound recording, engineering and broadcasting are the three sectors with the lowest score relative to the average. All these three sectors follow the automatic route upto 100 per cent equity share. Accounting services, legal services and rail freight transport, are the three sectors with the highest scores relative to the average as accounting and auditing are reserved for licensed accountants and auditors and a license is required to own and manage an accounting or an auditing firm and only Indian nationals may obtain a license; legal services, both national and international law, are reserved for licensed Indian lawyers; and railway operations are in the list of prohibited sectors and reserved for Indian Railways, a state-owned enterprise.

OECD's STRI needs to be examined carefully, as for example, in the case of computer services, not only is India's STRI higher than that of UK and USA, it is even higher in the sub-indicator of restrictions to movement of people! (Figure 2.4)

Similarly, for Maritime Transport sector, OECD's Services Trade Restrictiveness Index (STRI) ranks India at an overall 0.398 and the USA at only 0.371 (Table 2.7). A comparison of the domestic cabotage, Foreign Direct Investment (FDI) and related policies of India and US shows that this ranking is not appropriate.

A sample examination of the different policies for maritime transport in India and US given in Table 2.8 indicate the weakness in the OECD methodology and the need for making distinction also in the quality of restrictions.

Table 2.8: Components of Shipping Services Indicators: Comparison of regulations in India and the US

Policies for Maritime Transport	USA	India
Reflagging restrictions	Yes	No
Domestic construction provisions	Yes	No
Ownership restrictions	Yes	No
Crewing requirements	Yes	Yes
Fleet subsidies	Yes	No
Foreign Direct Investment	Not 100%	100%
Percentage of cargo carried by foreign ships	Foreign ships can carry American cargoes in national emergencies and after the approval of the US Congress and the President on a per ship basis to enter US waters.	96%
Cabotage*	Yes	Partially relaxed for containers, agricultural products and fertilizers

* US cabotage laws are more restrictive than in India or even European countries.

Note: The components of STRI indicators are compared for the two countries

Source: Based on INSA inputs.

Table 2.9: Weights Assigned by Policy Area (Per cent)

Sector / Policy Area »	Expert judgement weights found in OECD 2015 Methodology Report				
	1	2	3	4	5
Accounting services	25.0	22.3	15.7	17.1	19.9
Air transport	24.5	14.0	23.8	20.0	17.8
Architecture services	18.6	25.6	17.1	16.5	22.2
Broadcasting	39.7	12.0	17.3	17.7	13.3
Commercial banking	26.3	12.1	18.7	20.8	22.1
Computer services	17.4	20.8	17.7	20.2	23.8
Construction	22.0	16.9	22.1	18.6	20.5
Courier services	27.2	12.2	19.2	21.0	20.4
Distribution services	30.1	10.3	17.7	21.9	20.0
Engineering services	19.5	26.6	15.6	15.6	22.8
Insurance	31.0	13.8	16.0	19.1	20.1
Legal services	22.3	29.8	15.9	14.4	17.7
Logistics cargo-handling	NA	NA	NA	NA	NA
Logistics customs brokerage	NA	NA	NA	NA	NA
Logistics freight forwarding	NA	NA	NA	NA	NA
Logistics storage and warehouse	NA	NA	NA	NA	NA
Maritime transport	35.0	25.0	12.5	14.5	13.0
Motion pictures	27.2	21.8	19.2	13.4	18.2
Rail freight transport	24.9	13.1	15.4	26.3	20.3
Road freight transport	35.0	15.0	25.0	20.0	5.0
Sound recording	12.0	17.0	23.0	27.0	21.0
Telecommunication	24.9	13.1	15.4	26.3	20.3

Source: Derived from OECD Simulator data and information given in the report *The STRI: Scoring and Weighting Methodology*, OECD 2015.

Note: Policy Areas, 1: Restrictions on foreign entry; 2: Restrictions to movement of people; 3: Other discriminatory measures; 4: Barriers to competition; 5: Regulatory transparency.

OECD also gives higher weightage to restrictions on foreign entry in most of the sectors. (Table 2.9).

The OECD STRI is a good and informative database. However, the STRI methodology needs to be modified substantially if it has to be used for trade negotiations. The weighting scheme is also based on expert judgements which need to be made less subjective. The team of experts should be well balanced and represent different groups of countries. For transparency purpose, the names of experts should also be in public domain.

The genuine STRIs need to be examined and measures taken, while there is a need for careful

examination regarding others. Looking at the tariff equivalents of the services restrictions based on STRI is premature particularly when the data is imperfect, methodology is subjective and less transparent. While it is important for every country to examine the STRIs from their perspective, changes in methodology; greater transparency in selecting experts who give opinions on the different indicators for different countries; making the selection more balanced by including experts from developing countries like India as well; and providing better data can help in making the STRI more useful in trade policy.

STRI : Horizontal and Sector Specific Restrictions

Horizontal Restrictions

There are some horizontal measures under the STRI which are cross-cutting across sectors. The restrictiveness of these measures automatically gets reflected in the sectoral STRI. As a result, even if a sector is less restrictive as per sector - specific measures, the horizontal measures make the whole sector restrictive. Some of the major horizontal measures are given in this chapter under the five broad policy areas of OECD.

The OECD has included the following under the horizontal measures – Maximum foreign equity share which includes other policy measures which are automatically scored one when foreign equity limits are in place; [Figure 2.1, Chapter 2]. Statutory

monopolies; duration of stay for temporary services suppliers; public procurement; and some administrative procedures.

We have arrived at a list of 55 horizontal measures by segregating the policy measures which are common in most of the sectors. Out of the 55 Policy Measures selected by us, 44 Policy Measures are found in all the 22 sectors for India and the remaining for majority of sectors as given in Table 3.1. Some of them come more than once in a sector as in the case of accounting sector where it appears separately for accounting and auditing and air transport where it appears separately for domestic and international air transport.

Table 3.1 : Horizontal Restrictions

Policy Measure Code	Policy Measures	Number of times found	Number of Sectors
1_1_1	Foreign equity restrictions: maximum foreign equity share allowed	33	22
1_1_3	There are limits to the proportion of shares that can be acquired by foreign investors in publicly-controlled firms	27	18
1_10_1	Restrictions on cross-border mergers and acquisitions (M&A)	29	22
1_12_1	Performance requirements	24	22
1_16_1	Commercial presence is required in order to provide cross-border services	20	15
1_2_1	Legal form: only joint ventures are allowed	29	22
1_2_8	Legal form: other restrictions	22	22

Table 3.1 : Horizontal Restrictions (continued)

Policy Measure Code	Policy Measures	Number of times found	Number of Sectors
1_20_3	Cross-border data flows: transfer is possible only to countries with substantially similar privacy protection laws or consent by government authority	22	22
1_20_4	Cross-border data flows: fulfilling a combination of conditions is required before transfer is possible	22	22
1_20_5	Cross-border data flows: transfer of personal data is prohibited	22	22
1_4_1	Board of directors: majority must be nationals	27	22
1_4_2	Board of directors: majority must be residents	27	22
1_4_3	Board of directors: at least one must be national	27	22
1_4_4	Board of directors: at least one must be resident	27	22
1_4_5	Managers must be national	27	22
1_4_6	Managers must be resident	27	22
1_5_1	Screening explicitly considers economic interests	25	22
1_5_2	Screening exists without exclusion of economic interests	25	22
1_50_1	Other restrictions on foreign entry	22	22
1_7_1	Acquisition and use of land and real estate by foreigners is restricted	22	22
1_8_1	Restrictions on the type of shares or bonds held by foreign investors	23	22
1_9_1	Conditions on subsequent transfer of capital and investments	23	22
2_1_1	Quotas: intra-corporate transferees	22	22
2_1_2	Quotas: contractual services suppliers	22	22
2_1_3	Quotas: independent services suppliers	22	22
2_2_1	Labour market tests: intra-corporate transferees	22	22
2_2_2	Labour market tests: contractual services suppliers	22	22
2_2_3	Labour market tests: independent services suppliers	22	22
2_3_1	Limitation on duration of stay for intra-corporate transferees (months)	22	22
2_3_2	Limitation on duration of stay for contractual services suppliers (months)	22	22
2_3_3	Limitation on duration of stay for independent services suppliers (months)	22	22
2_50_1	Other restrictions to movement of people	22	22
2_6_1	Laws or regulations establish a process for recognising qualifications gained abroad	15	13

Table 3.1 : Horizontal Restrictions (continued)

Policy Measure Code	Policy Measures	Number of times found	Number of Sectors
3_1_1	Foreign suppliers are treated less favourably regarding taxes and eligibility to subsidies	22	19
3_2_1	Public procurement: Explicit preferences for local suppliers	23	22
3_2_2	Public procurement: Procurement regulation explicitly prohibits discrimination of foreign	23	22
3_2_3	Public procurement: The procurement process affects the conditions of competition in	22	21
3_50_1	Other restrictions in other discriminatory measures	22	22
4_1_1	Decisions by the regulatory body can be appealed	22	22
4_2_1	Firms have redress when business practices restrict competition in a given market	22	22
4_3_1	National, state or provincial government control at least one major firm in the sector	26	17
4_4_1	Publicly-controlled firms are exempted from the application of the general competition law	19	18
4_50_1	Other restrictions in barriers to competition	22	22
4_6_1	Minimum capital requirements	20	20
4_7_1	Restrictions on advertising	22	22
5_1_1	There is a legal obligation to communicate regulations to the public within a reasonable	22	22
5_2_1	There is an adequate public comment procedure open to interested persons, including	22	22
5_3_1	Range of visa processing time (days)	22	22
5_3_2	Multiple entry visa for business visitors	22	22
5_3_3	Cost to obtain a business visa (USD)	22	22
5_3_4	Number of documents needed to obtain a business visa	22	22
5_4_1	Number of working days to complete all mandatory procedures to register a company	20	20
5_5_1	Total cost to complete all official procedures required to register a company (in % of income per capita)	20	20
5_50_1	Other restrictions in regulatory transparency	22	22
5_6_1	Number of mandatory procedures to register a company	20	20

Horizontal Restrictions under the five Policy Areas

The major Horizontal Restrictions under the 5 policy areas for India are given below:

1. Restrictions on Foreign entry

a) Foreign investment

Foreign investment is governed by the “Consolidated FDI Policy” released annually by the Department of Industrial Policy and Promotion (DIPP), Ministry of Commerce and Industry. [Recent policy Effective from August 28, 2017] This document contains a positive list of sectors subject to limitations on establishment and operations in the Indian market.

As has been pointed out by the OECD (OECD 2017), sectors are categorised into two groups: prohibited and permitted sectors. In the permitted sectors, investment can take place either through the government route through which prior approval is needed, or the automatic route where no approval is required. In some sectors, the automatic route applies up to a certain threshold beyond which approval is needed. Sectors not listed in the document are not subject to restrictions on establishment other than those that follow from general provisions and the regulation that applies to the sector in question. With the exception of rail operations, all services sectors covered by the STRI falls under the permitted category. The abolition of FIPB which has not been pointed out by OECD has to be added as a liberalization measure.

Foreign investment is subject to horizontal limitations on the manner in which foreign investors may buy and sell shares in Indian companies. First, foreign companies cannot directly own assets or carry out business in India. They must establish a branch office, project office or liaison office to do so. Buying shares from local residents is also subject to pricing guidelines issued by the Security and Exchange Board of India (SEBI). Repatriation of dividends is permitted through authorised foreign exchange dealers only. There are also different

procedures depending on the nature of the investor and the investment. Eligible investors are Foreign Institutional Investors, Foreign Portfolio Investors, Foreign Venture Capital Investors and Non-Resident Indians.

Our segregated list of the horizontal restrictions related to FDI are the following:

- **Restrictions related to Maximum Foreign Equity Share.** While FDI has been liberalized in many services sectors, there are restrictions related to maximum foreign equity share allowed, where despite 100% foreign equity share being allowed, 49% is through the automatic route (i.e. without prior approval), while investments beyond 49% is through the government route (i.e. the foreign investment is subject to prior approval by the government).
- **Restrictions on cross-border mergers and acquisitions (M&A)** wherein a foreign company needs the prior approval of the Reserve Bank of India to merge into a company registered under The Companies Act, 2013. A Registered Foreign Portfolio Investor (RFPI) may purchase shares or convertible debentures of an Indian company under the Foreign Portfolio Investment (FPI) scheme subject to the terms and conditions specified in Schedule 2A and the limits and margin requirements prescribed by RBI/ SEBI. New Companies Act prohibits any loan/guarantee to subsidiaries of Indian companies outside India. This provision is likely to affect leveraged buyout by Indian companies outside India.
- **Limits to the proportion of shares that can be acquired by foreign investors** in publicly-controlled firms, wherein the Government must retain at least 51% equity and management control in all cases of disinvestment of central public sector enterprises.
- **Screening** without exclusion of economic interests wherein proposals for investment

by foreign investors under the "Government route" (i.e., with FDI exceeding 49% foreign equity) are considered by the relevant Ministries and regulatory departments and the Cabinet Committee on Economic Affairs (CCEA). The former review all proposals with foreign equity less than Rs.5000 crore. All investment above Rs.5000 crore is reviewed by CCEA. Screening is not explicitly based on economic interests.

- **Conditions on subsequent transfer of capital and investments**, wherein transfers of shares between persons resident in India and persons resident outside India are subject to pricing guidelines.
- **Restrictions on acquisition and use of land and real estate by foreigners**, wherein Branch/Project Offices of a foreign entity are permitted to acquire immovable property, other than agricultural land/farm house/plantation property, by way of purchase for their own use and to carry out permitted/incidental activities. However, entities from Pakistan, Bangladesh, Sri Lanka, Afghanistan, Iran, Bhutan or China are not allowed to acquire immovable property in India for a Branch/Project Office without prior RBI approval. This is not a blanket restriction and is only due to strategic concerns. New land acquisition bill, Land Acquisition, Rehabilitation and Resettlement Act 2013 has been in effect from 1st January, 2014. However, there are no specific provisions related to land acquisition by foreigners. Foreign nationals can acquire land or property in India only under the following circumstances: Where the acquisition of property is by an Indian company owned by a foreign national which has been set up to conduct activities permitted under the FDI norms or the foreign national is a Person of Indian Origin (PIO).
- **Restrictions related to legal form** like only a natural person, who is an Indian citizen and resident in India shall be eligible to incorporate

a one person company. The term "Resident in India" means a person who has stayed in India for a period of not less than 182 days during the immediately preceding one calendar year.

- **Restrictions on the type of shares or bonds held by foreign investors** wherein a person resident outside India referred to in sub-regulation (1) of Regulation 5, may purchase shares or convertible debentures issued by an Indian company up to the extent and subject to the terms and conditions set out in Schedule 1 of FEMA.
- **Some other restrictions** like performance requirements and need for commercial presence to provide the service, etc.

b) Residency Requirements:

Most of the sectors in India have the following restrictions.

- **The restriction that at least one of the Board of Directors must be resident:** The requirement in this case is that every company shall have at least one Director who has stayed in India for a period of not less than 182 days in the previous calendar year.
- **The restriction that Managers must be resident:** The requirement in this case is that no person shall be eligible for appointment as manager of a company unless he is a resident of India.

c) Regulations and limitations on location and transfer of data

Most business operations and functions have become digitised. In addition, a host of business services are offered by specialised international services providers that help run integrated and effective operations. Examples are cloud computing, customer services, supply chain management and many more. As pointed out by the OECD, in recent years, regulations and limitations on location and transfer of data have emerged. The regulation typically restricts transfer of personal data with the

objective of protecting consumers and their privacy, but many countries define privacy so broadly that the regulations may significantly impair modern cross-border services activities. In the Indian case, the restrictions are the following.

- In India, the Information Technology Act of 2000 contains horizontal regulation on data protection and privacy. Under the law, sensitive personal data and information (SPDI) is protected. The law requires that personal data can only be transferred to countries that ensure the same level of data protection as India does and the data transfer is necessary for the performance of contract or where the relevant person has consented to data transfer. More stringent rules apply to financial information and information on health conditions.

Given its narrower definition of private information, Indian law is less stringent in limiting data flows than for instance the European Union.

2. Restrictions to movement of natural persons

Trade through the temporary movement of natural persons is regulated through the Foreigners Act and related regulation. (The STRI covers regulations affecting **intra-corporate transferees, contractual services suppliers and independent services suppliers as defined in the General Agreement of Trade in Services (GATS)**). These establish which documents and permits are needed for the different categories of natural persons and the criteria for obtaining the permits.

As pointed out by the OECD, India applies a relatively liberal regime for business visitors, defined as those coming to India to make sales, establish contacts, participate in meetings, exhibitions, etc. on behalf of a company established abroad. Multi-entry business visas for up to five years validity are available and each entry can last a maximum of six months. But foreigners who seek to provide a service in India

need an employment visa. Such visas are available to highly skilled or qualified professionals if the work they are to perform cannot be undertaken by a qualified Indian citizen. The minimum salary or fee is US\$ 25,000 per year. Employment visas are issued for one year and can be extended for up to five years.

Our segregated list of horizontal restrictions related to movement of natural persons for most of the sectors of India shows that there are basically two conditions - Labour Market Tests and Limitation on Duration of Stay.

a) Labour Market Tests :

The labour market tests for the temporary movement of natural persons under the three categories are as follows:

- **For intra-corporate transferees**, an employment visa shall not be granted for jobs for which qualified Indians are available. However, multiple entry business visas are awarded with each stay limited to 6 months. But only executives can use business visa for attending meetings, monitoring and supervision.
- **For contractual services suppliers** also an employment visa shall not be granted for jobs for which qualified Indians are available. However, multiple entry business visa, up to 5 years, is awarded with each stay limited to 6 months. The provision cannot be used to work on contractual basis in India.
- **For Independent services suppliers** also, an employment visa shall not be granted for jobs for which qualified Indians are available. However, multiple entry business visa, up to 5 years, is awarded with each stay limited to 6 months. Business visa can be used for independent service suppliers with the objective of monitoring the progress of the work, conducting meetings with Indian customers and/or to provide technical guidance.

b) Limitation on duration of stay:

The limitation on duration of stay for the temporary movement of natural persons under the three categories is as follows:

- **For intra-corporate transferees**, an employment visa is issued for two years (up to five if it is part of a bilateral agreement, up to three years if applicant is an IT expert). However, multiple entry business visa, up to 5 years, is awarded with each stay limited to 6 months.
- **For contractual services suppliers**, an employment visa is issued for two years (up to five if it is part of a bilateral agreement, up to three years if applicant is an IT expert).
- **For Independent Services Suppliers**, an employment visa is issued for two years (up to five if it is part of a bilateral agreement, up to three years if applicant is an IT expert). However, multiple entry business visa, up to 5 years, is awarded with each stay limited to 6 months.

Some other conditions are related to laws or regulations establishing a process for recognizing qualifications gained abroad.

Similar conditions are also found in other countries. Infact, the labour market tests are more rigorous in some developed countries. The limitation on duration of stay in India is more of a formality.

India has infact taken the initiative of liberalizing its visa regime for Least Developed Countries (LDCs), and even notifying this in the WTO. So far, 21 members, including India, have notified preferential treatment to LDCs in services trade. India has offered this in respect of: (i) article XVI of the General Agreement on Trade in Services (GATS) (Market Access); (ii) technical assistance and capacity building; and (iii) waiver of visa fees for LDC applicants applying for Indian business and employment visas. The fee waiver will be valid until 31 December 2030. India is the only member which has offered waiver of visa fees. This is a unique and almost path-breaking offer

by India. So far, visa issues have remained untouched in the WTO/free trade agreements (FTA). India's offer should give significant advantage to service suppliers from LDCs vis-à-vis service suppliers from any other country.

Many trading partners of India have restrictive regimes. India submitted a paper on "Mode 4: Assessment of Barriers to Entry", in March 2016 at the WTO highlighting the increasingly complex nature of barriers to mode 4 entry. These include selective measures by our key trading partners' subjective definitions of sub-categories under the Intra-corporate transferees resulting in rejection of bonafide applications and undermining the commitments, and non-portability of social security contributions.

3. Other Discriminatory measures

Our segregated list of horizontal restrictions related to other discriminatory measures include the following.

a) Public procurement

Foreign services suppliers have access to the public procurement market, provided they register with the appropriate body. India does not have a national procurement legislation. A public procurement bill (Bill No 58 of 2012) was introduced in 2012, but was not passed in the Parliament. It was revived in 2015 and is yet to be introduced in the Parliament. Government procurement procedures are subject to the General Financial Rules of 2005 (GFR) and regulations and procedures at the state level. In addition, the Ministry of Finance has developed three manuals for public procurement, for goods, public works and services respectively, which provide detailed guidelines for the tendering process and awarding of contracts.

While the rules and guidelines do not discriminate against foreign suppliers, 20% of annual value of goods or services is required to be awarded to micro, small and medium sized enterprises (MSMEs).

As can be seen in the OECDs detailed comments of STRIs, in most sectors the restriction is under Rule 153 of the General Financial Rules (2017) which provides that the Central Government may, by notification, provide for mandatory procurement of any goods or services from any category of bidders, or provide for preference to bidders on the grounds of promotion of locally manufactured goods or locally provided services. However, for services, unlike goods there are no thresholds above which tender is mandated.

b) Taxes and subsidies

Taxes and subsidies are in principle non-discriminatory, although there are some sector-specific deviations from this principle. India has also recently introduced a tax that can be seen as an import tax on certain advertising services. A so-called equalisation levy on online advertising was introduced in the 2016-17 budget. From 1st of June 2016 Indian businesses that buy on line advertising from companies not established in India must deduct 6% of the payment and deposit it to the Indian government. This arrangement applies to business to business transactions exceeding one lakh rupees per year. This is likely to affect start-ups that rely entirely on online to advertise. Since this is not introduced as part of the Income Tax Act, but as a separate legislation under the Finance Bill, global firms that offer such services in India cannot claim tax credit in their home country under the double tax avoidance agreement.

Regarding the restriction that foreign suppliers are treated less favorably regarding taxes and eligibility to subsidies, residents and people conducting business in India are subject to the same tax provisions under Chapter II of the Income Tax Act and thus taxation in India is levied on a non-discriminatory basis.

There are also some exceptions like the large retailers being subject to specific taxes, wherein the corporate tax rate for foreign companies is 40%. As of September 2015, Minimum Alternate Tax

(MAT) does not apply to foreign companies that do not have a Permanent Establishment (PE) in India, subject to certain conditions. The Act does not have any specific taxation regime for companies engaged in retail operations.

4. Barriers to Competition

Our segregated list of horizontal restrictions related to Barriers to Competition include the following restrictions:

- **Regarding the policy measure that decisions by the regulatory body can be appealed**, appeal procedures are not restricted to nationals under either the Competition Act or the Companies Act. There are no specific restrictions against foreigners. Any person can make an appeal to the Appellate Tribunal in the necessary manner. The Competition (Amendment) Bill, 2012 was tabled in Lok Sabha but has not been passed and has lapsed.
- **Regarding the policy measure that firms have redressal mechanism when business practices restrict competition in a given market**, any person can request the Competition Commission to inquire into anti-competitive practices. Decisions of the Commission can be appealed to the Competition Appellate Tribunal. Compensation for damages suffered by an enterprise due to the anti-competitive behavior of other enterprises can be claimed from the Appellate Tribunal. The Competition Commission cannot order such compensation.
- **Some other restrictions** are related to minimum capital requirements; national, state or provincial government control of at least one major firm in the sector; and restrictions on advertising.

5. Regulatory Transparency

Our segregated list of horizontal restrictions related to Regulatory Transparency include the following:

- **Regarding the policy measure that there is a legal obligation to communicate regulations**

to the public within a reasonable time prior to entry into force, in India, Acts of Parliament are published in the Gazette but there is no minimum statutory time period between publication and entry into force. A new Act can enter into force either on the date of assent by the President to the Bill creating the Act (i.e., before publication), or a specific date mentioned in the Act itself or determined by the legislator.

- **Regarding the policy measure that there is an adequate public comment procedure open to interested persons, including foreign suppliers**, in India, the proposed legislations must be published but there is no obligation to hold consultations with all stakeholders about them. Furthermore, if the legislator decides to conduct such consultations, it can decide about the degree of participation and mode of consultation.
- **Regarding the Range of visa processing time (days)**, in India, upon receipt of the Visa Application through the Indian Visa Application Centre or directly, the Indian Mission/ Post requires a minimum of three working days to process the case and issue a visa depending upon the nationality and excluding special cases. It is possible to apply for an e-Tourist Visa (eTV) online which, among others, is valid for a "casual business visit". An application for eTV must be made at least four days in advance of the date of arrival.
- **Regarding multiple entry visa for business visitors**, in India, a Business Visa with multiple entry facility can be granted for a period up to five years or for a shorter duration as per the requirement. A stay stipulation of a maximum period of six (6) months will be prescribed for each visit by the concerned Indian Mission.
- **Regarding Cost to obtain a business visa (US\$)**, nationals of most countries require a visa to

India. Fees vary depending on reciprocity as well as the country applied from. The fees applicable for a US citizen for one year multiple entry visa is US\$ 16770. It is now also possible to apply for an e-Tourist Visa (eTV) online which, among others, is valid for a "casual business visit". Fees are divided in four slabs of zero, US\$ 25, US\$ 48 and US\$ 60, depending on nationality (based on reciprocity), plus a bank fee of 2.5% of the visa fee.

- **Regarding number of documents needed to obtain a business visa**, there are 5 basic number of documents required to be submitted by a US citizen applying for a business visa to India. It is also possible to apply for an e-Tourist Visa (eTV) online. The eTV is valid for a "casual business visit" (3 documents are required to apply for an eTV).
- **Some other restrictions** are related to number of documents needed to obtain a business visa, number of working days to complete all mandatory procedures to register a company, total cost to complete all official procedures required to register a company and number of mandatory procedures to register a company.

All the above issues in this policy area are procedural issues and many are related to 'Ease of Doing Business' rather than restrictions.

Contribution of Horizontal Restrictions to STRI Values – Sector-wise

- **The share of horizontal contributions to total STRI value of each sector** shows that they are the major contributors to total STRI value in a sector. Total STRI values are very high in India for Rail Freight transport (1.000), Legal Services (0.906) and Accountancy (0.886) and very low in Sound Recording (0.267), Road Freight Transport (0.285), Logistics Freight Forwarding (0.290) and Engineering (0.290) as can be seen in Table 3.2 and Figure 3.1.

Table 3.2 : India's Total STRI Value 2017- Sector and Policy Area Wise

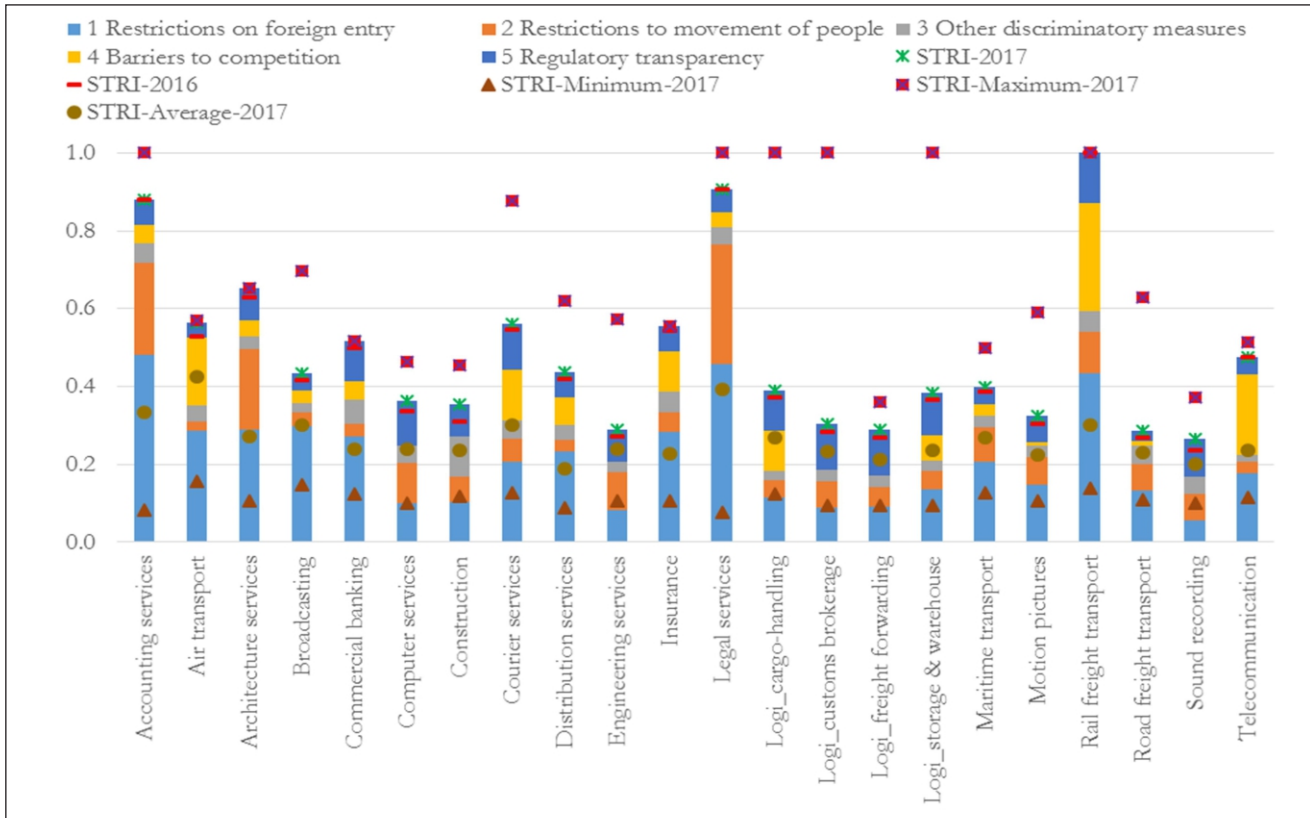
Sr. No.	Sector/ Policy Area	STRI	Restrictions on foreign entry	Restrictions to movement of people	Other discriminatory measures	Barriers to competition	Regulatory transparency
1	Accounting	0.880	0.483	0.236	0.051	0.047	0.064
2	Air transport	0.563	0.286	0.024	0.042	0.175	0.036
3	Architecture	0.651	0.289	0.207	0.032	0.041	0.083
4	Broadcasting	0.434	0.298	0.034	0.024	0.033	0.044
5	Commercial banking	0.517	0.270	0.034	0.061	0.049	0.103
6	Computer	0.364	0.100	0.103	0.044	0.000	0.117
7	Construction	0.353	0.102	0.067	0.102	0.000	0.082
8	Courier	0.560	0.208	0.059	0.047	0.129	0.118
9	Distribution	0.436	0.233	0.028	0.040	0.070	0.064
10	Engineering	0.290	0.083	0.097	0.028	0.000	0.083
11	Insurance	0.556	0.282	0.051	0.052	0.105	0.065
12	Legal	0.906	0.458	0.306	0.045	0.040	0.058
13	Logistics cargo-handling	0.389	0.115	0.043	0.026	0.103	0.102
14	Logistics customs brokerage	0.303	0.089	0.067	0.030	0.000	0.118
15	Logistics freight forwarding	0.290	0.090	0.051	0.031	0.000	0.119
16	Logistics storage and warehouse	0.383	0.136	0.046	0.028	0.066	0.108
17	Maritime transport	0.398	0.207	0.086	0.031	0.029	0.045
18	Motion pictures	0.325	0.147	0.071	0.031	0.007	0.069
19	Rail freight transport	1.000	0.434	0.106	0.054	0.276	0.130
20	Road freight transport	0.285	0.133	0.066	0.047	0.013	0.025
21	Sound recording	0.267	0.056	0.068	0.046	0.000	0.097
22	Telecom	0.475	0.177	0.029	0.017	0.206	0.045

Source: Based on data extracted on 13 Oct 2018 from OECD Website

- **In terms of numbers in total restrictions**, the highest restrictions are found in Air Transport (89), Insurance (80), Legal and Accounting Services (74) and Rail Freight Transport (73). They are very low in Computer and Engineering Services (22), Sound Recording (23), Logistics Freight Forwarding (24), Road Freight Transport (25) and Logistics Customs Brokerage (26). (Table 3.3 & Figure 3.2)
- **The segregation of Horizontal Restrictions from total restrictions shows that in terms of value**

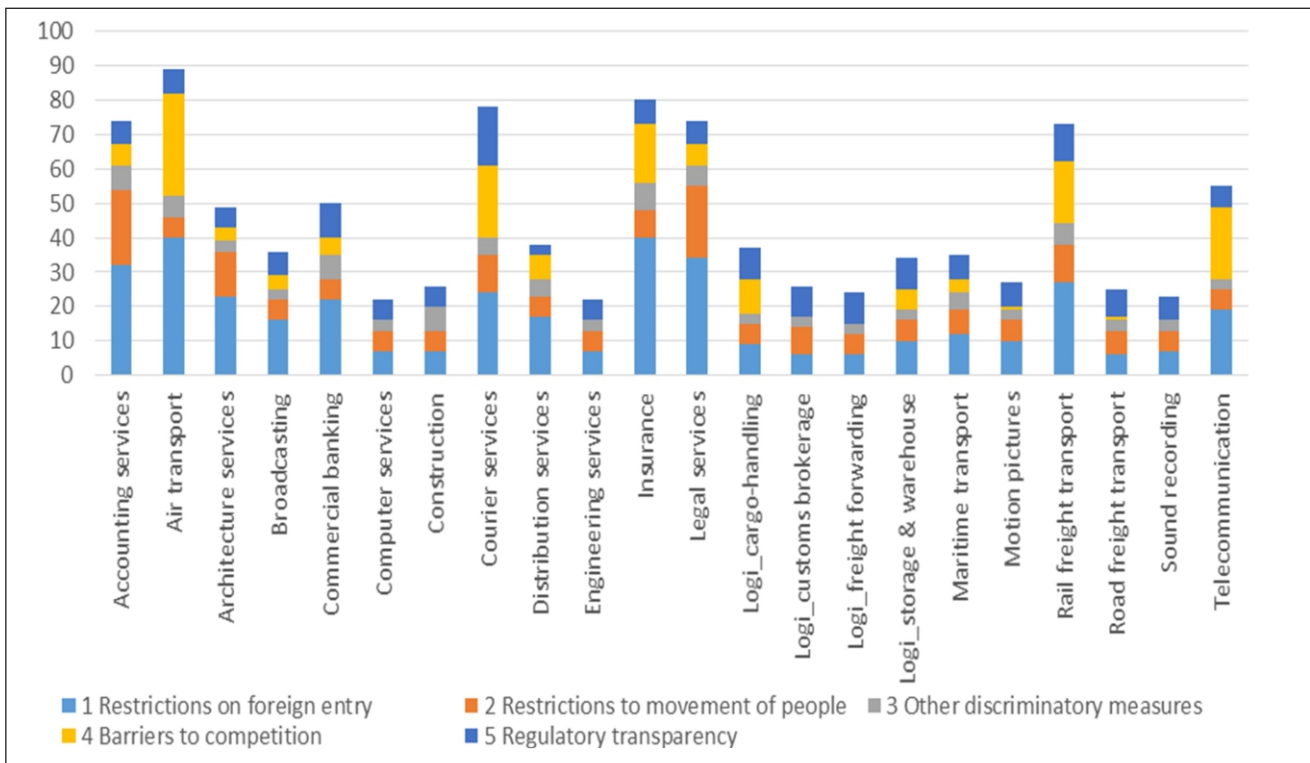
in all the sectors, the major contribution to STRI is due to horizontal restrictions. It is very high in some sectors like Computer Services (100%), Engineering Services (100%), Sound Recording (91.8%), Broadcasting (90.4%), Motion Pictures (87.9%), Road Freight Transport (87.8%), Logistics Freight Forwarding (86.3%), Logistics Storage and Warehouse (84.9%) and Logistics Customs Brokerage (81.6%) which implies that in these sectors, the STRIs are mainly due to horizontal restrictions (Table 3.3).

Figure 3.1: STRI Values sector wise by Policy Areas for India-2017



Source: Based on OECD STRI database

Figure 3.2 : Number of Restrictive Policy Measures: India-2017



Source: Based on OECD STRI database

- **In terms of numbers also the major restrictions are horizontal restrictions** and these are very high in Air Transport (57), Courier and Rail Freight Services (55), Legal Services (47) and Insurance and Accounting Services (45).

They are low in Construction (18), Logistics Customs Brokerage (21), Logistics Freight Forwarding (21), Sound Recording (21), Road Freight Transport (21) and Computer and Engineering Services (22).

Table 3.3: STRI: Horizontal & Sector-Specific Restrictions Share (Value and Number)

Sr. No.	Sectors	Total STRI		Share (Value)		Share (Numbers)	
		Values	Numbers	Horizontal (%)	Sector Specific (%)	Horizontal (%)	Sector Specific (%)
1	Accounting services	0.88	0 74	60.6	39.4	60.8	39.2
2	Air transport	0.563	89	66.0	34.0	64.0	36.0
3	Architecture services	0.651	49	69.8	30.2	73.5	26.5
4	Broadcasting	0.434	36	90.4	9.6	88.9	11.1
5	Commercial banking	0.517	50	56.4	43.6	58.0	42.0
6	Computer services	0.364	22	100.0	0.0	100.0	0.0
7	Construction	0.353	26	67.7	32.3	69.2	30.8
8	Courier services	0.560	78	76.7	23.3	70.5	29.5
9	Distribution services	0.436	42	55.2	44.8	57.1	42.9
10	Engineering services	0.290	22	100.0	0.0	100.0	0.0
11	Insurance	0.556	80	59.3	40.7	56.3	43.8
12	Legal services	0.906	74	61.7	38.3	63.5	36.5
13	Logistics cargo-handling	0.389	37	72.7	27.3	73.0	27.0
14	Logistics customs brokerage	0.303	26	81.6	18.4	80.8	19.2
15	Logistics freight forwarding	0.290	24	86.3	13.7	87.5	12.5
16	Logistics storage and warehouse	0.383	34	84.9	15.1	85.3	14.7
17	Maritime transport	0.398	35	68.2	31.8	68.6	31.4
18	Motion pictures	0.325	27	87.9	12.1	88.9	11.1
19	Rail freight transport	1.000	73	73.8	26.2	75.3	24.7
20	Road freight transport	0.285	25	87.8	12.2	84.0	16.0
21	Sound recording	0.267	23	91.8	8.2	91.3	8.7
22	Telecommunication	0.475	55	64.8	35.2	69.1	30.9

Source: Based on OECD STRI database

- In the total STRI of different Sectors, Policy Area-wise, restrictions on foreign entry and restrictions to movement of people followed by regulatory transparency are the major policy

areas (Table 3.2). In terms of numbers also they are high at 38% as can be seen in Table 3.4. Other Discriminatory Measures like Public procurement have higher weight, but are few in numbers.

Table 3.4: STRIs: Share in terms of numbers

	No's	Share (%)
Total Nos. of Restrictive Policy Measures	1001	100.0
Restrictions on foreign entry	381	38.1
Restrictions to movement of people	186	18.6
Other discriminatory measures	98	9.8
Barriers to competition	161	16.1
Regulatory transparency	175	17.5

Table 3.5: India STRI-Contribution of Horizontal Restrictions by Policy Area

Sr. No.	Sectors	Total STRI Value	Contribution of Horizontal Restrictions to STRI	Contribution of Horizontal Restrictions by Policy Area				
				Restrictions on foreign entry	Restrictions to movement of people	Other discriminatory measures	Barriers to competition	Regulatory transparency
1	Accounting services	0.880	0.533	0.299	0.102	0.036	0.031	0.064
2	Air transport	0.563	0.372	0.257	0.024	0.042	0.017	0.031
3	Architecture services	0.651	0.454	0.208	0.111	0.032	0.020	0.083
4	Broadcasting	0.434	0.392	0.280	0.034	0.024	0.017	0.038
5	Commercial banking	0.517	0.292	0.160	0.034	0.026	0.010	0.062
6	Computer services	0.364	0.364	0.100	0.103	0.044		0.117
7	Construction	0.353	0.239	0.102	0.067	0.029		0.041
8	Courier services	0.560	0.430	0.198	0.059	0.047	0.043	0.084
9	Distribution services	0.436	0.241	0.151	0.028	0.024	0.010	0.027
10	Engineering services	0.290	0.290	0.083	0.097	0.028		0.083
11	Insurance	0.556	0.329	0.190	0.045	0.020	0.018	0.056
12	Legal services	0.906	0.559	0.270	0.167	0.037	0.027	0.058
13	Logistics cargo-handling	0.389	0.283	0.115	0.043	0.026	0.031	0.068
14	Logistics customs brokerage	0.303	0.247	0.089	0.050	0.030		0.079
15	Logistics freight forwarding	0.290	0.251	0.090	0.051	0.031		0.079
16	Logistics storage and warehouse	0.383	0.325	0.136	0.046	0.028	0.044	0.072
17	Maritime transport	0.398	0.272	0.121	0.086	0.019	0.007	0.039
18	Motion pictures	0.325	0.286	0.118	0.071	0.031	0.007	0.059
19	Rail freight transport	1.000	0.738	0.362	0.106	0.045	0.107	0.118
20	Road freight transport	0.285	0.250	0.133	0.066	0.032		0.019
21	Sound recording	0.267	0.245	0.048	0.068	0.046		0.084
22	Telecommunication	0.475	0.308	0.177	0.029	0.017	0.039	0.045

- **In the case of Horizontal Restrictions Policy Area-wise** (Table 3.5) also restrictions on foreign entry, restrictions to movement of people and regulatory transparency are the major policy areas with restrictions. Barriers to Competition is not found in seven sectors and Other Discriminatory Measures, though found in all sectors, has relatively low values.
- **There are some restrictions which can be streamlined by India**, which can help in lowering the STRI score of many sectors and in turn in the total STRI of India. These include the legal obligation to communicate regulations to the public within a reasonable time prior to entry into force; adequate public comment procedure open to interested persons; cost to obtain a business visa which is US\$ 167.70 for US Citizens. In many countries it is lower and for most of the countries it is below or around US\$ 100. This can be lowered for India which can help in facilitating business visitors. The fees could also be made uniform instead of varying depending on reciprocity as well as the country. In the case of cross border M&As, the New Companies Act prohibits any loan guarantee to subsidiaries of Indian companies outside India. Since this provision is likely to affect leveraged buyout of Indian companies outside India, there is a need to see if this can be relaxed.

Some Inferences

- **The Horizontal Restrictions get reflected in the total restriction of each sector** and thus are the major contributors in many sectors. The presence of some of the Policy Measures like foreign equity restrictions automatically leads to STRI scores in some other related Policy Measures even if there are no restrictions in these other Policy Measures. These need to be examined first and addressed. If some of the horizontal restrictions are removed or softened, the STRI values of many sectors will fall automatically.
- **India has many horizontal measures related to Foreign Entry, which are comparatively restrictive and given higher weightage** in the STRI by OECD. These get reflected in the STRIs of the sectors also, thus resulting in a higher STRI for India.
- **There are some measures which are just formalities** and not really restrictive and need not be included under STRI unless they are really restrictive. These are related to visa processing time, cost to obtain a business visa, etc., for natural persons which are also found in other countries and are more in the form of 'Ease of Doing Business' issues.
- **The higher weightage for some parameters** related to foreign entry and also the high number of parameters of a similar nature in some Policy Measures for different services have also resulted in India's STRI values being higher in many sectors.

Sector-Specific Restrictions

Sector-wise restrictions include both the horizontal restrictions and sector-specific restrictions. An Analysis of the sector-specific restrictions shows the following.

- **If the horizontal restrictions are segregated and only the contribution of sector-specific restrictions to STRI are considered**, then their contribution to STRI value would be much lower ranging from a high of 43.6% for Commercial Banking Services to a low of 0% for Computer and Engineering services. The other sectors in which the sector specific restrictions to total STRI of the sector is low are Sound Recording, Motion Pictures, Road Freight Transport, Logistics Freight Forwarding, Logistics Storage and Warehousing and Logistics Custom Brokerage. In terms of numbers, the sector-specific restrictions are in single digit in the following sectors - Sound Recording, Broadcasting, Motion Pictures, Road

Table 3.6: India STRI-Contribution of Sector-Specific Restrictions by Policy Area

Sr. No.	Sectors	Total STRI Value	Contribution of Horizontal Restrictions to STRI	Contribution of Sector-Specific Restrictions of STRI	Contribution of Sector-Specific Restriction by Policy Area				
					Restrictions on foreign entry	Restrictions to movement of people	Other discriminatory measures	Barriers to competition	Regulatory transparency
1	Accounting services	0.880	0.533	0.347	0.184	0.133	0.014	0.016	
2	Air transport	0.563	0.372	0.191	0.029			0.157	0.005
3	Architecture services	0.651	0.454	0.197	0.081	0.095		0.020	
4	Broadcasting	0.434	0.392	0.042	0.019			0.017	0.006
5	Commercial banking	0.517	0.292	0.226	0.111		0.035	0.039	0.041
6	Computer services	0.364	0.364	0.000					
7	Construction	0.353	0.239	0.114			0.073		0.041
8	Courier services	0.560	0.430	0.130	0.010			0.086	0.034
9	Distribution services	0.436	0.241	0.195	0.082		0.016	0.060	0.036
10	Engineering services	0.290	0.290	0.000					
11	Insurance	0.556	0.329	0.226	0.092	0.006	0.003	0.086	0.009
12	Legal services	0.906	0.559	0.347	0.187	0.139	0.007	0.013	
13	Logistics cargo-handling	0.389	0.283	0.106				0.072	0.034
14	Logistics customs brokerage	0.303	0.247	0.056		0.017			0.039
15	Logistics freight forwarding	0.290	0.251	0.040					0.040
16	Logistics storage and warehouse	0.383	0.325	0.058				0.022	0.036
17	Maritime transport	0.398	0.272	0.127	0.086		0.012	0.021	0.006
18	Motion pictures	0.325	0.286	0.039	0.029				0.010
19	Rail freight transport	1.000	0.738	0.262	0.072		0.009	0.168	0.012
20	Road freight transport	0.285	0.250	0.035			0.016	0.013	0.006
21	Sound recording	0.267	0.245	0.022	0.008				0.014
22	Telecommunication	0.475	0.308	0.167				0.167	

Freight Transport, Logistics Freight Forwarding, Logistics Customs Brokerage, Logistics Storage and Warehousing and Courier Services. It is therefore clear that horizontal restrictions contribute greatly to the total STRI value in these sectors.

- **The sector-specific restriction by the five Policy Areas** show that the major restrictions are in policy area 5 Regulatory Transparency, Barriers to Competition and Restrictions on Foreign Entry. The other two policy areas are less important

with many sectors not having these restrictions [See Table 3.6].

The analysis in this chapter shows that in all the sectors the horizontal restrictions have a higher share in terms of value and also in terms of numbers. Out of total 1001 Restrictive Policy measures found in all 22 sectors, 713 are Horizontal Policy Measures and 288 are sector-specific Policy Measures. Thus, tackling the horizontal restrictions wherever possible can automatically lead to low STRIs in the different sectors.

India's Sector-Wise Services Trade Restrictions

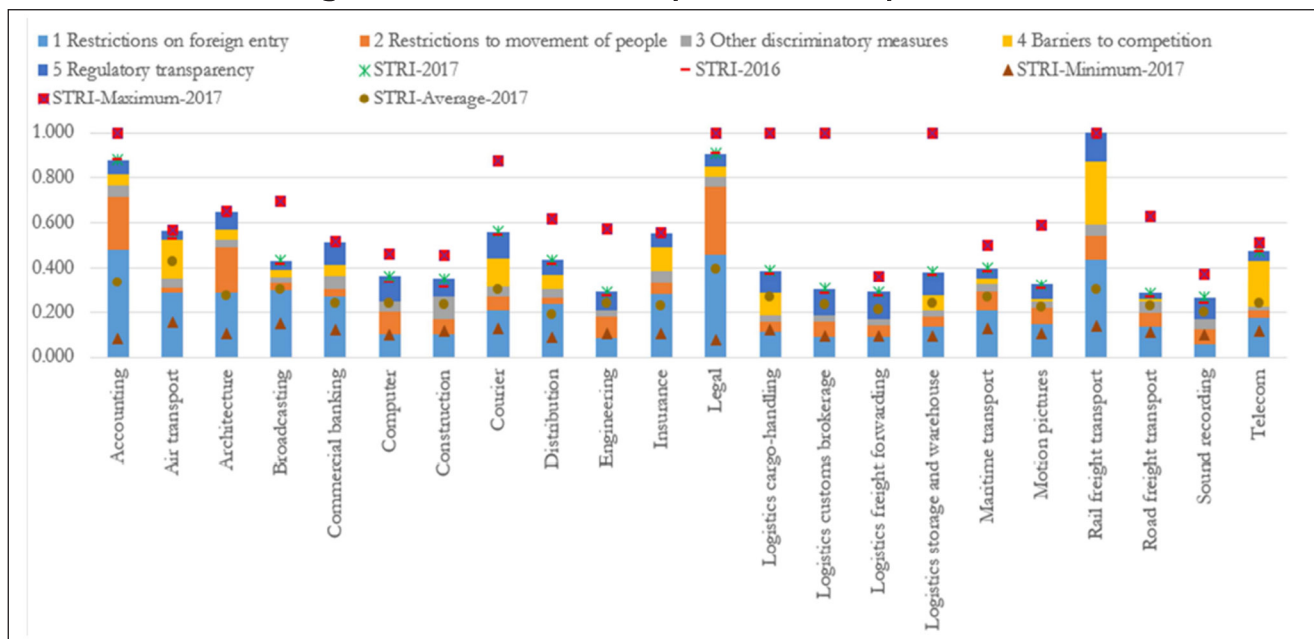
India's Sector-Wise STRIs Vis-à-vis Select Countries

In this chapter, India's sector-wise service trade restrictions have been analyzed based on the OECD database and also compared with the restrictions in some other select countries. The sector-wise STRIs include both the horizontal and sector-specific STRIs in a given sector.

The OECD database includes 22 services sectors for 44 countries. The STRI scores along with policy measures and detailed comments of the services trade restrictions are given in this database under

5 categories. These 5 categories are restrictions on Foreign entry, restriction to movement of natural persons, other discriminatory measures, barriers to competition and regulatory transparency. As stated by OECD, the STRI database records regulations actually in force and does not take into account preferential agreements. In Figure 4.1, the STRI values by sectors and policy area are given for the 22 sectors for India for the latest available year i.e.2017. The minimum, maximum and average STRI values among the 44 countries in the OECD database are also given in Figure 4.1. (The STRI values for the 22 sectors for the 44 countries is given in Annexure 1).

Figure 4.1: India's STRI Values by Sector and Policy Area-2017



Note: The STRI indices take values between zero and one, one being the most restrictive.

As can be seen in the figure, among the sectors, Rail freight transport has the highest STRI value (1), which is the maximum STRI value. The other two sectors with high STRI values are Legal Services (0.906) and Accounting services (0.880). The other services with STRI value above 0.5 are Architecture Services (0.651), Air Transport (0.563), Courier Services (0.560), Insurance (0.556) and Commercial Banking (0.517). The lowest STRIs are in Sound Recording (0.267) and Road Freight Transport (0.285).

Policy Area-wise, restrictions on foreign entry followed by restrictions to movement of people are the two major policy areas in most of the sectors.

An attempt has been made here to compare India's STRIs with STRIs of some select countries (USA and UK-Developed; Korea and Indonesia- ASEAN; and Brazil, Russia, China and South Africa- BRICS) for the different services sectors. These eight countries along with India will henceforth be called as the Select Nine countries. (see Figures 4.1 to 4.9)

Figure 4.2: United States' STRI Values by Sector and Policy Area-2017

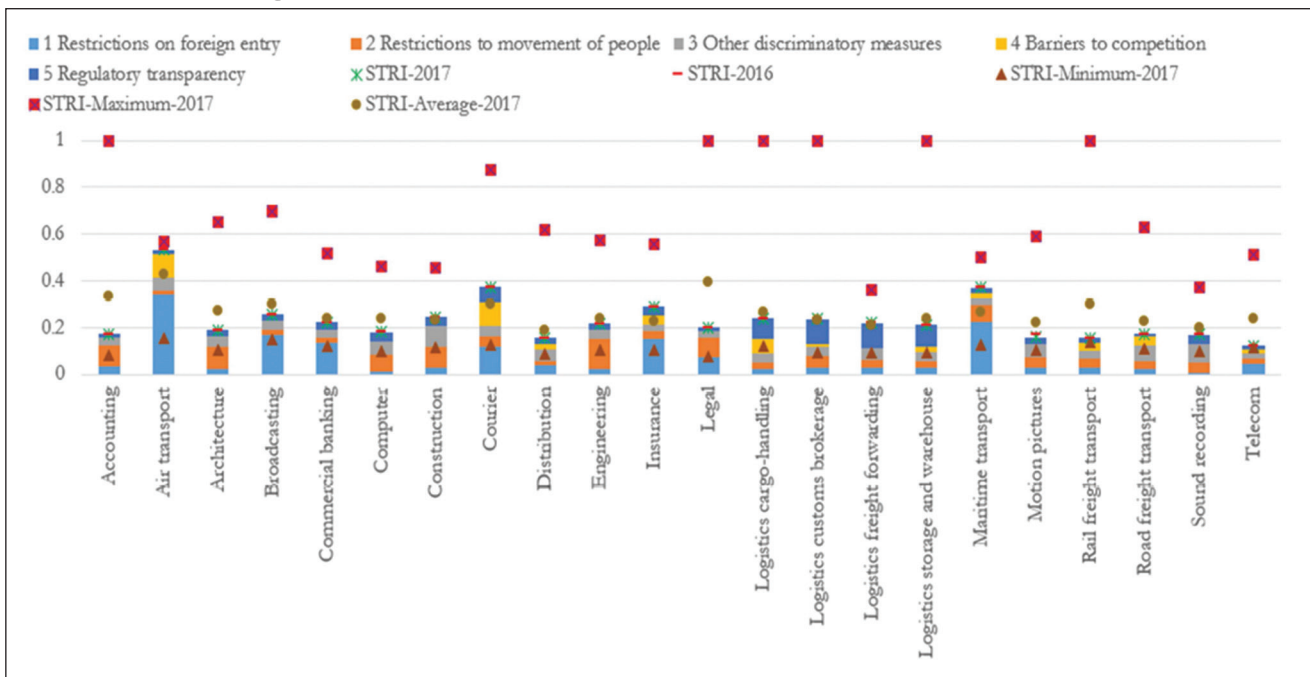


Figure 4.3: United Kingdom's STRI Values by Sector and Policy Area-2017

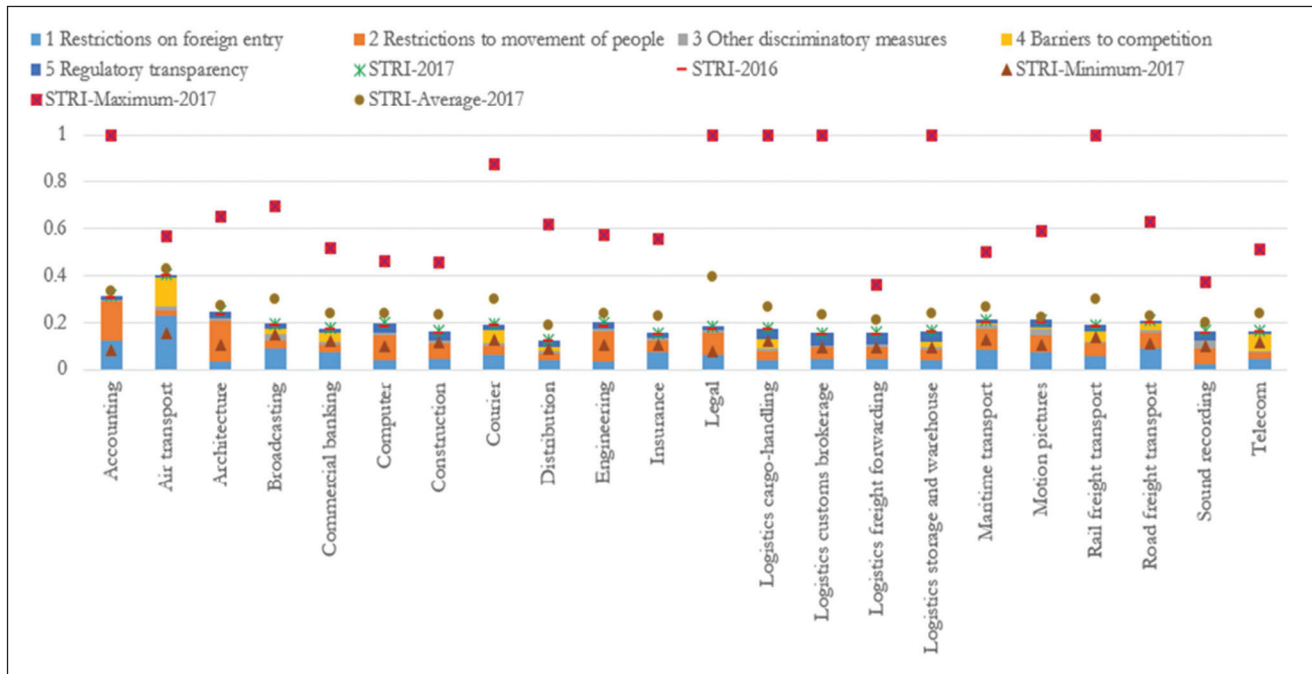


Figure 4.4: China's STRI Values by Sector and Policy Area-2017

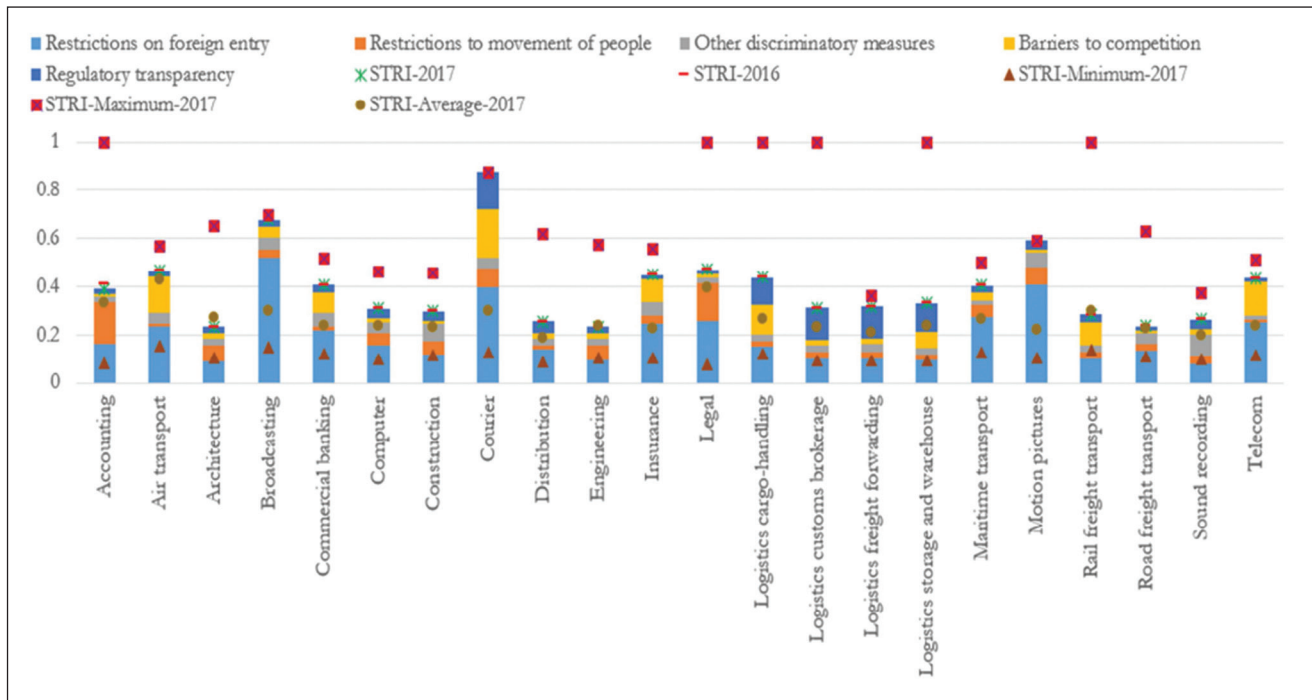


Figure 4.5: Russia's STRI Values by Sector and Policy Area-2017

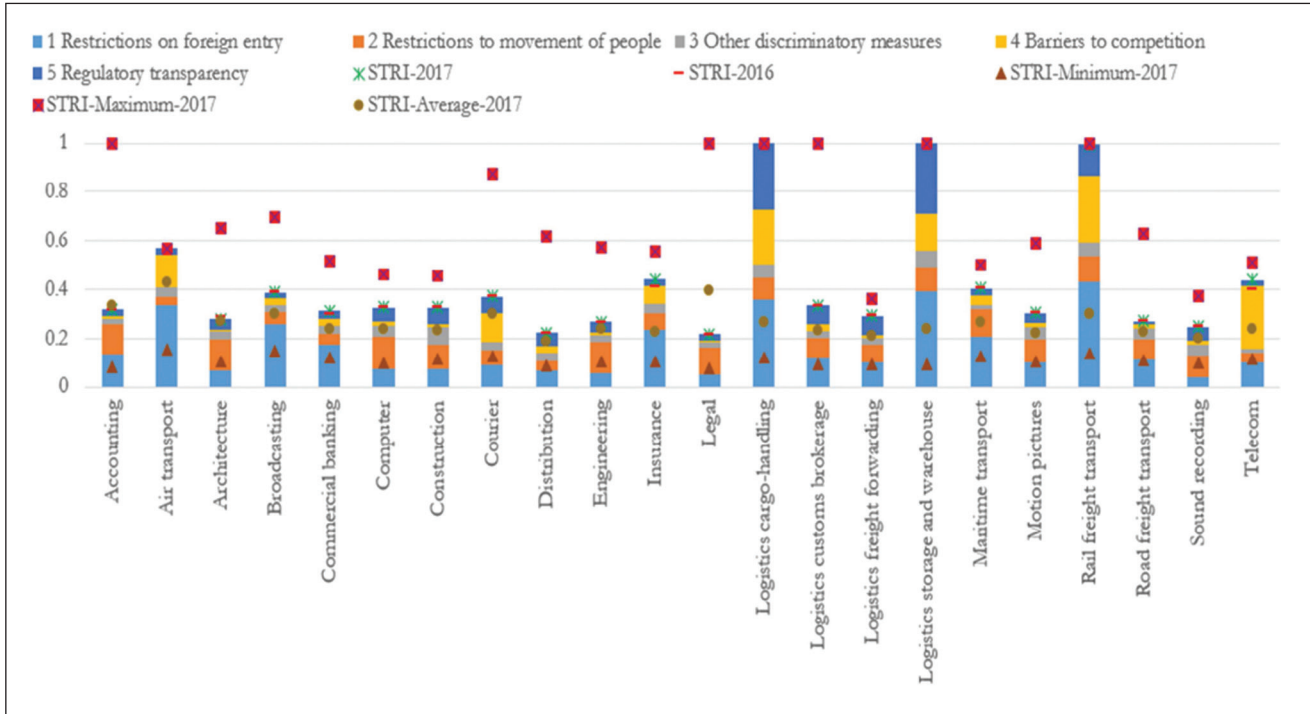


Figure 4.6: Brazil's STRI Values by Sector and Policy Area-2017

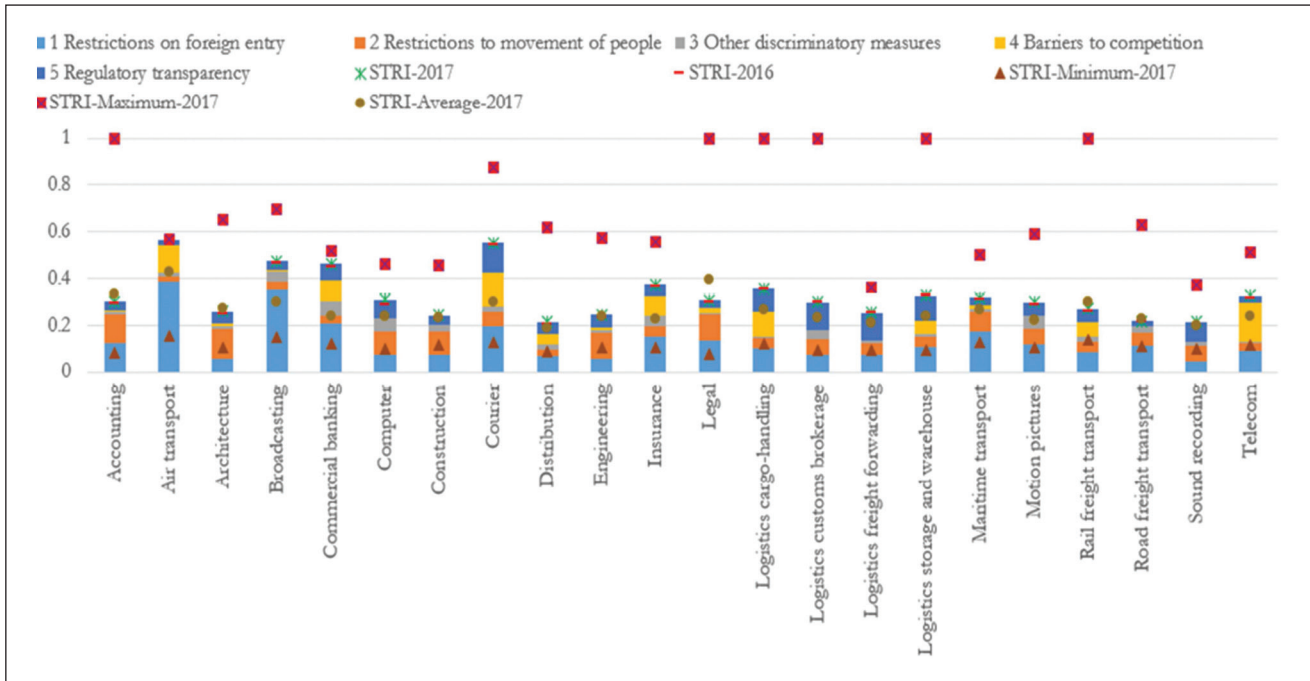


Figure 4.7: South Africa's STRI Values by Sector and Policy Area-2017

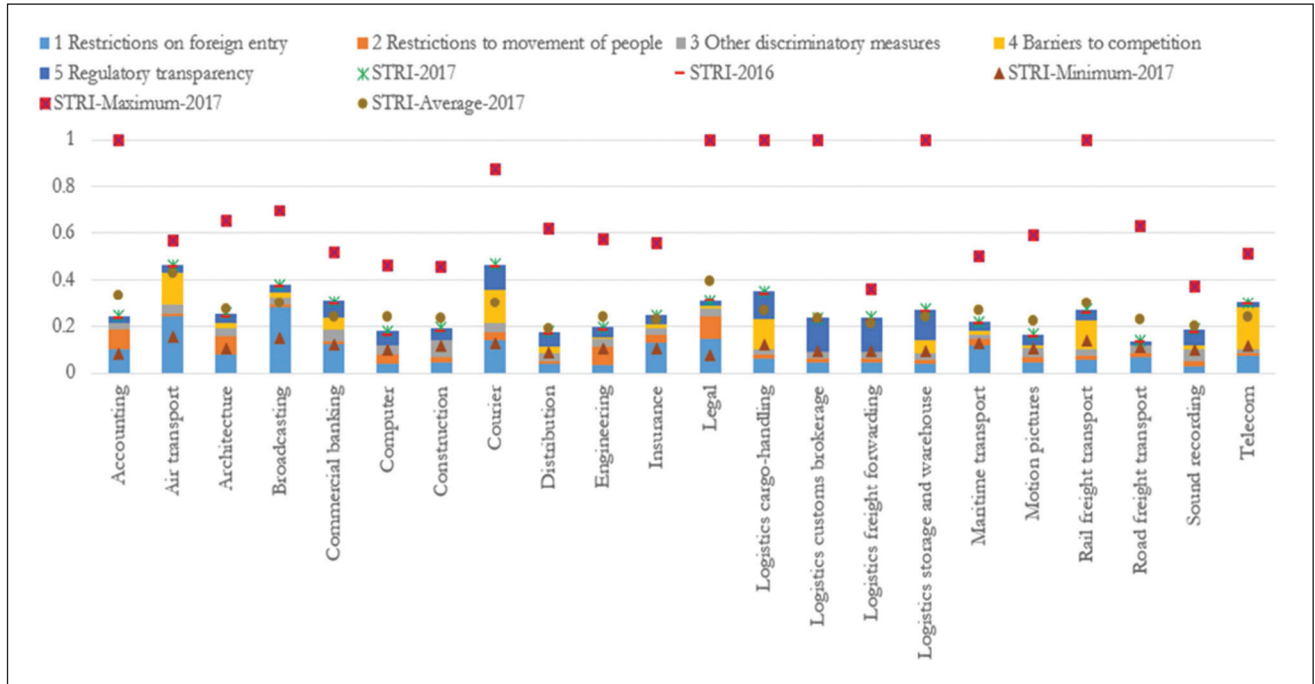


Figure 4.8: Korea's STRI Values by Sector and Policy Area-2017

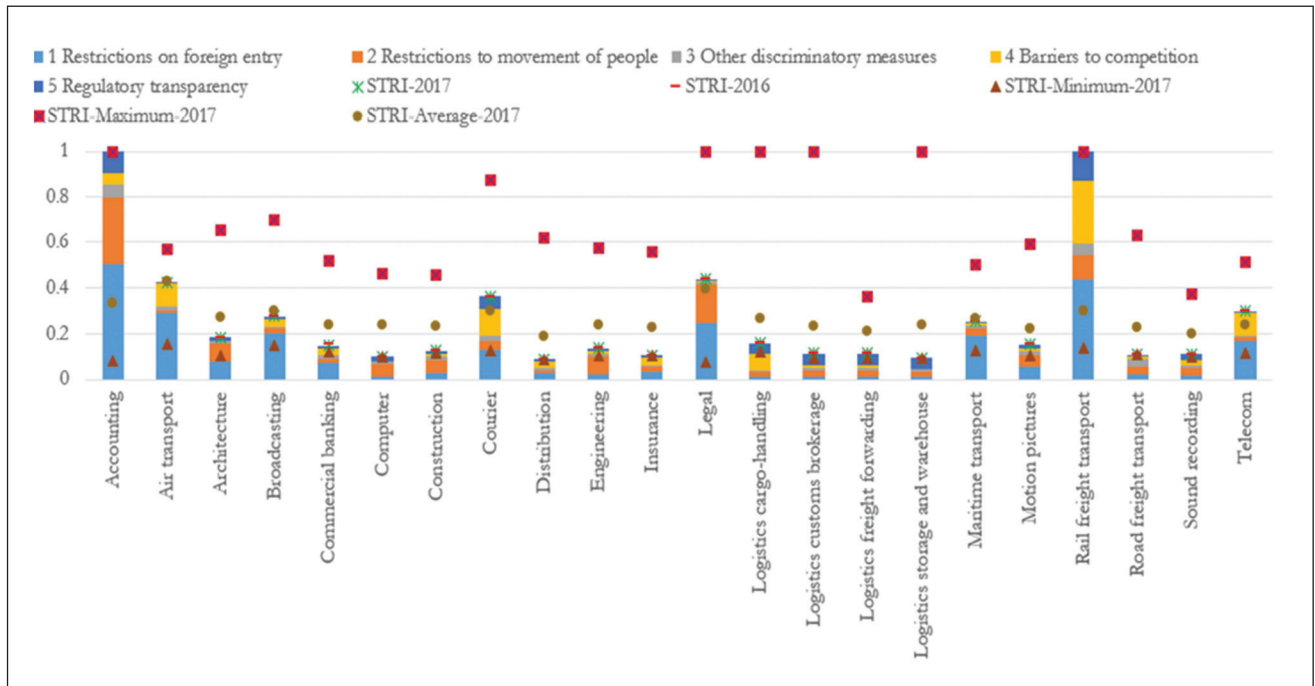
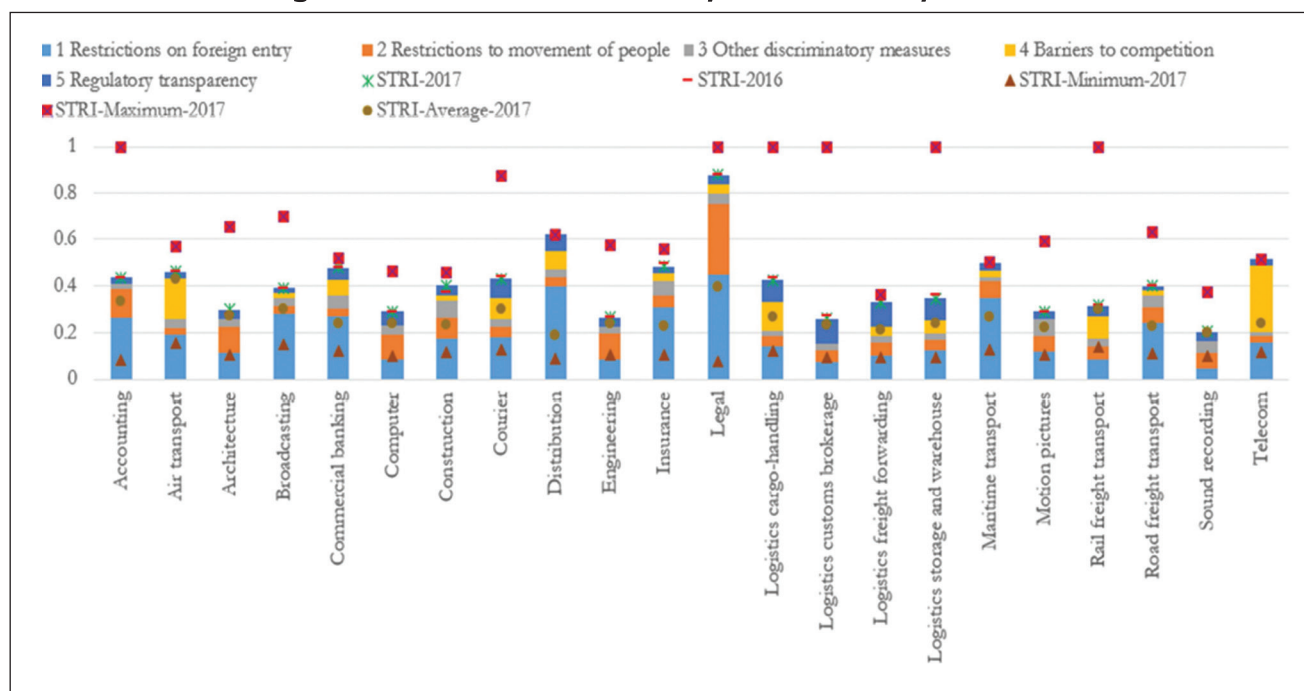


Figure 4.9: Indonesia's STRI Values by Sector and Policy Area-2017


A comparison of India's STRIs with the STRIs of other select countries shows the following:

- US has relatively high STRI values in sectors like Air Transport, Courier Services and Maritime Transport and UK has relatively high STRI values in Air Transport and Accounting. But in most sectors for these two countries, the STRI Values are near or below average STRI of the sector.
- Russia has very high and maximum STRI values in Logistics: Cargo Handling, Logistics: Storage and Warehouse and Rail Freight Transport. It also has relatively high and maximum STRI values in Air Transport.
- South Africa has low STRI values in many sectors which are near or below average STRI. STRI values are relatively high only in sectors like Courier Services and Air Transport.
- Korea has very high and maximum STRI values in Accounting (which is higher than that of India) and Rail Freight Transport (similar to India). It has relatively high STRI values in Air Transport, Legal Services and Courier Services. But in many services, STRIs are at the minimum/below or near the average.
- China has high and maximum STRI values in Courier Services, Broadcasting and Motion Pictures which are even higher than that of India. There are relatively high restrictions even in Air Transport, Insurance, Legal Services, Logistics/Cargo Handling, Maritime Transport and Telecom Services. Out of the 22 sectors, STRI values for China are lower than India in 15 sectors (viz Accounting, Air transport, Architecture, Commercial Banking, Computer, Construction, Distribution, Engineering, Insurance, Legal, Logistics : storage and warehouse, Rail freight transport, Road freight transport, Sound recording, and Telecom). However, China is considered to have many invisible barriers to services particularly related to low exchange rates, IPRs on technology, cross-border data flows, etc.
- Brazil has high and maximum STRI value in Air Transport and near to maximum STRI value in Commercial Banking. In Courier Services and

Broadcasting also it is relatively high. But in most sectors, it is near or below the average.

- Indonesia has very high STRI values in Legal Services. It has high and Maximum or near Maximum STRI values in Distribution Services, Commercial Banking, Maritime Transport, Construction and Telecom. In Air Transport and Insurance also, it is high.
- In terms of Policy Area, restrictions on foreign entry is the major restriction in all countries in most of the sectors followed by restriction to movement of natural persons. In developed countries like the US and UK the contribution of the restrictions to movement of people to STRI is relatively high.

STRIs in different sectors in India

1. Accounting Services (Accountancy and Auditing)

Auditing is subject to heavy regulations in most countries. In fact, all countries in the STRI database regulate the Auditing profession while Accounting is regulated in 25 out of 44 countries. The highest STRI value in the sector is for Korea (1.0) and Turkey (1.0) followed by India (0.88). The lowest STRI value is for Chile (0.081). The high STRI values in Korea, Turkey and India is because of restrictions on foreign entry (Policy Area 1) followed by restrictions to movement

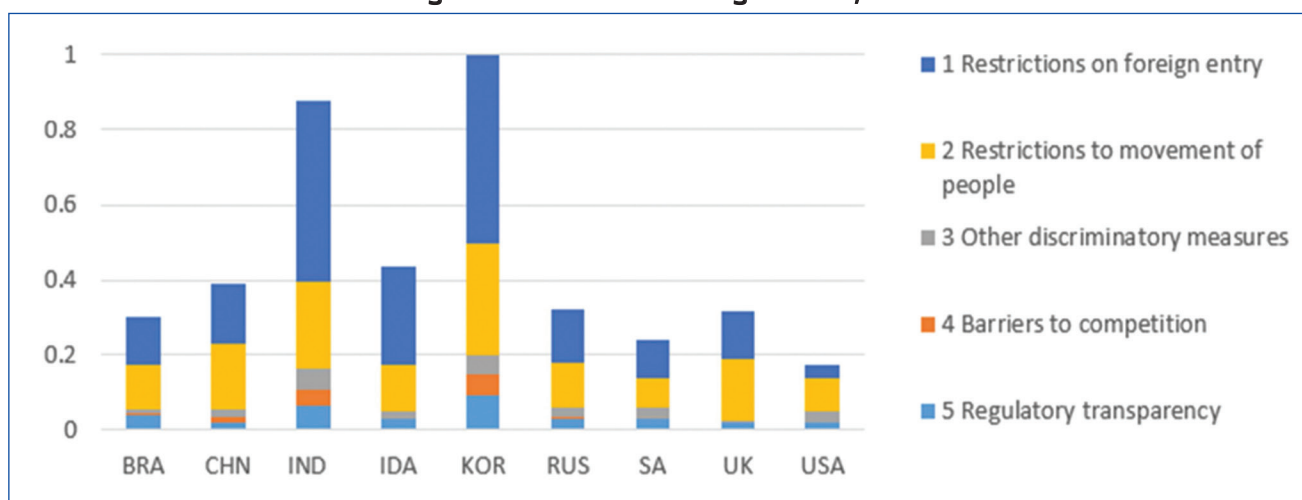
of people (Policy Area 2). India has 32 and 22 restrictive policy measures under these 2 Policy Areas. The low restrictions in Chile, US, New Zealand, Mexico and Japan are because these two Policy Areas have very low STRI values and also there are less number of Restrictive Policy measures under these two Policy Areas.

A Large portion of STRI measures are horizontal in nature with their contribution in Accounting services in India being 60.6% in terms of value and 60.8% in terms of numbers.

India and the Select 9 countries: Comparison

In the Select 9 countries, India and Korea can be classified as more restrictive with Korea having similar and same level of restrictions as India. Indonesia is another country with many restrictions which are also found in India. USA and UK are less restrictive. Among the Select 9 countries, Korea has the highest STRI in Accounting Services closely followed by India (Figure no. 4.10). This is mainly due to Policy Area 1, i.e. restrictions on foreign entry, followed by Policy Area 2 i.e. restrictions to movement of people. USA has the lowest STRI value among the Select 9 countries. In the case of developed countries like the UK and the USA, the Policy Area 2, i.e. restrictions to movement of people is more important than Policy Area 1, i.e. restrictions on foreign entry. However, STRI values as such are low for these two countries in accounting services.

Figure 4.10: STRI-Accounting Services, 2017



Analysis of STRI Restrictions by Major Policy Areas

The two major policy areas with high STRIs in India are Policy Area 1 & 2.

Policy Area 1: Restrictions on Foreign Entry

Under Policy Area 1, India has restrictions in all parameters except cross border data flows and the transfer of personal data. Some of the major restrictions are as follows:

- **Maximum foreign equity share allowed and equity restrictions applying to not licensed individuals or firms: In India**, these two STRI measures are found in both accounting and auditing. Thus, there are totally 4 STRI measures. **The high STRI values under all these 4 parameters is that only locally licensed individuals i.e., Chartered Accountants (CA's) shall become partners and hold equity share in accounting or auditing firms.**

A Chartered accountant can practice accounting or auditing either individually or in partnership with CAs or in partnership with members of such other recognized professions as may be prescribed by ICAI or Government. However, a foreign accountant can become locally licensed CA only on reciprocity basis. Since, the same restriction is given 4 times, the STRI value also gets inflated. The 4 parameters have higher weights among all parameters of 0.046, 0.046, 0.034 and 0.034. Using such high weights and using the same criteria 4 times is not done for other parameters like say restrictions to movement of people.

In comparison, China's Accounting and Auditing are classified in the encouraged category and thus given under 0 restrictions under the STRI measure of maximum equity with just 0.011 STRI Value [i.e., less than 1/3 that of India for equity restrictions applying to non-licensed individuals and firms.

In Indonesia, for Accounting Services there is the restriction that 51% of equity share at the Office of Accounting Service in the form of

limited liability company, shall be owned by an Indonesian. For partnership firm, the number of partners who are foreign citizens shall be no more than 1/5 (one-fifth) of all partners. For Auditing services, the number of foreign partners, shall be no more than 1/5 (one-fifth) of all partners. A limited liability company cannot render Auditing services. To conduct business in Indonesia, foreign licensed public accounting firms have to associate with a local public accounting firm.

In Korea, which is as restrictive as India, Korean licensed Certified Public Accountants (CPAs) and accounting firms that they establish can provide both accounting and auditing services. However, only the foreign certified public accountants whose licenses are issued by a party of FTAs and other treaties can invest in an Accounting firm in Korea within the scope of less than 50% of investment share with a voting right or total amount of capital of the relevant firm. In such case, the upper limit of the amount of investment per foreign certified public accountant shall be less than 10% of investment share with a voting right or total amount of capital of the relevant accounting corporation. However, there is no equity restriction regarding the equity holder's nationality.

USA is the most open among the Select 9 countries in both Accounting and Auditing. The only condition here is that the shareholders of a professional service corporation must be locally-licensed and shareholders of a foreign professional service corporation must be licensed in their jurisdiction.

UK has some conditions. For a firm to be a registered auditor, individuals who have an appropriate qualification, registered auditors, EEA auditors, EEA audit firms or a combination of these must hold at least a majority of the voting rights.

Brazil has a relatively simple system for both Accounting and Auditing, wherein the majority

of the capital of accounting companies must be held by licensed accountants and auditors. **There is a need for India to examine whether the system followed in Brazil could be adopted.**

- **STRI measure on Cross Border M&As:** In India, the restriction under this STRI measure is that a foreign company needs the prior approval of RBI to merge into a company registered under the Companies Act 2013. A Registered Foreign Portfolio Investor (RFPI) may purchase shares or convertible debentures of an Indian company under the FPI scheme subject to some terms and conditions, and the limits and margin requirements prescribed by RBI / SEBI. The Companies Act prohibits any loan/ guarantee to subsidiaries of Indian companies outside India. This provision is likely to affect leveraged buyout by Indian companies outside India. China, Russia and many other countries have restrictions under this policy measure. Only USA, South Africa and Brazil have no restrictions under this policy measure.
- **STRI measures related to Performance requirements and need for commercial presence to provide cross border services (auditing).** There is no performance requirement condition in India and there is no specific requirement that commercial presence is required to provide cross border services of auditing. However, the STRI value is possibly given due to the restrictions on foreign equity. Countries like Brazil, Indonesia and South Africa have such conditions.
- **STRI measures for Auditing relating to Legal form wherein only joint ventures are allowed/ sole proprietorship is prohibited/corporation is prohibited/ partnership is prohibited:** In India, the only condition is that a firm has to be registered with ICAI and can take the legal form of either proprietorship or limited liability partnership. Among the other select 9 countries, mainly Korea has restrictions in these policy measures.
- **Commercial association being prohibited between accountants or auditors and other professionals,** In India, the restriction is that a CA shall not pay or allow or agree to pay or allow, directly or indirectly, any share, commission or brokerage in the fees or profits of his professional business, to any person other than, locally licensed CA, for the purpose of rendering professional services from time to time in or outside India as per Chartered Accountants Act 1949. Among the Select 9 countries, other than Korea, none of the other countries have restrictions in this policy measure.
- **Nationality and Residency for Board of Directors and Managers for Auditing and Accountancy:** In India, nationality is not one of the requirements of membership of ICAI. But they should be licensed CAs only. Partners in partnership firm have to be locally licensed CAs only. If any person has passed any other exam or completed training which is recognized by ICAI is not permanently residing in India then residency condition is imposed. Mainly Korea and Indonesia have restrictions in the policy measure related to Nationality. But regarding residency and need for licensing, other countries have conditions.
- **Acquisition and use of land and real estate by foreigners:** In India, the restrictions are that Branch/Project offices of a foreign entity are permitted to acquire immovable property, other than agricultural land/ farm house/ plantation property by way of purchase for their own use and carry out permitted / incidental activities. However, entities from some countries are not allowed as indicated in Chapter 3. Except USA, UK, China and South Africa all other countries in the select 9 have restrictions under this policy measure. Though China allows transfer of Land use rights, it has to be according to the laws notwithstanding state/collective land ownership.

- **Restrictions on the type of shares or bonds held by foreign investors :** In India, while a person resident outside India can purchase shares or convertible debentures issued by Indian company, there are some conditions regarding this. **Brazil** is very liberal regarding this policy measure with Brazilian law guaranteeing that foreign capital will have the same legal treatment given to national capital on equal terms, and forbids any discrimination.
- **Subsequent transfer of capital and investments:** In India, transfer of capital and investments are subject to pricing guidelines. Many countries including Brazil have restrictions under this policy measure.

Policy Area 2: Restrictions to Movement of People

- **STRI measures regarding Quotas for intra-corporate transferees and Contractual Services Suppliers and Independent Services Suppliers:** In India, regarding intra-corporate transferees there are no specific restrictions though the STRI value is 0.01 which is possibly due to foreign equity restrictions. For the other two types of services suppliers there are no restrictions regarding the above.
- **STRI measures on Labour Market Tests:** In India, an employment visa is needed and employment visa shall not be granted for jobs for which qualified Indians are available. However multiple entry business visas are awarded with each stay limited to 6 months. But only executives can use business visa for attending meetings, monitoring and supervision. For Contractual Services Suppliers and Independent Services Suppliers also, an employment visa is needed. But multiple entry business visa cannot be used to work on contractual basis in India, though it can be used by independent service suppliers to monitor the progress of work, conducting meetings with Indian customers and/or to provide technical guidance.
- **Nationality or citizenship required to practice (Accounting and Auditing):** In India, CAs have to be members of ICAI and obtain a certificate to practice from ICAI. ICAI has many conditions though nationality is not one of them.
- **Prior or permanent residency (Accounting and Auditing):** In India, according to the CA Act, if any person, who has passed any other exam or completed training, which is recognized by the ICAI, is not permanently residing in India, then residency condition is imposed. One of the following criteria fulfils residency requirement: (i) A person has to be in India in a year for a period or periods amounting in all to 182 days or more or (ii) maintains or causes to be maintained for him a dwelling place in India for a period or periods amounting in all to 182 days or more in a year and has been in India for 90 days or more in that year. A CA is allowed to practice both accounting and auditing.
- **Domicile required for license to practice (Accounting and Auditing):** In India, besides the ICAI conditions, if an applicant is not an Indian citizen, Certificate of Indian domicile has to be obtained.
- **Laws or regulations for recognizing qualifications abroad (Accounting and Auditing):** In India, according to CA Act, foreign degree recognition is on reciprocity basis only.
- **Temporary licensing is in place (Accounting and Auditing):** In India, some of the accounting services are not regulated by the CA Act or Companies Act and can be provided on temporary basis.
- **There is an additional restriction for both Auditing and Accounting that foreigners have to completely redo the university degree, exam and compulsorily practice in India,** as foreign degrees are accepted on reciprocity basis only. While only India and Turkey have this condition as

stated by OECD. Other countries have somewhat similar conditions. **In China**, only Chinese citizens can provide accounting and auditing services as certified professional accountants (CPAs). Foreigners cannot qualify for a CPA unless their country grants the same treatment to Chinese citizens on grounds of reciprocity. **In Korea**, the credits needed to take the CPA exam can only be earned at local educational institutions. Credits earned in foreign universities are not recognized with the exception of some foreign institutions with which Korea has an agreement. Hence, foreigners must obtain the necessary credits locally in order to be eligible for the CPA exam. Once qualified as a CPA, there is a mandatory 1 year of apprenticeship training before practicing accounting or auditing services. The conditions in China and Korea are in no way less restrictive than India.

There are some restrictions in other Policy Areas also.

Policy Area 3: Other Discriminatory Measures

In India besides the horizontal restrictions related to public procurement, taxes and subsidies, there are two important policy measures where there are restrictions.

- **The first is on Laws, Regulations or relevant standards – deviating from International standards on auditing:** In India there is no specific reference which confirms Indian auditing standards has adopted International Standards on Auditing (ISAs). Korea also has restrictions in this area.
- **STRI measure on use of foreign firm names being restricted from auditing:** In India, post 1988, for any firm to be registered in India, the firm name must comprise of names or initials of its current partners, members of the ICAI. Names registered prior to 1988 are grandfathered. Korea and South Africa also have restrictions under this policy measure.

Policy Area 4: Barriers to Competition

- **In India** the policy measures are mainly those which are given under horizontal restrictions like appeal against decisions by the regulatory body and redress for firms when business practices restrict competition in a given market. **Only Korea** among the other Select 9 countries has restrictions in the above two policy measures.
- **There are also restrictions related to mandatory minimum or maximum fees** as in India the CA cannot charge fees which are based on a percentage of profits.
- **There are also restrictions on advertising for auditing:** In India, according to guidelines for advertisement for the members in practice, firms/members can only advertise write-up with pre-defined format. The format includes basic information about firm, details of employee and services provided by the firm.

Policy Area 5: Regulatory Transparency

- **In India the restriction in this policy area are mainly those given under horizontal restrictions** related to communicating regulation to the public and the public comment procedure. These are also found mainly in Korea. There are also procedural restrictions related to cost to obtain business visa, time and cost to register a company, number of mandatory procedures, etc.

India's restrictions in Accountancy and Auditing are high. But other countries like Korea also have restrictions. **Korea** is more restrictive than India, under policy area 1 due to restrictions on cross border data flows where fulfilling a combination of conditions is required before transfer is possible as per Personal Information Protection Act 30th September 2011 last modified on 30th March 2017, whereas **in India** a body corporate may transfer sensitive personal data or information to any other body corporate or a person located in any other country that ensures the same level of data

protection that is adhered to by the body corporate as provided for under the Information Technology Rules, 11th April 2011 and Information Technology Act 17th October 2000 amended in 2008 and in force from 5th February 2009. **Another related restriction in Korea** is that transfer of personal data is prohibited as per Personal Information Protection Act September 2011, last modified on 30th March 2017 and Act on Promotion of Information and Communications Network utilization and Information Protection January 1987, last updated on 23 March 2017, **whereas in India** it is not restricted.

In the case of US, under Policy Area 2, though the value of STRI is lower than India, there are 9 restrictions which are indeed important. One restriction relates to Quotas on contractual services suppliers wherein, the H-1B visa category is considered closest to contractual services suppliers with the quota of 65,000 per year as per Immigration and Nationality Act. This restriction has now become more restrictive with many conditions. Another restriction is on quotas of Independent Services Suppliers which is also assumed to fall under H-1B category in all sectors with quota of 65,000 per year. The numerical limitations do not apply to individuals employed at an institution of higher education; individuals employed at a non-profit research organization or government research organization, or individuals who have earned a masters or higher degree from a US higher education institution up to a maximum of 20,000 individuals. **India does not have any specific quota restrictions.** UK also has similar restrictions like USA. The quota restrictions in these countries in fact negates any liberal aspects in other parameters which seems to have been overlooked by OECD. The other restrictions of US in this Policy Area are related to Labour market tests for contractual services suppliers and independent services suppliers wherein H1B visa holders have to be paid at least the prevailing wage for the position and work location; nationality or citizenship required for license to practice auditing as per New

York Education Law 2016, while India does not have this condition; Foreign professionals required to take local exams for accounting and auditing as per New York Education Law 2016, wherein local exams is required in most cases; and Foreign professionals required to practice locally for at least one year in accounting and auditing as per New York Education Law 2016, the intention of which is to have experience satisfactory to the board of regents and in accordance with the commissioner's regulations. **Under policy area 2, Korea** is also more restrictive than India due to restrictions related to Quotas for Contractual Services Suppliers and Independent Services Suppliers as per Immigration Act 1963 updated on 14th March 2017. Accordingly passing Certified Public Accountant (CPA) examination is necessary to be qualified as a CPA or Auditor. In India, CA should be a member of ICAI and no other conditions apply. In Korea, there are also other restrictions to movement of people.

Some of the restrictions in India can be removed or relaxed, which can not only help trade in these services but also make our STRI become less restrictive. Some of the areas for liberalization could include relaxing the criteria and procedures to obtain a license; allowing foreign auditors or accountants to provide services in India not just on a short-term basis through limited licensing, but based on certain criteria. Internal Audit and Concurrent Audit can be considered for liberalization. Financial accounting and Management reports may not be considered for liberalization at present taking into account the regulatory angle.

OECD has stated that India and Turkey are particularly restrictive because of the additional requirement that foreign providers have to completely re-do the university degree, practice and exam locally in order to obtain a license. However, recognition on reciprocal basis is allowed. In countries like China, foreigners cannot qualify to be CPAs unless under reciprocal treatment basis. Another major restriction

in India is that auditing corporations or commercial associations with other professionals are not permitted. Reforms in this area can be thought of if we want to make accounting and auditing a major area for exports. Policies of some countries like Brazil needs to be examined for adoption in India with modifications wherever needed.

2. Air Transport

The highest STRI value in this sector is for Norway (0.571), followed by Russia (0.570), Turkey (0.564), India (0.563) and USA (0.534). Even these are of medium range compared to some other sectors. The lowest STRI value in this sector is in Chile (0.157) followed by Colombia (0.286). In India, the share of horizontal contributions to total STRI of this sector is 66% in value terms and 64% in terms of numbers.

India and the Select 9 countries: Comparison

Among the Select 9 countries, Russia has the highest STRI value in this sector followed by Brazil, India and USA. UK has the lowest STRI values among these countries in this sector, as can be seen in Figure 4.11.

Analysis of STRI Restrictions by Major Policy Areas

The two Policy Areas where the STRI Values are high for India are Policy Areas 1 & 4.

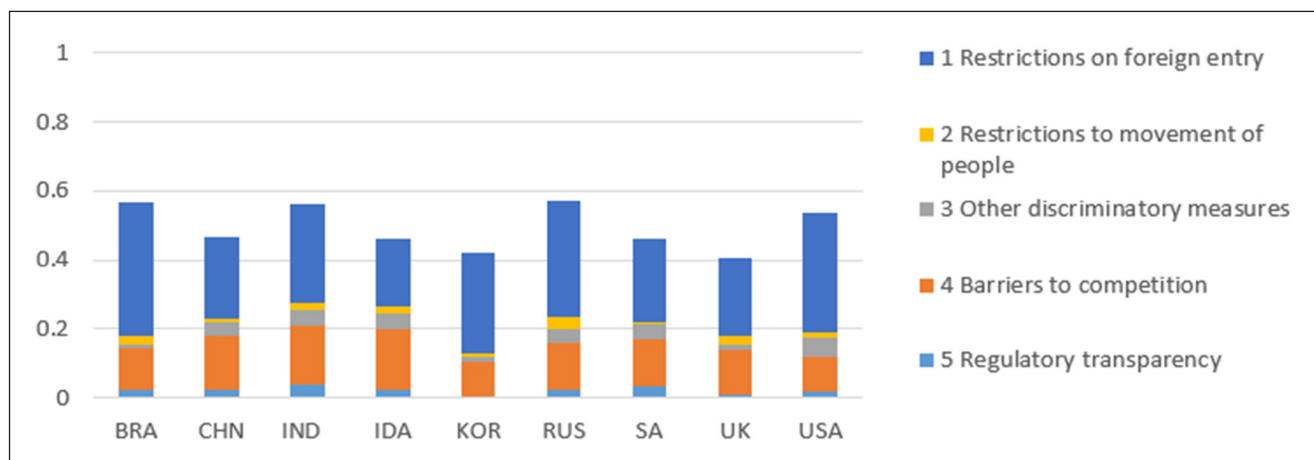
Policy Area 1: Restrictions on Foreign Entry

- While India is in the high STRI list in this sector, unlike the other countries in the Select

9 countries, India does not have restrictions on 4 major measures; maximum foreign equity share allowed for both domestic and international traffic for both cargo and passenger. Thus, there is no foreign equity cap in India. Foreign investment is allowed up to 49% through the automatic route and above that through the government route. Foreign airlines, however, can only own up to 49% of invested capital in Indian companies operating scheduled and non-scheduled flights in India.

- OECD has stated that India has restrictions regarding limits on the proportion of shares that can be acquired by foreign investors in publicly controlled firms both for Cargo & passenger as Air India is fully state-owned and foreigners cannot obtain shares in it. Besides in all cases of disinvestment of CPSEs government must retain at least 51% equity and management control. However, as per Press release dated 10 Jan 2018, it has now been decided to do away with this restriction and allow foreign airlines to invest up to 49% under approval route in Air India subject to the conditions that foreign investments in Air India including that of foreign Airline(s) shall not exceed 49% either directly or indirectly; and substantial ownership and effective control of Air India shall continue to be vested with Indian Nationals.

Figure 4.11: STRI-Air Transport Services, 2017



In China 25% of Public Aviation enterprises can be owned by foreigners, in Korea there are no state-owned air companies and in USA there are no publicly controlled firms in the sector.

- **Citizenship and Residency requirements:**

There are restrictions that majority of Board of directors must be nationals for both domestic and international cargo and passenger as the chairman and at least two-thirds of the Directors must be citizens of India. This ensures substantive and effective control of the company by Indian Nationals. While there is no specific mention that managers must be nationals, the consolidated FDI policy states that Scheduled Operator's Permit can be granted only to a company of which substantial ownership and effective control is vested in Indian nationals. Brazil, Russia and the US also require the majority of Board of Directors to be citizens. Similarly, there are residency requirements for Managers and atleast one of the Board of Directors.

- **There are other horizontal restrictions** related to acquisition and use of land and real estate by foreigners; on the type of shares and bonds held by foreign investors (cargo); on subsequent transfer of capital and investments; restrictions on cross-border mergers and acquisitions; and restrictions on cross-border data flows wherein transfer of data is allowed only to countries which ensure same level of data protection as the data sender in India and transfer is necessary for the performance of a contract or where the relevant person has consented to data transfer.

Policy Area 4: Barriers to Competition

- **Here the major restriction stated by OECD is related to national, state or provincial government control of at least one major firm in the sector (passenger and cargo).** As stated earlier, the restrictions related to Air India has

recently been relaxed. Restrictions are there in China, Russia, South Africa and Indonesia.

- **Minimum Capital requirements** are found both in India and Korea, while China and USA do not have this restriction.
- **Slot allocation restrictions:** In India, slots are granted for both domestic and international traffic (cargo and passenger) on the basis of historic rights if the slots were used by the requesting airline 80% of the time in the previous season. In addition, 50% of the remaining slots must be allocated to new entrants. Slot allocation is also found in Korea, China & US in the case of domestic cargo and passenger, while it is not found in US for International cargo and traffic. Thus, in the other countries also, slot allocation is basically not based on market principles. Since slot selection is considered under many parameters (around 28), this automatically has a higher contribution to STRI scores in this policy area. In USA & Korea slot exchange on a one to one basis is allowed for both domestic (Cargo & Passenger) and International (Cargo & Passenger).
- **Schedules for airport use (cargo and passenger) :** India has no restrictions, with IGIA airport Delhi open round the clock. China's Beijing International Airport has curfews with restrictions on usage.
- **Regarding exemption of air carrier alliances from competition law (Cargo & Passenger), India has no restrictions, but countries like US and UK have.** For example, in US the Department of Transportation (DOT) has authority to grant anti-trust immunity to anti-competitive carrier agreements, if it determines that such agreements "are necessary to meet a serious transportation need" or are necessary to achieve an important public benefit that cannot be achieved by reasonable and less anti-competitive alternatives.

- **Regarding Price regulation on domestic routes (Cargo)** India has no restrictions and the regulatory body may issue directions if it is satisfied that a transport undertaking resorts to predatory pricing (**This positive step of India is not recognized in the indicator**). China has restrictions as prices are approved by the State Council.
- **The notable fact in this sector is price regulation on domestic routes (passenger) where India is considered restrictive as prices for Passenger traffic on certain domestic routes under the UDAN regional connectivity scheme are fixed. A price cap of Rs 2500 applies to half of the seats available on the designated routes. It is really ironical that a social welfare measure of encouraging our transport to backward regions and regions without or with less air connectivity is treated as a restriction by OECD. Thus, India is considered on par with China where there is really a restriction with Prices determined by the State council!**
- **Under contract for Universal Services Obligations (USO) awarded through competitive bidding (cargo and passenger) also, India is considered restrictive for a social welfare measure i.e. All scheduled operators operating in Category I routes are required to deploy at least 10% of such capacity in Category II route and at least 50% capacity in Category III. On the other hand, USA is considered to have no restrictions despite the fact that Essential Air Services (EAS) is meant to maintain a minimum air service for small communities and the Dept. of Transportation subsidizes two to four round trips per day. Besides foreign air carriers may not engage in domestic traffic.**
- **Open sky policy:** India also has an open sky policy for cargo. It has open sky agreement with US among other countries since 2015 and the Government will enter into an “open sky” Air

Service Agreement (ASA) on reciprocal basis with SAARC countries and countries with territory located entirely beyond a 5000KM radius from New Delhi as per National Civil Aviation Policy 2016. Other countries in Select 9 countries also have open sky policy. While Korea has adopted an open skies policy, in Indonesia and China it is based on Bilateral and Multilateral agreements. In UK, it is based on EU-US open skies agreement and in the US a negotiated policy is formulated. In South Africa it is fully liberalized.

There are some restrictions in other Policy Areas also.

Policy Area 2: Restriction to Movement of People

- **There are horizontal restrictions** in India related to employment visas for intra-corporate transferees, contractual and independent services suppliers.

Policy Area 3: Other Discriminatory Measures

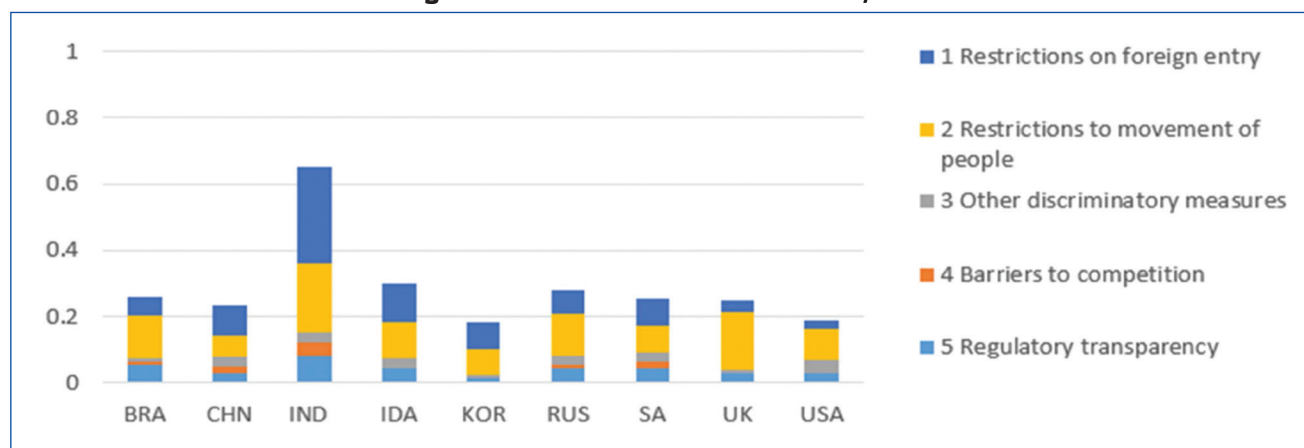
- **The restrictions are mainly the horizontal restrictions related to public procurement.**

Policy Area 5: Regulatory Transparency

- **In India the restriction in this policy area are mainly those given under horizontal restrictions** related to communicating regulation to the public and the public comment procedure. There are also procedural restrictions related to cost to obtain business visa, time and cost to register a company, number of mandatory procedures, etc.

India is fourth highest in STRI value in Air Transport. However, India is less restrictive in this sector than some other select countries, particularly in parameters like restrictions on foreign entry in the form of maximum foreign equity share allowed in Cargo and passenger in both Domestic and International Air Transport in Policy Area 1. As pointed out by OECD, in Air Transport, in general, large countries tend to have a higher STRI in air transport services than smaller countries.

Figure 4.12: STRI-Architecture Services, 2017



In Air Transport sector, liberalization related to disinvestment in Air India and rationalization of slot allocation can help in reducing the STRI scores substantially for India. Meanwhile, there is also a need to modify the OECD methodology where the same or similar parameter appears again and again adding to the STRI value as in the case of slot selection. If some parameters are clubbed and social welfare measures not considered as restrictions then, STRI of India will fall substantially in this sector.

3. Architecture Services

The highest STRI value in this sector is for India [0.651] followed by the Slovak Republic [0.567], France [0.469] and Poland [0.439]. The lowest STRI values are for Latvia followed by Chile, Australia and the US. In this sector the contribution of horizontal restrictions to total STRI of the sector is 69.8% in value terms and 73.5% in terms of numbers.

India and the Select 9 countries: Comparison

Among the Select 9 countries, India has the highest STRI value in this sector distantly followed by Indonesia. Korea has the lowest STRI. As can be seen in the Figure 4.12, among the Select 9 countries, except India, all other countries fall in the low-medium range of STRI values.

Analysis of STRI Restrictions by Major Policy Areas

The highest STRI for India in this sector is mainly due to Restrictions on Foreign Entry (Policy Area 1) and

Restrictions to Movement of People (Policy Area 2).

Policy Area 1: Restrictions on Foreign Entry

- **Maximum Foreign Equity Restrictions:** Architectural services do not fall in permitted or prohibited list of FDI policy of India. However, it was mentioned in Annexure 8 of the Industrial Parks conditions and 100 percent investment is allowed under the automatic route. However as pointed out by the service providers it is subject to domestic laws (Architects Act and Labour Laws) which prohibit access to foreigners and non-residents to be engaged in practice or be employed.
- **One major high weighted restriction in India is related to equity restrictions applying to not licensed individuals or firms** as only locally licensed individuals i.e. architects should become partners and hold equity share in architect firms. According to the Architects Act, no person (individual/company, LLP, etc.) other than an architect or a firm of architects (having only architect partners) shall use the title and style of 'Architect' for practicing the profession of an 'Architect'.

In Brazil, there is the condition that a firm that uses the nominative term "Architecture" in the company's name or trade name, necessarily requires a licensed Architect as partner or manager with decision power. For a firm

exercising architecture and urban planning, their professionals (technical staff) must be registered with the Board of Architecture and Urbanism (CAU).

In South Africa, the Architectural Profession Acts stipulates that only locally licensed architects can register to practice. However, in terms of equity share of architectural services firms, neither the Companies Act nor the Architectural Profession Act has provision to restrict. Thus, not licensed individuals may invest in the firms.

In Russia, there are no specific equity restrictions, however foreign firms or individual architects cannot provide architecture services alone on the territory of Russia and they have to work together with Russian legal entities or citizens.

In the US, Shareholders of a professional service corporation must be locally-licensed. For design professional corporations, non-professionals may own less than 25 percent of the shares and may constitute less than 25 percent of director and officer positions. However, shareholders of a foreign professional service corporation must be licensed in their jurisdiction.

In Korea, certified architects registered in Korea can have equity shares of an architecture services firm in Korea.

China has no such restrictions as it does not have the requirement for the investors to be licensed in China. Thus, it has around one-third the STRI value contribution of India in this parameter.

- **The horizontal restrictions on cross border M&As are also found in this sector for India** as prior approval of RBI is needed to merge into a company registered under the Companies Act 2013. As mentioned in the Horizontal Restrictions chapter, one particular restriction i.e. New Companies Act prohibits any loan/guarantee to subsidiaries of Indian companies outside India.

This provision is likely to affect leveraged buyout by Indian companies outside India. Among the other Select 9 countries, Korea has restrictions but details are not available.

- **In the case of performance requirements and commercial presence** to provide cross border services, though there are no specific requirements in any Architects Act or any other Act, STRI values have been assigned by OECD, possibly due to the cascading effect of only locally licensed individuals being allowed to hold equity shares of architect firms. On the other hand, for this, the STRI value in China is '0' though Chinese registered engineers and architects should constitute at least one fourth of the total registered staff required by its class of aptitude. This requirement can however be fulfilled by foreign service providers getting qualified for Chinese registered engineers and architects.
- **Corporations are prohibited:** In India, corporations are prohibited and only Individual or partnership firms are permitted as per the Architects Act.
- **Regarding the policy measure of commercial association being prohibited between architects and other professionals** also though the Architecture Act, rules and regulations does not have any such specific provisions, OECD has assigned STRI values. However as pointed out by the Service Providers, commercial association is permissible only as consultant to the architects.
- **In India to be in the Board of Directors there are nationality conditions** and locally licensed conditions. There are no residency requirements, though according to Companies Act, every company shall have at least one director who has stayed in India for a total period of not less than, 182 days in the previous calendar year.
- **For Managers, there is no nationality clause** as neither the Architects Act or Rule, nor the Companies Act require the Manager to be a

national. However, all partners of architecture firms have to be nationals in order to practice an architectural profession. **But there is the residency requirement in India for manager as no person shall be eligible for appointment as manager of a company unless he is a resident of India.** Countries like USA, Korea, UK, Russia, South Africa and even China to some extent do not have this condition. However almost all countries have the condition that the manager must be a licensed professional. Though India does not have this condition, all partners in the architecture firm have to be locally licensed architects. Managers are however subject to the Labour laws regarding permission for foreigners to act as managers.

- **Screening:** India does not have any provision of screening in Architects Act or any other Act. Yet this parameter is included under the restrictions in the OECD database. However as pointed out by Service Providers, Labour Laws restrict the grant of employment permission and subsequent visa permission. Countries like US have screening restrictions due to threats to national security.
- **There are also the horizontal restrictions** related to acquisition and use of land and real estate by foreigners; cross border data flows of personal data; the type of shares or bonds held by foreign investors, wherein a person resident outside India can purchase shares or convertible debentures issued by an Indian company upto the extent and subject to some terms and conditions; pricing guidelines for subsequent transfer of capital and investments; etc.

Policy Area 2: Restrictions to Movement of People

- **India does not have quotas for intra-corporate transferees or contractual and independent service suppliers** though the MSME notification has some form of quotas. As per the Public Procurement Policy for Micro and Small Enterprises (MSEs) Order, 2012 effective from 1st

April 2012 every Central Ministry / Department / PSUs shall set an annual target for 20% procurement from MSE Sector products and services rendered by them.

USA actually has restrictions related to quotas for all three types of service suppliers. However, intra-corporate transferees is not classified as restrictions for US despite L-1A and L-1B visa limited to executive (L-1A), managerial (L-1A) or specialized knowledge of the firm's product or process (L-1B).

- **In this sector also there are the horizontal restrictions related to Labor market tests for intra-corporate transferees, contractual services suppliers and independent services suppliers** as employment visa is required which shall not be granted for jobs for which qualified Indians are available. However multiple entry visas are given. But as pointed out by service providers, multiple entry business visa cannot be used as attending meetings, monitoring and supervision of works is strictly providing services and not a business activity. They can provide services only as consultants but not as architects.
- **Similarly, there is the horizontal limitation on duration of stay for intra corporate transferees, contractual and independent services suppliers.** Employment Visa is issued for 2 years (up to 5 years if it is part of bilateral agreement and up to 3 years if applicant is an IT expert). For Intra-Corporate transferees and Independent services suppliers, multi-entry business Visa, up to 5 years is issued with each stay limited to 6 months. Other countries have similar restrictions.
- **India has nationality or citizenship condition for license to practice** which none of the other countries in the Select 9 countries have. Even China does not insist on nationality but only has the principle of reciprocity in registration. This is an area to be considered for liberalization.

However temporary licensing is in place as a licensed architect, in any country outside India, can undertake the function as a consultant or designer in India for a specific project with the prior permission of the Central Government. In China, the principle of reciprocity is observed in registration, but foreign architects are allowed to practice regardless of nationality under Regulations on Administration of Foreign-invested Construction and Engineering Design Enterprises.

- **There are also restrictions regarding recognizing qualifications gained abroad.** Only those degrees are recognized if listed in the schedule of the Act. The list includes both Indian and Foreign universities from which degree is recognized by the Council of Architecture (CoA). But there is no established procedure for individual applications from Indian or Foreign applicants, to recognize degrees earned from other countries. **The other countries in the Select 9 are more liberal than India in this parameter. Even in Korea, foreign architects may be partially exempted from the subjects of Korean Architect qualification examination. India needs to examine whether some streamlining can be done in this regard.**
- **Like many other countries there are restrictions related to Foreign professionals required to take a local exam and also required to practice locally for at least one year.** In the Indian case, practice of architecture profession is limited to a Citizen of India. **However, other countries are more liberal in these 2 parameters with China allowing registration by way of Mutual Recognition Agreements (MRAs) instead of examination, etc. In Korea,** a foreign architect license holder may practice only in the case where he/she provides the architectural service jointly with the founding certified architect of a local architect office. A foreign license holder shall report its foreign license or qualification acquired in

foreign country(ies) to the government. Further if foreign architects have a total of five years or more of practical experience, they do not have to undertake practical training in Korea. **This is another area to be considered for reforms by India.**

- **There is also another major restriction that Foreign providers have to completely re-do the university degree, practice and exam in India.** This is because of the condition that practice of architecture profession is limited to a Citizen of India **This is not found in any of the other countries in the Select 9 and needs a relook.** Even in Korea which is relatively more restrictive than other countries, Foreign architects may be partially exempted from this subject of Korean architect qualification examination.

There are some restrictions in other Policy Areas also.

Policy Area 3: Other Discriminatory Measures

- **There are only horizontal restrictions** related to Public Procurement.

Policy Area 4: Barriers to Competition

- **In this policy area, besides minimum capital requirements and fee setting, there is one important restriction related to advertising in India.** An Architect or Architectural firm shall not advertise professional services or shall not allow the name to be included in advertisement or to be used for publicity purposes. Though there are some exceptions provided in the regulation. Other countries are more liberal in this aspect. Even in South Africa, the only other country in Select 9 to have restrictions, the rule is that only registered architectural professionals have the right to promote his/her service.

Policy Area 5: Regulatory Transparency

- **In India the restrictions in this policy area are mainly those given under horizontal restrictions** related to communicating regulation to the

public and the public comment procedure. There are also procedural restrictions related to cost to obtain business visa, time and cost to register a company, number of mandatory procedures, etc.

Thus, this service sector has many regulations including sector specific regulations. Some specific policy areas in this sector to be considered for reforms include the restriction of locally licensed architects to hold equity in a architecture firm; nationality or citizenship condition for license to practice as an architect in India and which could be relaxed instead of giving just a temporary license for a specific project as a consultant or designer; condition related to recognition of degrees, need to take local exams and completely redo the university degree to practice in India; and the restriction related to advertising.

4. Broadcasting

The countries with highest restrictions in this sector with high STRI values are Colombia (0.698), China (0.678) and Mexico (0.643). The lowest STRI values are for Latvia (0.148), Luxembourg (0.152), Lithuania (0.165), Netherlands (0.167), New Zealand (0.173) and UK (0.195). India is in the medium range (0.434). The major restrictions in this sector are the horizontal restrictions. The contribution of the horizontal restrictions to total STRI in this sector is 90.4% in value terms and 88.9% in terms of numbers.

India and the Select 9 countries: Comparison

Among the Select 9 countries, China has the highest STRI in this sector followed by Brazil and India. UK has the lowest STRI, as can be seen in Figure 4.13.

Analysis of STRI Restrictions by Major Policy Areas

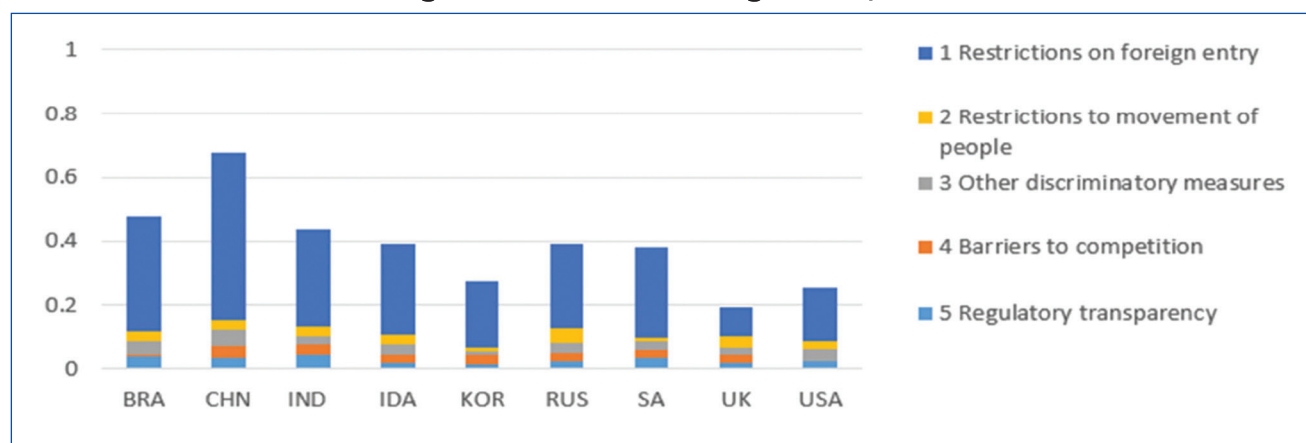
The major Policy Area in India in this sector with relatively high restrictions is the Restrictions on Foreign Entry (Policy Area 1).

Policy Area 1: Restrictions on Foreign Entry

- **Regarding the Maximum foreign equity share allowed in broadcasting (non-terrestrial)**, leaving UK which has no STRI contribution, India is more liberal than the other countries in the Select 9 list with 100% Foreign Investment allowed through automatic route for DTH (Satellite), Digital cable networks and HITS. Foreign investment in uplinking of Non-News and Current Affairs channels is also 100% through the automatic route. However, foreign investment in uplinking of news and current affairs channels is restricted to 49% through Government route.

US is very restrictive in this parameter. In US, no foreign government, foreign citizen or corporation organized under foreign laws may hold a broadcast license directly. Direct foreign ownership in a US corporation holding a broadcast license is limited to 20%. Indirect foreign ownership is limited to 25% unless the

Figure 4.13: STRI-Broadcasting Services, 2017



FCC finds that it would serve the public interest (such authorization has never been granted in practice).

China is most restrictive with Investment in both satellite and cable television being prohibited under the Catalogue of Foreign Investment Industries. Online streaming services for audio and video programmes also fall under this category. However, Investments in the production of television programmes (without broadcasting) is possible subject to a joint venture requirement.

- **Regarding maximum foreign equity share allowed in broadcasting terrestrial, in India,** there is monopoly by DD, a central government owned and controlled public service provider and is not open to private investment. All the other countries except UK in the Select 9 countries have restrictions in this area. **In US,** the conditions are the same as for non-terrestrial broadcasting. **In China,** investments in terrestrial television falls under prohibited sector.
- **Regarding limits to proportion of shares that can be acquired by foreign investors in publicly controlled firms, in India** DD is a public service broadcaster company owned by Prasar Bharti, a state-owned entity. Further in any disinvestment of PSES, Govt. must retain 51% equity and management control. **Other countries in the Select 9 except US and UK have similar restrictions. Strangely for US no STRI value has been assigned by OECD as the Public Broadcasting Service (PBS) is a non-profit corporation and does not issue shares! Similarly, in UK, no STRI values are assigned as BBC and Channel 4 which control BBC Films and Film 4 productions respectively do not have shareholders!**
- **Regarding Board of Directors and Managers, there are the horizontal restrictions** that majority of the Board of Directors should be nationals and at least one of the Board of Directors should be

a resident. There are no residency requirements for TV producers. Managers should be resident citizen only. Residency requirement for majority of Board of Directors is found in all the Select 9 countries except UK.

- **Other restrictions on foreign entry in India** are related to CBFC (Central Board of Film Certification) Certification to screen films.
- **The horizontal restrictions** related to cross border M&As, restrictions on acquisitions and use of land and real estate by foreigners, restrictions on subsequent transfer of capital and investments, cross-border data flow, etc are found in this sector also in India.
- **There is a statutory monopoly on copyrights management** as under the Copyright Act, the central govt shall not ordinarily register more than one copyright society to do business in respect of the same class of works. There are no restrictions in the other countries in the Select 9 countries. **There is a need to see whether this restriction can be relaxed.**

There are some restrictions in some other Policy Areas as well.

Policy Area 2: Restrictions to Movement of People

- **These are mainly the horizontal restrictions** related to employment visa and duration of stay for intra corporate transferees, contractual and independent services suppliers.

Policy Area 3: Other Discriminatory Measures

- **There is only the horizontal restriction** related to Public Procurement.

Policy Area 4: Barriers to Competition

- **Government control of at least one major TV channel. In India,** Prasar Bharati (Broadcasting Corporation of India) is owned by the Government of India. In turn, it owns and controls Doordarshan, the main public broadcaster in the country. Such restrictions are found in other countries also.

In US and UK also, there are publicly owned TV channels but they are nonprofit corporations and so no STRI value is assigned.

- **General competition law does not apply to Public TV channel** with Prasar Bharati in India being exempted from tax since 2012. Such conditions are also found in other countries.
- **There are restrictions on advertising in India**, as advertisements in broadcasting cannot exceed 12 minutes in a clock hour. The time gap between two advertisement sessions cannot be less than 15 minutes. Korea, UK and Brazil also have similar restrictions.

Policy Area 5: Regulatory transparency

- **In India the restriction in this policy area are mainly those given under horizontal restrictions** related to communicating regulation to the public and the public comment procedure. There are also procedural restrictions related to cost to obtain business visa, time and cost to register a company, number of mandatory procedures, etc.

In Broadcasting, with 90% of the restrictions being horizontal restrictions and restrictions to foreign entry being the major restrictions under sector specific restrictions, further liberalization in this sector can take place only by liberalizing the horizontal restrictions and restrictions to foreign entry. One sector specific policy measure which needs to be examined for reforms is regarding the condition of allowing registering only one copyright society to do business with respect to same class of works.

There are also some areas for reforms related to FM Radio which are the following.

- **Removal / Reduction of Minimum Reserve Price for Phase 3 Auctions.** The Government is

currently reviewing the Minimum Reserve prices and policy.

- **Freedom of Airing News / Current Affairs:** There is a strong reluctance on the part of the Government in allowing news and current affairs, other than exact rebroadcast of AIR citing serious security issue. India is perhaps the only free democracy in the world today wherein news on radio is not allowed. Even Nepal and Bangladesh have no such restrictions. TRAI had already recommended in February 2008 that FM should be allowed to source news from all approved sources.
- **Regarding Sports Broadcast:** Currently only local sport events can be covered by private FM. National and international events are barred. This needs to be addressed.
- **Increase of cap on the number of stations from 15 percent of total to 40 percent:** Currently the national cap is 15 percent and the city cap is 40 percent. This policy limits national growth and forces many larger operators to focus on larger metros, ignoring smaller towns. So, there is a need to consider equating the national cap to city caps which is 40 percent.

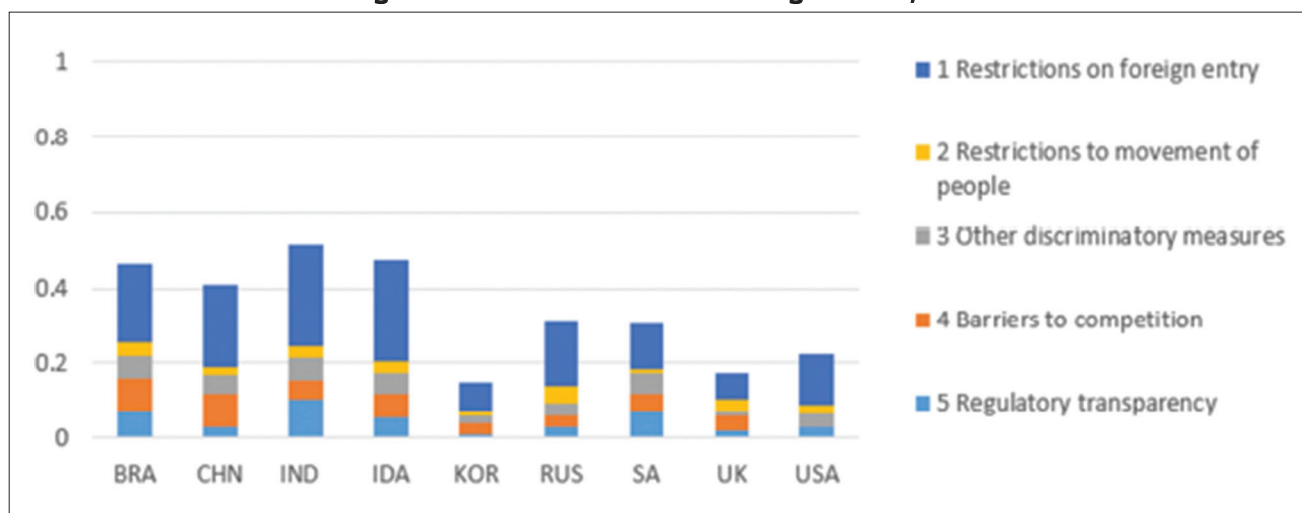
5. Commercial Banking

India has the highest STRI value (0.517) in the sector followed by Indonesia. The lowest STRI value is in Latvia (0.124) followed by Ireland (0.145), Spain (0.146) and Korea (0.148). In India the contribution of horizontal restrictions to total STRI value in this sector is 56.4% in value terms and 58% in terms of numbers.

India and the Select 9 countries: Comparison

Among the Select 9 countries, India has the highest STRI value followed by Indonesia and Brazil. Korea followed by UK have the least restrictions, as can be seen in Figure 4.14.

Figure 4.14: STRI-Commercial Banking Services, 2017



Analysis of STRI Restrictions by Major Policy Areas

The high STRI value in this sector in India is mainly due to restrictions on foreign entry (Policy Area 1) and regulatory transparency (Policy Area 5). The restrictions in India under the important Policy Areas are as follows.

Policy Area 1: Restrictions on Foreign Entry

- **There are restrictions in India related to foreign equity share allowed** as the FDI policy provides for a 74% equity cap with 49% under automatic route and beyond 49% to 74% under the government route for private sector banking investment and 20% equity cap in public banking sector investment under government route. As pointed out by OECD, wholly owned subsidiaries of foreign banks as well as foreign branches are permitted, which implies that in practice the equity limit applies mainly to acquisition of local banks. Only Indonesia has restrictions in this parameter among the other countries in the Select 9 countries. **In China** it is more liberal, as a wholly funded bank can be established by foreign bank or jointly with any other foreign financial institution. The foreign participation in Chinese funded bank is restricted to 20% per single foreign financial firm and 25% for all foreign investors combined.

- **There are also limits to the proportion of shares that can be acquired by foreign investors in publicly controlled firms in India** as Govt. retains 51% equity and management control in all cases of disinvestment in CPSEs in India. Similar restrictions are found in other countries like China, Brazil, Russia and Indonesia. However, in USA, there is no federally owned bank. The Bank of North Dakota is the only state-owned bank and is 100% controlled by the state.
- **As regards legal form of allowing joint ventures**, applications of FDI in Private banks having joint venture / subsidiary in insurance sector may be addressed to RBI for consideration in consultation with IRDA, to ensure that the limit of foreign shareholding applicable for the insurance sector is not being breached.
- **Regarding foreign branches of banks being prohibited**, in India foreign banks will be permitted to either have branches or subsidiaries but not both. So, under both the above STRI contribution is '0' in India.
- **However, regarding restrictions on foreign branches**, India like many other countries has restrictions. Only Korea and UK do not have it among the Select 9 countries. In India the

restrictions are that the foreign banks can have commercial business in India only through a wholly owned subsidiary with some conditions. As pointed out by the OECD, the Reserve Bank of India has policies in place to encourage foreign banks to take the subsidiary rather than the branch route, but with limited success. Foreign banks have preferred branches because subsidiaries would not be able to leverage their parents' balance sheets when making big loans, and foreign subsidiaries face limitations on the number of branches they may open.

- **There are restrictions on the branch network** as the Banking Regulations Act (BRA) requires that authorisation be sought for a branch (including an ATM) to be opened in a new city or region. No specific limit on the number of new branches is stated but there are approval and reporting conditions which need to be fulfilled for expansion. A bank shall open at least 25 per cent of its branches in unbanked rural centres (population up to 9,999 as per the latest census). Foreign banks also are subject to special expansion criteria.
- **Criteria to obtain a license are more stringent for foreign companies in India.** The factors taken into account while considering applications for setting up a wholly-owned subsidiary in India include the economic and political relations with the country of incorporation of the parent bank, and reciprocity with home country of the parent bank. In addition, Wholly Owned Subsidiary (WOS) shall maintain a minimum capital adequacy ratio, on a continuous basis for an initial period of 3 years from the commencement of their operations, at 10 per cent i.e. 1 per cent higher than that required under the phased implementation of Basel III.
- **Regarding Board of Directors,** the restrictions is that for wholly-owned subsidiaries, not less than 50% directors should be Indian nationals/ NRIs/PIOs subject to the condition that one-third of the directors are Indian nationals resident in India. **Thus, there is both nationality and residency clause.** USA and Indonesia have similar restrictions while other countries in the Select 9 do not have it.
- **Nationality and residency conditions for managers.** In India and other countries in Select 9, there is no condition that the manager must be a national. But US has this condition with scope of waiver. However, in India the manager must be resident as in US.
- **As regards screening explicitly to consider economic interest,** there is no restrictions in India as this is not a requirement of the investment process, though a public interest test is undertaken by RBI to determine the policy in relation to advances to be followed by banking companies. But in China there are restrictions.
- **Restrictions are there in India in the case of screening without exclusion of economic interests** as under FDI and FEMA policy, government approval is required for investment beyond 49% and up to 74% for private banks, though there is no specification of national interest test. Restrictions under this parameter are there for most of the Select 9 countries.
- **There are horizontal restrictions related to acquisition of land and real estate by foreigners,** because of restrictions to entities of some countries due to strategic reasons.
- **Regarding conditions on subsequent transfer of capital and investments,** there are pricing guidelines in India.
- **Regarding restrictions on cross-border M&As,** the STRI value is only due to pricing guidelines, while FDI policy has no restrictions. A review of extent of penetration of Foreign Investment in Indian banks is needed before M&As. China, Brazil, Russia also have restrictions under this Category.

- Like many other countries in the Select 9, **there are restrictions in India related to quotas or economic needs tests applied in the allocation of licenses** as restrictions would be placed on further entry of new wholly owned subsidiaries and foreign banks when the capital reserves of foreign banks in India exceed 20% of the capital and reserves of the banking system. As regards foreign banks in branch mode of presence, licenses for new foreign banks may be denied when the maximum share of assets in India both on and off-balance sheet of the banking system exceeds 15%. There are also some other routine conditions.
- **There are also restrictions on the branch network** as authorization is needed including for ATM, though no specific limit on the number of new branches is stated. Foreign banks also are subject to special expansion criteria. Korea, South Africa and Indonesia have restrictions under this category.
- **For reserving some banking services for domestic suppliers**, unlike China, there are no restrictions in India.
- **In India, commercial presence is required for deposit taking, lending and payment services** as to get a banking license, a private company needs to be owned and operated by a resident of India. It is only after 5 years of operation that a bank can be fully owned by a foreign entity. This indicates the necessity of some sort of commercial presence in India to operate. These types of restrictions are found in almost all the Select 9 countries.
- **In India as in many other select countries there are limitations on cross-border money transfers by customers.**
- **There are restrictions on internet banking in India** as banks have to put in place a system of document-based registration with mandatory physical presence of their customers, before commencing mobile banking service. Except Indonesia no other country in Select 9 has similar conditions.
- **There is also a horizontal restriction regarding cross-border data flows** wherein in India, personal data can only be transferred to another country that ensures the same level of data protection as the data sender in India and the transfer is necessary for the performance of a contract or where the relevant person has consented to data transfer.
- **As in other countries, there are other restrictions also in India** with one of the conditions of licenses for new banks as per February 2013 guidelines is that the aggregate non-resident shareholding from FDI, NRIs and FIIs in the new private sector banks shall not exceed 49% of the paid-up voting equity capital for the first 5 years from the date of licensing of the bank. No non-resident shareholder, directly or indirectly, individually or in groups, or through subsidiary, associate or joint venture will be permitted to hold 5% or more of the paid-up voting equity capital of the bank for a period of 5 years from the date of commencement of business of the bank. After 5 years, the general 74% limit will apply.

Policy Area 5: Regulatory Transparency

- **There are the horizontal restrictions** related to legal obligation to communicate regulations to the public; adequate public comment procedure; and procedural issues related to cost and number of documents to obtain visa, time and cost to register a company, etc.

There are some sector specific restrictions like the following:

- **Licenses allocated according to publicly available criteria:** The list of criteria taken to grant a license represent only a minimum and is not an exhaustive list.

- **Time to resolve insolvency** in India of around 4.3 years.
- There are also STRI values under policy measure informing reasons for denial of license and time allowed for decisions on applications by regulators.

There are some restrictions in other Policy Areas also.

Policy Area 2: Restriction to Movement of People

- **There are some horizontal restrictions** related to employment visa and duration of stay for intra-corporate transferees, contractual and individual services providers.

Policy Area 3: Other Discriminatory Measures

Besides the horizontal measures related to public procurement, there are some sector specific measures as follows.

- **Deviation from International standards accounting rules (IFRS):** India has not adopted the IFRS Standards. However, the 2015 Indian Accounting Standards Rules (Ind AS) is based on and substantially converged with the IFRS Standards. However, section 5 of the Ind AS Rules explicitly excludes banking (and insurance) companies from applying these standards, and instead they are required to follow the standards prescribed by the Reserve Bank of India. The RBI announced plans to apply the Ind AS for these institutions from "2018-2019 onwards".
- **Restrictions on extending loans or taking deposits in foreign currency:** The general rule is that no person resident in India shall borrow or lend in foreign exchange from or to a person resident in or outside India unless authorized by the Regulations. Regulation 4 imposes conditions and requirements for becoming an authorized entity for such operations.
- **Restrictions on banking to non-residents for domestically licensed banks:** No person resident in India shall borrow in rupees from, or lend in rupees to, a person resident outside India.
- **Restrictions on raising capital domestically for foreign banks:** No branch, office or agency in India of a person resident outside India shall transfer or issue any security or foreign security in India unless it is provided in FEMA or allowed by RBI.

Policy Area 4: Barriers to Competition

- **Directed Credit schemes:** 40 percent of Adjusted Net Bank Credit (ANBC) or credit equivalent amount of Off-Balance Sheet Exposure, whichever is higher, must be allocated to the priority sector, including 18 percent to agriculture. There are more specific targets by sector. Priority sector lending is to meet important social needs and cannot be considered as restrictive.
- **Interest rates on deposits are regulated in India** with interest rates ceilings on Foreign Currency Non-Repatriable account (FCNR) deposits. China, Brazil and Indonesia have similar restrictions.
- **Regulation of early repayment conditions and fees:** In India there is no general rule on early repayment. Many banks allow it, but charge early repayment penalties up to 2-3% of the principal amount outstanding. Prepayment penalty may vary according to the reasons and source of funds. China, Korea and Indonesia have similar restrictions.
- **Government control :** OECD has stated that 83% of Indian banks are government controlled with SBI being the largest. Though public-sector banks currently dominate the banking industry, numerous private and foreign banks exist. Several public-sector banks are being restructured, and in some cases the government

either has already reduced or is in the process of reducing its ownership. At present, in terms of the market share, the state-owned banks account for more than 72%, private banks handle 16%, foreign banks account for more than 7%, and old-generation private lenders control 5% of the market.

- **Government has discretionary control over funding of the supervisory agency in India** with the RBI not having an independent revenue stream from outside the government. China, Korea and Brazil have similar restrictions. This restriction is not found **in UK**, with the FCA and PRA financed by fees levied on the companies they regulate. **In USA**, the OCC is financed by a fee it collects on banks. The Federal Reserve's income comes primarily from the interest on government securities that it has acquired through open market operations.

Thus, there are many restrictions in Banking sector. While reforms are needed in this sector, given the experience of subprime crisis in the recent past, careful analysis is needed while relaxing restrictions in this sector.

Some reforms in this sector could be as follows:

- **Regarding restrictions in India relating to Foreign Equity share allowed**, given the fact that the performance of private sector banks is better than public sector banks with PSBs contributing 86.14% of the total NPAs of SCBs in 2017-18; and also the fact that the public sector banks are being strengthened by mergers, there is a need to see whether the full 74% foreign investment by the private sector banks can be through the automatic route. However, a careful examination is required as banking is also a socio-economic activity in India.
- **Regarding branch network**, in order to promote e-payments, number of ATMs in unbanked and

rural areas can be increased and bank-wise areas needs to be adopted for area of operation.

- **In case of commercial presence for deposit taking and payment services**, there is the condition that only after 5 years of operation a bank can be fully owned by a foreign entity. This can be reduced to, say, 3 years.
- **Regarding screening** of investment, public interest test must be mandatorily undertaken by Reserve Bank of India keeping in view the larger economic benefits for the development of the country. At present it is done by the RBI, but is not a requirement.
- **Regarding duration of stay for contractual and independent services suppliers**, employment visa can be increased from the present 2 years to 3 years as in the case for IT experts.
- **Regarding the supervisor having authority over licensing and enforcement of prudential measures**, RBI should continue to have full autonomy in this respect.

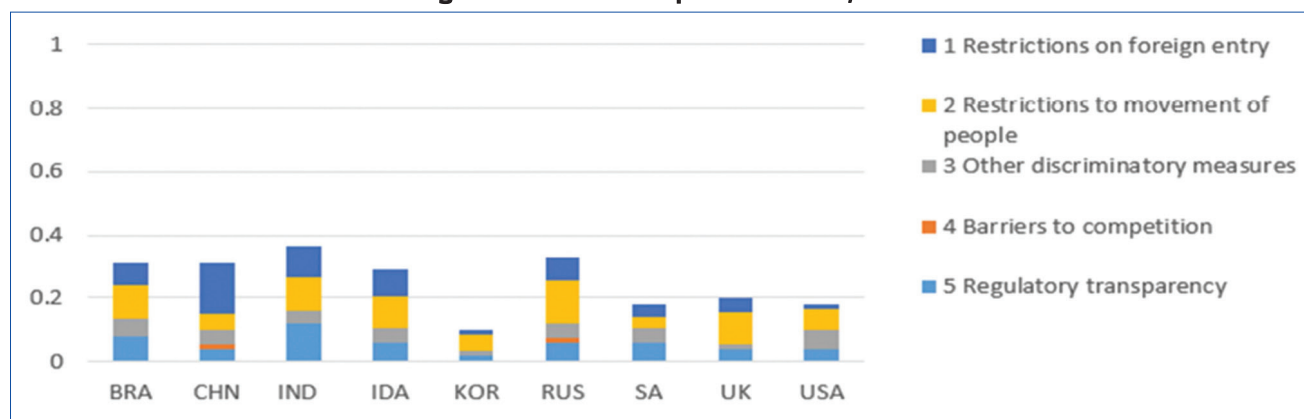
6. Computer Services

The highest STRI Value in this sector is in Iceland [0.462] followed by India [0.364], Switzerland [0.350], Russia [0.328], Israel [0.321], Belgium [0.318] and China [0.309]. The lowest STRI Value is in Korea [0.100] followed by Latvia [0.114] and Chile [0.139]. In Computer Services, horizontal restrictions contribute almost 100% both in terms of value and numbers.

India and the Select 9 Countries: Comparison

Among the Select 9 countries, India has the highest STRI score followed by Russia and Indonesia. Korea has the lowest. While India has few restrictions, countries like USA and UK have fewer restrictions with the STRI value of two developed countries, US [0.180] and UK [0.200] being lower than that of India [Figure 4.15].

Figure 4.15: STRI-Computer Services, 2017



Analysis of STRI Restrictions by Major Policy Areas

STRI Values are relatively low in India compared to other sectors and the major components contributing to India's STRI are Regulatory Transparency [Policy Area 5], Restrictions to Movement of People [Policy Area 2] and Restrictions on Foreign Entry [Policy Area 1].

Policy Area 5: Regulatory Transparency

- **Horizontal restriction of legal obligation to communicate regulations to public within a reasonable time prior to entry into force.** In India, this restriction is because Acts of Parliament are published in the Gazette but there is no minimum statutory time period between publication and entry into force. A new Act can enter into force either on the date of assent by the President to the Bill creating the Act (before publication), a specific date mentioned in the Act itself or determined by the legislator. This is not really a restriction as there is complete clarity in this regard. However, it can also be easily rectified by India as this is only a procedural issue and not really a restriction. Other countries except Russia have STRI Values of '0' just because of definite procedures of publication of bill.
- **Regarding the horizontal policy measure of adequate public comment procedure open to interested persons including foreign suppliers,** India has no obligations to hold consultations with all stakeholders, though the proposed

legislation should be published. The degree of participation and mode of consultation is also not specified if the legislator decides to conduct the consultation. Other than Russia all other countries have no STRI Value under this parameter. In this context, it can be stated that the process laid down for the Pre-legislative Consultation Policy, explicitly states that the draft legislation should be placed in the public domain for a minimum period of 30 days and feedback / comments from the public and other stakeholders be obtained. The aspect quoted in the STRI matrix is an additional requirement wherein the Ministry, in addition to placing the proposal in public domain may also hold consultations with all stakeholders. It is for this additional consultation that the Ministry can determine the degree of participation and mode of consultation. Further, there is no restriction stated that feedback / comments from foreign suppliers cannot be accepted. This is not a restriction but only a procedural issue and can be easily rectified.

- **Regarding the horizontal policy measure of cost to obtain a business visa in US \$ terms,** visa to India is required for most country nationals with the fees for a US citizen for multiple entry visa being US \$167.70 etc., for casual business visit. Fees are in four slabs of zero, US \$25, US \$48 and US \$60 dependent on nationality (based on

reciprocity) plus a bank fee of 2.5% of visa fee. US, UK, Brazil also have this restriction.

- **There are also other horizontal procedural issues** termed as restrictive policy measures like number of working days to complete all mandatory procedures, total costs and number of mandatory procedures to register a company.

Policy Area 2: Restrictions to Movement of People

- **India does not have any restrictions related to Quotas on intra-corporate transferees, contractual service suppliers and independent services suppliers.** US and UK have restrictions on the contractual service suppliers and independent service suppliers, while Russia has on all three types.
- **In the case of labour market tests,** India also has restrictions like an employment visa is required and it will not be granted for jobs for which qualified Indians are available. Multiple entry visas are awarded. However, this provision cannot be used to work on contractual basis in India. This restriction would normally not apply to the computer services industry. However, in the unlikely event of Blue-collar workers being brought in from overseas on contract basis (as happened in Odisha, when Chinese workers were brought in), the requirements may come into play. Leaving Korea, all other countries in the Select 9 have restrictions on almost all the three types of service suppliers. Employment visa is a universal requirement wherein any foreign national seeking employment outside his own country of residence, requires an employment visa, including all the OECD countries. India has been scored as "1" (being restrictive), while the USA has been scored as "0" (being open), whereas the employment restrictions for foreigners seeking to work in the USA (through H1B visas) is extremely restrictive and also carries an annual limit for grant of such visas to all foreign

nationals, irrespective of country of origin. The H1B visa requirement is also applicable to intra-corporate transferees. Also, India does not have any process by which an evaluation can be conducted to assess availability of local talent for a specific job role. Further, in the case of computer services, there is no requirement to prove or demonstrate that qualified Indians are not available. This could apply to some other sectors but not for the computer services sector.

- **Limitations on duration of stay for independent and contractual services suppliers and intra-corporate transferees:** In India, the employment visa is for 2 years (up to 5 years as part of a bilateral agreement, upto 3 years if applicant is an IT expert). However, multiple entry business visa, up to 5 years is awarded with each stay limited to 6 months for intra-corporate transferees and independent services suppliers. **Korea, Brazil and Indonesia** also have such restrictions. Despite the visa restrictions in countries like US, STRI Value is '0' under these indicators for them. Though duration of visas is initially for 3 years, it can go upto 6 years. This is a classification issue making India's STRI for computer services more restrictive than that of US.

Policy Area 1: Restrictions on Foreign Entry

These are mainly the horizontal restrictions

- **Regarding foreign equity restriction,** foreign investment is freely permitted under the automatic route. So, there is no restriction.
- **For the limits of shares foreign investors can acquire in publicly controlled firms,** there is no STRI as there is only the condition that Government must retain 51% equity and management control in all cases of disinvestment in central public sector enterprises. Infact, the computer services entities that are controlled by the Government are in the nature of security related entities like CERT - IN, etc.

- **Restriction related to cross-border M&As** as prior approval of RBI needed and New Companies Act prohibits any loan/guarantee to subsidiaries of Indian companies outside India. Industry sources have informed that certain cross border mergers do not require RBI approval if prescribed conditions are fulfilled. There is also no prohibition on loan/ guarantee to subsidiaries of Indian companies outside India but are subject to some conditions. However, **RBI approval process needs to be accelerated.**
- **Legal form: other restrictions in India:** Only a natural person who is an Indian citizen and resident in India shall be eligible to incorporate a one-person company. This clause is unlikely to be availed by companies in the computer services segment. These are usually for professional services etc. which are set up by professionals and as an entity, provide an alternative to a Proprietorship firm, albeit with a limited liability.
- **Horizontal Restrictions related to cross-border data flows in India** are there because personal data transfer is allowed only to another country ensuring same level of data protection as sender in India and where data transfer is necessary for the performance of a contract or where the relevant person has consented to transfer. However, in the case of USA the matrix states that there are no restrictions in flow of data. This is true only in case of data flow to the EU, with which there is a Safe Harbour Agreement. For all other countries, there are restrictions in flow of data. The step being taken by India to insist that all data must reside on servers located in India is a good decision. While this may be viewed as restrictive, it is a pattern that most developed countries follow. There is also the possibility of India facing similar barriers in foreign markets.
- **Horizontal condition of residency** for Managers and atleast one of the Board of Directors. The condition needs to be satisfied during the financial year. However, it would be better if the condition is evaluated on the basis of preceding financial year as one can anticipate the residential status at the end of the financial year.
- **Horizontal restriction on the type of shares or bonds held by foreign investors** which is subject to certain terms and conditions.
- **Restrictions related to acquisition of land and real estate by foreigners:** This is due to restrictions for entities from Pakistan, Bangladesh, Sri Lanka, Afghanistan, Iran, Bhutan or China; and foreign entities not being allowed to acquire immovable property other than agricultural land/farm house/ plantation property by way of purchase for their own use and to carry on permitted incidental activities. This restriction is not likely to have any impact on this segment as a computer services unit is unlikely to be set up in agricultural land or a plantation.
- **Restrictions related to subsequent transfer of capital and investments:** There are pricing guidelines and the OECD database indicates limits on the rate of dividend on preference shares or converted preference shares which should not exceed 300 basis points over PLR of SBI. However, industry sources have indicated that there is no limit on the rate of dividend under foreign exchange regulations.

There are restrictions in other Policy Areas as well.

Policy Area 3: Other Discriminatory Measures

- **In the case of foreign suppliers being treated less favourably regarding taxes and subsidies** there is no STRI score as taxation is on a non-discriminatory basis.
- **Regarding explicit preference for local suppliers in public procurement,** as per OECD, the STRI score is due to rule 153 of General Financial Rules [GFR].

However, this is applicable basically to Khadi / handloom and MSME sectors and may not be relevant for computer services. The preferential treatment which might impact the procurement process could exist in other segments, but not in this sector.

Policy Area 4: Barriers to Competition

- In all the 8 parameters considered in this policy area, India has no STRI value and hence no restrictions.

Restrictions are few in this sector in India, despite India being on the top of STRI restrictions for this sector. This is evidenced by the fact that businesses from across the world make a beeline to set up their operations in India. **Since almost all the restrictions are horizontal restrictions, further liberalization of the sector can be possible only by addressing any relevant restrictions in horizontal restrictions area.**

Generally speaking, all aspects in computer services can be liberalised, excluding sensitive areas like security (CERT-IN, etc.), entities handling and processing direct benefits transfer, entities holding biometric data of citizens etc.

The step being taken by India to insist that all data must reside on servers located in India is a good decision. While this may be viewed as restrictive, it is a pattern that most developed countries follow. There is also the possibility of India facing similar barriers in foreign markets.

In the domain of computer services, India is significantly less restrictive than other countries. Some other aspects that can be considered for liberalising or enhancing the Ease of Doing Business could include:

- Permitting the entire Board of Directors for newly incorporated companies to be non-residents for a finite period initially, say 12 months. Upon completion of this time window, the entity

should comply with the requirement of at least one director being a resident.

- Easing the acquisition of land by entities setting up operations in the computer services segment, while excluding the currently identified 7 countries.
- Explore the possibility of fast-tracking approvals for completing mandatory processes for setting up a company, especially in the computer services sphere.

There is also a need to address the issues of taxation for start-ups which is resulting in these entities registering themselves in other countries which offer a favourable treatment. For example, the differential treatment on capital gains from unlisted shares between residents and non-residents.

There is also a need for rationalization of classification of parameters used by OECD particularly for Computer Services. Specially in regard to computer services, there are several STRI's that are ambiguous and / or their impact in terms of restrictions is not evident. For example, while it is stated that Visa Fees are determined on the basis of reciprocity, an absolute value for Visa Fees is also given and an evaluation is done against that absolute value. Also, for the IT industry (which includes computer services) normally multiple entry Business Visas are granted for 36 months, while for other sectors, they may be restricted to 12 months. For India, a generalisation has been taken at 12 months, and scored as "Restrictive" (scored "1") whereas for USA, which also issues business Visas initially for 36 months, extendable upto 6 years, it has been scored as "Open" (scored as "0").

Thus, there is a need to streamline the evaluation system of OECD by making it less subjective (see Box 1). Thus, while OECD has developed a good database, it's method of weighting and calculating STRI value is a little bit skewed failing to differentiate between

the difference in the quality of restrictions. Adequate care is not taken in accounting, for example, non-tariff trade barriers like mandating a minimum salary level (as UK and USA do for the IT industry); the Immigration Skills Charge (introduced recently by UK); the Data Protection and Privacy Rules in EU; and the complete lack of progress with regard to the Indo-US Totalisation treaty under which India continues to pay billions of dollars to the US, without any benefit for its citizens who are deputed to work in the US on H1B visas, etc.

Recently to provide clarity to FDI policy on e-commerce sector Government has issued a press release on 26 Dec 2018 making some changes in the policy which will be effective from 1st February 2019. As per the press release, FDI in E-commerce activities is allowed 100 % under Automatic route subject to the provisions that, e-commerce entities would engage only in Business to Business (B2B) e-commerce and not in Business to Consumer (B2C) e-commerce; and 100% FDI under automatic route is permitted in marketplace model of e-commerce and not in inventory-based model of e-commerce. Besides there are other conditions like the following. Marketplace e-commerce entity will be permitted to

enter into transactions with sellers registered on its platform on B2B basis. E-commerce entity providing a marketplace will not exercise ownership or control over the inventory i.e. goods purported to be sold. An entity having equity participation by e-commerce marketplace entity or its group companies, or having control on its inventory by e-commerce marketplace entity or its group companies, will not be permitted to sell its products on the platform run by such marketplace entity. E-commerce entities providing marketplace will not directly or indirectly influence the sale price of goods or services and shall maintain level playing field. Services should be provided by e-commerce marketplace entity or other entities in which e-commerce marketplace entity has direct or indirect equity participation or common control, to vendors on the platform at arm's length and in a fair and non-discriminatory manner. For the purposes of this clause, provision of services to any vendor on such terms which are not made available to other vendors in similar circumstances will be deemed unfair and discriminatory. E-commerce marketplace entity will not mandate any seller to sell any product exclusively on its platform only.

Box 1: Illustrative example of STRI: Realistic Scoring

In this Box an attempt has been made to give a realistic STRI scoring for Computer Services. The justification for changing the scores and giving realistic scores using the OECDs STRI simulator are given in Table No. 4.1 below the box.

STRI Indicator	Sub-indicator evaluated	Original evaluation of Sub-indicator			Recommended evaluation of Sub-indicator		
		Scored as Restricted	Scored as Open	Aggregate value for the STRI indicator	Scored as Restricted	Scored as Open	Aggregate value for the STRI indicator
Restrictions on Foreign Entry	25	7	18	0.100	4	21	0.043
Restrictions to Movement of People	12	6	6	0.103	2	10	0.034
Other Discriminatory Measures	6	3	3	0.044	0	6	0.000
Barriers to Competition	8	0	8	0.000	0	8	0.000
Regulatory Transparency	10	6	4	0.117	6	6	0.078
Total Score				0.364			0.155

Source: Based on inputs from Raju Bhatnagar.

Inferences:

In the current assessment India is ranked 43 out of 44, making it extremely unattractive as far as the computer services segment is concerned. This goes against the ground reality where India is viewed as the most preferred destination.

A review of the scores, as indicated above, would bring India's score to 0.155, placing it at the 6th rank, tied with Australia and behind, Korea (0.10), Latvia (0.114), Chile (0.139), France (0.162) and Ireland (0.165). However, no attempt has been made to change the scores of other countries and OECDs STRI values have been used for them for comparison.

Table No.4.1 : Justification for changing the STRI Scores

Policy Area	Policy Code	Policy Measure	Reason of OECD	Our Observations	Conclusions and Recommendations
1. Restrictions on Foreign Entry	1.2.8	Legal form: other restrictions:	Only a natural person, who is an Indian citizen and Resident in India shall be eligible to incorporate a One Person Company.	In this sector, there is no scope for a One Person Company to establish itself. These are usually for other services like professional services which are set up by professionals and as an entity, provide an alternative to a Proprietorship firm, albeit with a limited liability.	Since this is not relevant to the computer services sector, the scoring should be reduced from "1" to "0".
	1.4.6	Managers must be resident:	Only a person Resident in India can be appointed as a Managing Director or a Whole-Time Director.	However, the Companies Act provides complete exemption from this restriction if the unit is set-up in a notified SEZ. In this sector, there are considerable incentives (duty free capital goods / equipment imports; exemption from select local taxes, etc.), therefore it is very likely that entities in computer services will be set up in SEZs only.	So, this "restriction" is of little relevance to the computer services sector and the scoring should be reduced from "1" to "0"

Table No.4.1 : Justification for changing the STRI Scores (Continued)

Policy Area	Policy Code	Policy Measure	Reason of OECD	Our Observations	Conclusions and Recommendations
	1.71	Acquisition and use of land and real estate by foreigners is restricted	The restriction is in two categories viz., (i) Acquisition of immovable property, other than agricultural land / farm house / plantation property (ii) Restrictions in case real estate is intended to be acquired by entities incorporated in entities from Pakistan, Bangladesh, Sri Lanka, Afghanistan, Iran, Bhutan or China.	(i) While the restriction has been highlighted, it is inconceivable that a computer services unit would be set up in agricultural land or a plantation. This restriction is not likely to have any impact on this segment and hence this score should be changed to "0" from the current "1" (ii) In most cases (and not just for these countries) entities setting up operations in India in computer services sector would not acquire land or real estate and would operate out of tenanted premises.	There could be a case for reducing this score also to "0" from "1". Even if it is argued that there is a restriction in the books of statute, factoring in the ground realities, the scoring should be '0' or the weightage should be the lowest.
	1.20.3	Cross-border data flows: transfer is possible only to countries with substantially similar privacy protection laws or consent by government authority	For India cross border data flow is permitted to another country which ensures the same level of data protection as the data sender in India and the transfer is necessary for the performance of a contract or where the relevant person has consented to data transfer.	However, in the case of USA, the matrix states that there are no restrictions in flow of data. This is true only in case of data flow to the EU, with which there is a Safe Harbour Agreement. For all other countries, there are restrictions in flow of data. The step being taken by India to insist that all data must reside on servers located in India is a good decision. While this may be viewed as restrictive, it is a pattern that most developed countries follow.	Given that the USA type of approach is scored at "0", there is justification to reduce India's score from "1" to "0".
2. Restrictions to movement of people	2.21	Labour market tests: intra-corporate transferees	An employment visa is required for intra-corporate transferees and that employment visa shall not be granted for jobs for which qualified Indians are available.	This is a universal requirement wherein any foreign national seeking employment outside his own country of residence / citizenship requires an employment visa, including in all the OECD countries. India has been scored as "1" (being restrictive), while the USA has been scored as "0" (being open), whereas the employment restrictions for foreigners seeking to work in the USA (through H1B visas) is extremely restrictive and also carries an annual limit for grant of such visas to all foreign nationals, irrespective of country of origin. The H1B visa requirement is also applicable to intra-corporate transferees. If the USA can be scored as Open i.e., "0", there is a strong case for India to be scored "0" as well. Also, India does not have any process by which an evaluation can be conducted to assess availability of local talent for a specific job role. There is no such requirement needed to be fulfilled while seeking an employment visa. Further, in the case of computer services, there is no requirement to prove or demonstrate that qualified Indians are not available. This could apply to some other sectors but not for the computer services sector.	So, this "restriction" has no relevance to the computer services sector and the scoring should be reduced from "1" to "0".

Table No.4.1 : Justification for changing the STRI Scores (Continued)

Policy Area	Policy Code	Policy Measure	Reason of OECD	Our Observations	Conclusions and Recommendations
	2.2.2	Labour market tests: contractual services suppliers	An employment visa is required for contractual services suppliers and that employment visa shall not be granted for jobs for which qualified Indians are available.	This is a universal requirement wherein any foreign national seeking employment outside his own country of residence / citizenship requires an employment visa, including in all the OECD countries. Also, India does not have any process by which an evaluation can be conducted to assess availability of local talent for a specific job role. There seems to be no such requirement needed to be fulfilled while seeking an employment visa.	So, this "restriction" has no relevance to the computer services sector and the scoring should be reduced from "1" to "0".
	2.2.3	Labour market tests: independent services suppliers	An employment visa is required for independent services suppliers and that employment visa shall not be granted for jobs for which qualified Indians are available.	This is a universal requirement wherein any foreign national seeking employment outside his own country of residence / citizenship requires an employment visa, including in all the OECD countries. Also, India does not have any process by which an evaluation can be conducted to assess availability of local talent for a specific job role. There seems to be, no such requirement needing to be fulfilled while seeking an employment visa.	So, this "restriction" has no relevance to the computer services sector and the scoring should be reduced from "1" to "0".
	2.3.1	Limitation on duration of stay for intra-corporate transferees (months)	An employment visa is needed. Visa is normally issued for two years (up to five if it is part of a bilateral agreement or up to three years if applicant is an IT expert).	For the computer services sector, employment visas are issued for 3 years (since these are all issued for the IT sector). It is observed that in the case of USA, employment visas are also issued for a period of 36 months for computer services though it is extendable upto 6 years. However, under this indicator, India has been scored as "1" (being restrictive), while the USA has been scored as "0" (being open), while the visa durations are identical.	So, India ought to be scored at par with the USA i.e., be scored at "0". The scoring should be reduced from "1" to "0".
3. Other Discriminatory measures	3.2.1	Public procurement: Explicit preferences for local suppliers	The STRI Matrix draws reference to Ministry of Finance, Govt. of India [General Financial Rules, 2017, Rule 153] and The Constitution of India [Article 14] It further states that Rule 153 of the General Financial Rules (2017) provides that "[t]he Central Government may, by notification, provide for mandatory procurement of any goods or services from any category of bidders, or provide for preference to bidders on the grounds of promotion of locally manufactured goods or locally provided services."	Article 14 of the Constitution of India provides for equality before law and is not relevant to the issue of Public Procurement. Further the Rule 153 of GFR referred to applies for Khadi / handloom and MSME sectors. These rules are not applicable as far as computer services are concerned. While it is correctly stated that the Government may notify rules in this regard, which is a sovereign right of any country, what is pertinent is that, at present there are no such restrictions and over the past decade and a half that the computer services industry has come of age in India, there have not been any such restrictions either.	The explanation given for scoring India as "1" (Restrictive) is unwarranted and this should be scored at "0". The scoring should be reduced from "1" to "0".

Table No.4.1 : Justification for changing the STRI Scores (Continued)

Policy Area	Policy Code	Policy Measure	Reason of OECD	Our Observations	Conclusions and Recommendations
	3.2.2	Public procurement: Procurement regulation explicitly prohibits discrimination of foreign suppliers.	The STRI Matrix draws reference to Ministry of Finance, Govt. of India (General Financial Rules, 2017,) Chapter 6.	A brief reading of Chapter 6 does not make any differentiation between domestic and foreign suppliers, in the computer services industry. While there is no specific statement that such discrimination will not be made, the fact that no explicit preference is accorded to domestic suppliers vis-à-vis foreign suppliers is adequate indication that all suppliers will be treated equally. This is more than evident in the computer services industry.	The scoring of India as "1" (Restrictive) is unwarranted and this should be scored at "0". The scoring should be reduced from "1" to "0".
	3.2.3	Public procurement: The procurement process affects the conditions of competition in favour of local firms	The STRI Matrix draws reference to Ministry of Finance, Govt. of India (General Financial Rules, 2017,) Chapter 6 and to Ministry of Finance Procurement Policy Division (Article 11 [2])	A brief reading of the above two references does not make any differentiation between domestic and foreign suppliers, in the computer services industry. The preferential treatment which might impact the procurement process could exist in other segments, but does not in the computer services segment.	The scoring of India as "1" (Restrictive) is unwarranted and this should be scored at "0". The scoring should be reduced from "1" to "0".
4. Barriers to Competition		Under the indicator "Barriers to Competition" there are 8 sub-indicators that have been evaluated. India has been assessed as Open in all these sub-indicators.			This is acceptable.
5. Regulatory transparency	5.1.1	There is a legal obligation to communicate regulations to the public within a reasonable time prior to entry into force	The STRI Matrix makes mention that Acts of Parliament are published in the Gazette but there is no minimum statutory time period between publication and entry into force.	This statement does not appear to be correct. A Legislation can either enter into force on the date of assent by The Hon'ble President or on the date it is Gazetted or on a specific date mentioned in the Act itself. There doesn't appear to be any issue with regard to clarity and transparency in this matter.	The scoring of "1" (Restrictive) is uncalled for. Given that there is complete clarity in this regard, this should be scored at "0". The scoring should be reduced from "1" to "0".
	5.2.1	There is an adequate public comment procedure open to interested persons, including foreign suppliers	The STRI Matrix draws reference to "Decisions taken in the meeting of the Committee of Secretaries (CoS, on the Pre-legislative Consultation Policy, held on 10th January, 2014, No. 2, paras. 6 and 7)" and "How a Bill Becomes an Act" and states that proposed legislations must be published but there is no obligation to hold consultations with all stakeholders about them.	The process laid down for the Pre-legislative Consultation Policy, explicitly states that the draft legislation should be placed in the public domain for a minimum period of 30 days and feedback / comments from the public and other stakeholders be obtained. The aspect quoted in the STRI matrix is an additional requirement wherein the Ministry, in addition to placing the proposal in public domain may also hold consultations with all stakeholders. It is for this additional consultation that the Ministry can determine the degree of participation and mode of consultation. Further, there is no restriction stated that feedback / comments from foreign suppliers cannot be accepted.	The scoring of "1" (Restrictive) is uncalled for. Given that there is complete clarity in this regard, this should be scored at "0". The scoring should be reduced from "1" to "0".

7. Construction

In this sector the highest STRI Value is for Iceland (0.454) followed by Indonesia (0.402), Ireland (0.356) and India (0.353). Compared to other sectors, STRI is low in this sector even for the countries with top STRIs. The lowest STRI is for Korea (0.125). Horizontal restrictions contribute 67% of the total STRI in this sector in value terms and 69.2% in terms of numbers.

India and the Select 9 Countries: Comparison

Though India has relatively less restrictions in this Sector and is broadly on the lines of other countries, among the Select 9 countries, India has the second highest STRI value in this sector after Indonesia, as can be seen in Figure 4.16.

Analysis of STRI Restrictions by Major Policy Areas

The STRI Values of India are mainly due to Restrictions on foreign entry (Policy Area 1) and other discriminatory measures (Policy Area 3).

Policy Area 1: Restrictions on Foreign Entry

- **There are no specific foreign equity limits** for construction services. Foreign Investment in construction services follows the automatic route.
- **There are other horizontal restrictions** related to residency requirement for managers and at least

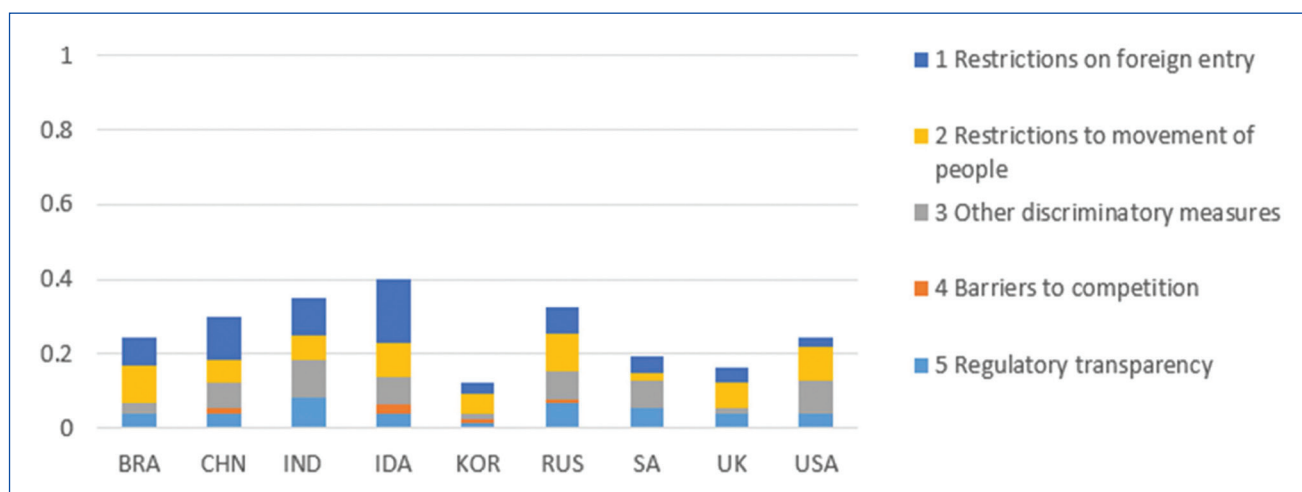
one of the Board of Directors; restrictions related to acquisition and use of land and real estate by foreigners; conditions on subsequent transfer of capital and investment; restrictions on cross border M&As and cross border data flows which are also found in some of the Select 9 countries.

- **Legal form: other restrictions.** In India, for Construction Development Townships, housing and Built-up infrastructure, the minimum capitalization is US \$10 million for wholly owned subsidiaries and \$5 million for Joint Ventures with Indian partners. The funds would have to be brought in within six months of commencement of business of the company. Other than India, only Brazil has restrictions under this policy wherein there is a specific approval regime for the establishment of foreign branches.

Policy Area 3: Other Discriminatory Measures

- **In India, most of the restrictions in this Policy Area are under the horizontal measures related to Public procurement.** The Central Government can provide for mandatory procurement of any goods or services from any category of bidders or provide for preference to bidders on the grounds of promotion of locally manufactured goods or locally provided services. 7 restrictions are related to public procurement in India which

Figure 4.16: STRI-Construction Services, 2017



are almost similar. Only Brazil has no restrictions under all the seven policy parameters related to public procurement, while UK and Korea have restrictions only under one parameter.

- **In the case of discriminatory qualification process and procedures related to public procurement, in India** under Rules for Enlistment of Contractors in Delhi, there should be past experience of completion of work with specific contract value with any government in order to qualify for enlistment in approved government contracts. This measure prevents foreign firms to qualify for government projects in the beginning as their global project execution capabilities are not considered in this case. Only Brazil, Korea and UK have no restrictions under this policy measure. **In Brazil**, the procurement law prohibits differential treatment between Brazilian and foreign companies in the procurement process. **In Korea**, method of contraction is open competition and in **UK**, the construction activities to which the regulations apply are listed. **In India there is scope to overlook the foreign firm's global executive capabilities as the qualification specifies government experience in government contract. This restriction could be relaxed on the lines of other countries.**
- **Policy measure of laws or regulations imposing national standards that deviate from international standards in the case of Building design code standards and construction product standards.** In India, the National Building Code provides standards for building construction in India, including construction materials. Its development history does not however, make reference to international standards. Thus, there is no clear indication that these are as per international standards.

Policy Area 2 : Restrictions to Movement of People

- **The restrictions are basically the horizontal restrictions**, related to employment visa and duration of stay for intra-corporate transferees, contractual and individual services suppliers.

Policy Area 4: Barriers to Competition

- There are no restrictions in India in this sector under this Policy Area.

Policy Area 5: Regulatory Transparency

- **In India the restriction in this policy area are mainly those given under horizontal restrictions** related to communicating regulation to the public and the public comment procedure. There are also procedural restrictions related to cost to obtain business visa, time and cost to register a company, number of mandatory procedures, etc.

In Construction sector also, liberalization can mainly take place by liberalizing horizontal restrictions. In the case of other discriminatory measures there is scope for reforms related to qualification requirements for public procurement and specifically following international standards in the case of building design code standards and Construction product standards.

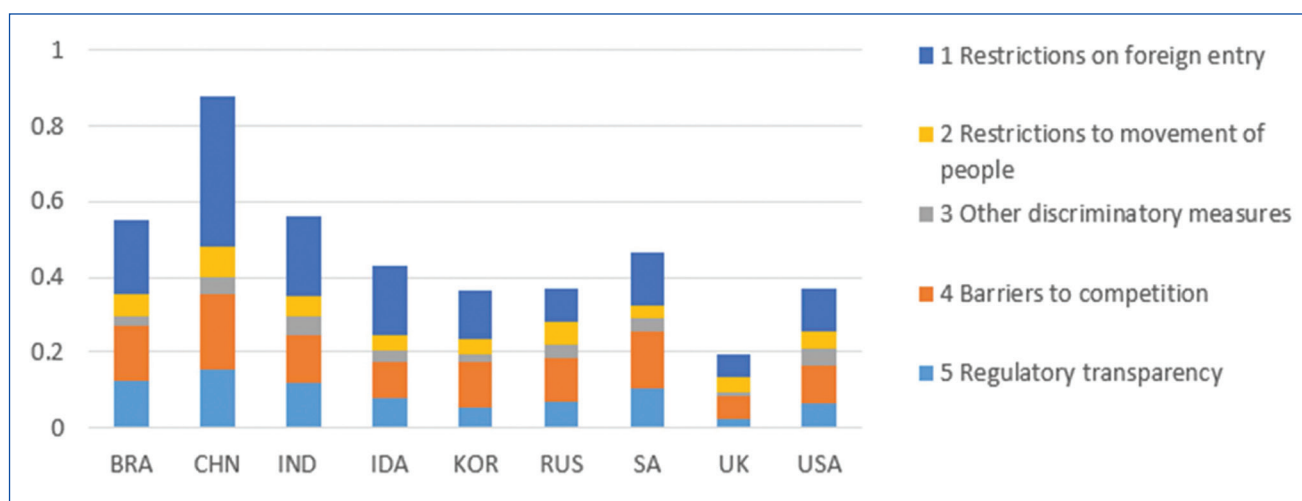
8. Courier Services

The highest STRI Value in this service sector is for China (0.877) followed by India (0.560), Chile (0.486) and Israel (0.485). The lowest value is in Netherlands (0.128) followed by Germany (0.130). In India, horizontal restrictions contribute 76.7% in terms of value and 70.5% in terms of numbers.

India and the Select 9 Countries : Comparison

As can be seen in the Figure 4.17, India has the second highest STRI after China which has a very restrictive regime in this sector. All other countries in the Select 9 except UK are in the medium range in terms of STRI. Only UK has liberalized these services.

Figure 4.17: STRI-Courier Services, 2017



Analysis of STRI Restrictions by Major Policy Areas

The high STRI Value in this sector in India is mainly due to Restrictions on Foreign Entry (Policy Area 1), Barriers to Competition (Policy Area 4) and Regulatory Transparency (Policy Area 5).

Policy Area 1: Restrictions on Foreign Entry

Most of the Select 9 countries have restrictions in most of the parameters except in UK, Russia and to some extent Indonesia. In India, there are restrictions in all parameters under this Policy Area.

- **Foreign Investment in Courier Services in India follows the automatic route and 100% FDI is allowed.** However, it excludes the activity relating to distribution of letters which comes under Indian Post Office Act. 100% FDI is allowed. Companies need to register but do not need a license/authorization to enter the market. A foreign company may incorporate a company as a joint venture or as a wholly owned subsidiary. **In China**, foreign investment in postal services and express delivery of letters is under the prohibited category. **In USA** also expedited mail interpreted as express mail or courier is regulated. **India can consider opening up even the distribution of letters to private sector.**

- **There are horizontal restrictions in this policy area for India** including the limits on proportion of shares that can be acquired by foreign investors in publicly controlled firms; restrictions on cross-border M&As and cross-border data flows; acquisition of land and real estate by foreigners; type of shares or bonds held by foreign investors; conditions on subsequent transfer of capital and investment; residency requirement for Managers and for atleast one of the Board of Directors.
- **There is no nationality clause** for Board of Directors and Managers.
- **There is also the monopoly on letters** (though it does not contribute to STRI scores) with the India Post Office Act 1898 allowing India Post to retain the exclusive privilege of carrying and delivering letters. However, parcels are not included in the meaning of the word 'letter'. Both courier firms and India Post offer express delivery services in India.

Policy Area 4: Barriers to Competition

All the Select 9 countries, except UK and Indonesia have restrictions in majority of policy measures in this Policy Area in Courier services.

- **There are the horizontal restrictions** related to appeal of the decisions of the regulatory body and the policy measure that firms have redressal mechanism when business practices restrict competition in a given market. The Competition [Amendment] Bill 2012 tabled in Lok Sabha has lapsed and yet to be passed.

There are also many sector-specific measures which include the following:

- **Regarding access to postal network in India**, only India Post can use its own infrastructure which is not shared with any private courier firm. **USA** government also has similar rules supporting its postal service.
- **Regarding dispute resolution mechanism** in India there is no post/courier service specific dispute settlement mechanism, but there is a National Consumer Disputes Redressal Commission.
- **In courier services in India there are no dominant provider** in the Indian market which is quite fragmented.
- **Regarding restriction of national, state or provincial government control**, at least one major firm in the sector, India Post offers courier services and holds a significant position of the market.
- **Policy measure of publicly controlled firms being exempt from the general competition law** is applicable to India as the India Post is exempted from the provisions from the Consumer Protection Act 1986.
- **In India, prices for postal services are regulated** as the central government can fix the rates of postage and other sums to be charged in respect of postal articles sent by Inland Post under the Act.
- **Regarding minimum capital requirements, though a public limited company can also be started without a minimum capital of Rs.5 lakhs, a STRI value has been assigned by the OECD.**
- **Restrictions to Advertising:** In India, comparative advertising is allowed.
- **Regarding Legal separation of the regulator and the services operators** the postal/courier regulator is legally separated from private courier service operators, however India Post is government owned. **In UK** there is no restriction in this case and **in Indonesia** the regulator and service operators are separate.
- **In India regarding corporation tax**, level of tax does not vary between domestic and foreign companies. However, in terms of subsidies, foreign firms are treated less favorably.
- **Accounting separation is required:** In India a Competition Law bill passed in 1985 took up the concerns that the Post Office of India should account separately for its non-monopoly activities, thus requiring the Post Office to maintain separate accounts for operations in competitive sectors. In UK and Indonesia there are no restrictions in this policy area.
- **There are also other restrictions** related to appropriate cost allocation system being in place; accounting information being made public; restrictions related to storage and warehousing; quality/performance standards requirements for courier services outside universal services, etc.

Policy Area 5: Regulatory Transparency

- **There are horizontal restrictions** related to communicating regulation to the public and the public comment procedure. There are also procedural restrictions related to cost to obtain business visa, time and cost to register a company, number of mandatory procedures, etc.

There are some other restrictions related to customs procedures.

- **Regarding Pre-arrival processing**, India has set up Accredited Clients Programme (ACP) and Authorized Economic Operator (AEO) programme with the aim of allowing pre-processing of shipments.
- **Regarding a de minimis regime** in place for import duties, and also internal tax, the regulation distinguishes the values of documents, gifts, low value dutiable consignment and samples.
- **Regarding release of goods before determination and payment of duties**, the customs Act 1962 covers duty deferment.

Policy Area 2: Restrictions to Movement of People

- **The restrictions are mainly horizontal restrictions** like employment visa and duration of stay for intra corporate transferees, contractual and individual services suppliers.
- **There is also a restriction related to licensing system.** The government planned to amend the Post Office Bill in 2011 proposing registration and licensing of courier services in India. But the bill was not passed. However, a STRI value has been assigned for this.

Policy Area 3: Other Discriminatory Measures

- **There are horizontal restrictions** related to public procurement.
- **Regarding taxes and subsidies**, Corporation tax is a tax which is levied on the incomes of registered companies and corporations. The level of tax does not vary between domestic and foreign companies. However, in terms of subsidies, foreign courier services providers are treated less favourably as the India Post service receives significant subsidies from the government.

Thus, the Courier Services in India have many restrictions which are due to the existence of a dominant Government player, India Posts and Government's role in fixing rates for postage,

etc. Reforms can be done mainly in horizontal restrictions. Some reforms related to sector specific restrictions include opening up even distribution of letters which is now with only India Posts and streamlining subsidies given to India Post and customs procedures issues. India Posts is a good case for reforms and disinvestment as it is underutilized though of late it is helping in implementing some of the social sector schemes of the government. In fact, India Posts has a lot of infrastructure which can be used profitably for revenue generation. Even sale or renting out of infrastructure of India Posts can be thought of. It can fetch handsome revenue for the government.

9. Distribution Services

The countries with the highest STRI Values in this sector are Indonesia [0.621] followed by India [0.436]. The countries with least restrictions are Korea [0.089] followed by Latvia [0.090]. In this sector the share of horizontal restrictions to total STRI is 55.2% in terms of value and 57.1% in terms of numbers. This implies that sector-specific restrictions are equally important in this sector.

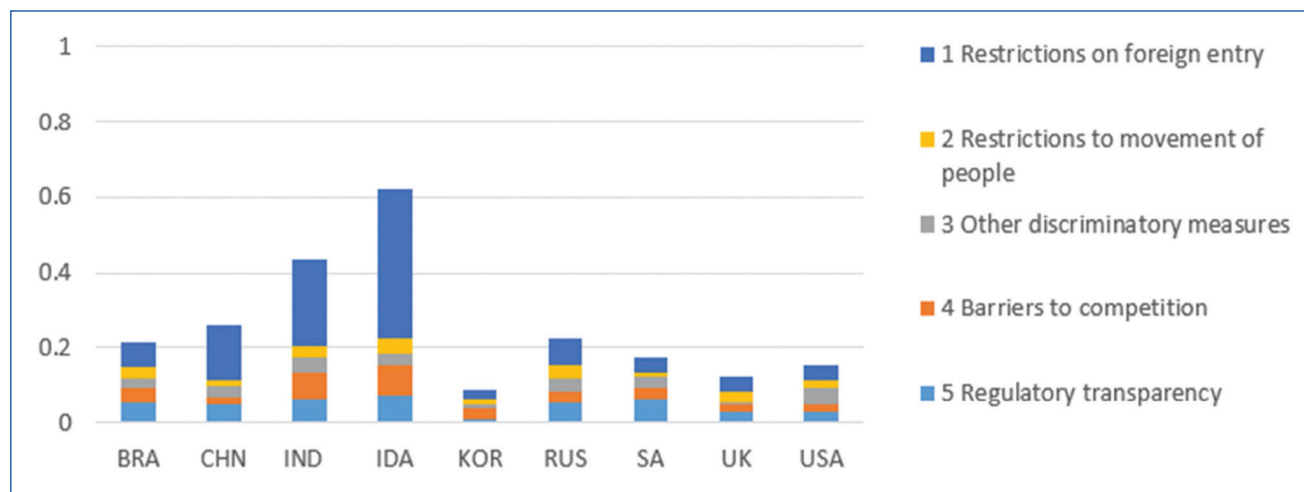
India and the Select 9 Countries: Comparison

Among the Select 9 countries, the highest restrictions are in Indonesia, followed by India and China as can be seen in Figure 4.18. While Indonesia has more restrictions than India, countries like US, UK, Korea, Brazil, Russia, South Africa have fewer restrictions than India. The restrictions are mainly on foreign entry particularly retail trade. In some parameters like number of sales outlets per firm, India has no restrictions while USA, has it. Under restrictions to movement of persons, India has restrictions as is the case with most other countries.

Analysis of STRI Restrictions by Major Policy Areas

The major category of restrictions in India is Restrictions on foreign entry (Policy Area 1).

Figure 4.18: STRI-Distribution Services, 2017



Policy Area 1: Restriction on Foreign Entry

- **There are foreign equity restrictions in India (in retail trading)** with foreign equity up to 51% (government) being allowed for multi-brand retail trading and 100% (Automatic up to 49%, Government route beyond 49%) being allowed for single brand product retail trading. While Indonesia has higher restrictions than India in this parameter, China has less restrictions. **China** has liberalized these services with Direct sales and online sales having been removed from the restricted investment sectors in the 2015 catalogue of Foreign Investment along with other liberalization measures in the wholesale and retail trade of various agricultural and industrial goods. Majority Chinese ownership is still required in the distribution of oil in gas station in case there are more than 30 chain stations funded by the same foreign investor. As of 2015, foreign ownership in e-commerce services has been liberalized. E-commerce falls under the value-added telecommunications services as part of transaction processing services. On 19th June 2015, Ministry of Industry and Information Technology lifted the 50% FDI cap that applies to the latter services. All the countries other than India, Indonesia and China in the Select 9 do not have restrictions under this parameter. **In Russia**, equal rights are guaranteed for foreign

and local investors in both retail and wholesale trade. Exemptions are permitted for industries of strategic importance.

- **As regards wholesale trade, there are no foreign equity restrictions in India** with Automatic route available, with no need to seek preliminary Government permission.
- **There are some horizontal restrictions** like restrictions on cross-border M&As in India, where only FFI and QFI (Qualified Foreign Investors) may acquire the assets of an Indian company and M&As usually takes place through establishment of a holding company in India; cross-border data flows restriction where personal data may only be transferred to another country that ensures the same level of data protection, etc.; restrictions related to acquisition and use of land and real estate by foreigners; and subsequent transfer of shares between persons resident in India and persons resident outside India where there are pricing guidelines; and residency requirement condition for Managers and at least one of the Board of Directors.
- **Regarding Performance requirements:** In the Select 9 countries, 5 countries have restrictions in this sector and each has a different performance requirement. **In India** in the case of foreign investment in single brand retail activities above

51%, the sourcing of 30% of the value of goods purchased must be done from India. However, a 3 years exemption can be granted starting from the commencement of the business for products that are technologically relevant and where local sourcing is not possible.

In Brazil, the general law requires, for the purpose of applying for a temporary work visa for a foreign national before the Brazilian immigration authorities, the Brazilian company must provide evidence that at least two-thirds of its workforce is composed by Brazilian employees. However, there are several exceptions and the Council for Immigration is entitled to reduce this requirement. If a company wants to appoint a foreigner as Administrator, Manager, Director or Officer with management powers, it must invest 600,000 Reals per foreigner appointed in these positions or 150,000 Reals with the condition to create at least 10 new jobs per foreign manager appointed during the following two years.

In Indonesia, Franchiser and franchisee must meet 80% requirement on products made in Indonesia. Including raw material, equipment, and final products made in Indonesia.

In South Africa, an application for a business visa by a foreigner who has established a business or invested in an existing business in the Republic, shall be accompanied by a proof that at least 60% of the total staff employed in the operations of the business are South African citizens or permanent residents employed permanently in various positions.

- **There are zoning regulations in India** discriminating foreign suppliers against domestic suppliers as foreign retailers can set up outlets only in cities with a population of more than 10 lakhs. **China** has cancelled regional restrictions on December 11, 2004. **In Korea** to open a superstore/ quasi superstore within 1 kilometer of traditional

market, there is need to register with the Mayor of the self-governing city by attaching a report on impact evaluation of business districts and a regional cooperation plan. In Brazil, there is no limitation on the ownership and use of urban property by foreigners or entities controlled by foreigners, whether or not resident/domiciled in Brazil. The same rules apply to them for purchase, sale and licensing as to Brazilian individuals and legal entities. Limitations apply for rural properties where the maximum owned by foreigners is 25% of the municipality surface.

- **Regarding commercial presence to provide cross-border services and restrictions to e-commerce:** E-commerce is only allowed for business to business trading and not in retail trading. Commercial presence only by means of e-commerce would not be permissible, for companies with FDI, engaged in the activity of multi-brand retail trading and single-brand retail trading. Restrictions are found in this parameter only in China and Indonesia besides India.
- **Regarding restrictions on franchising,** India does not have legislation specific to regulating franchise in India. Therefore, a franchise agreement is governed by different legislations which may be restrictive in different ways.
- **Regarding Legal form-other restrictions:** According to FDI policy, only one non-resident entity, whether owner of the brand or otherwise, shall be permitted to undertake single brand product retail trading in India. Retail trading in any form, by means of e-commerce would not be permissible, for companies with FDI, engaged in the activity of single-brand retail trading. This provision can include franchises. Regarding multi-brand retailing, the above policy is an enabling policy only and the state governments / UTs would be free to take their own decisions in regard to implementation of the policy.

- **Restrictions regarding licenses for the distribution of certain products which are subject to quotas or economic needs tests (wholesalers and retailers):** In India this restriction is there.
- **Regarding licenses for Departmental Stores or large-store formats being subject to quotas or economic needs tests,** in India, retail sales outlets may be set up only in cities with a population of more than 10 lakhs as per 2011 census or any other cities as per the state government's decision, and may also cover an area of 10 kilometers around the municipal / urban agglomeration limits of such cities. This can be classified as an economic needs test. Only India, China and Indonesia have STRI scores under this parameter. **In Indonesia,** retail license is subject to economic needs test. Prior to getting approval, the distributor needs to submit analysis on socio-economic condition of the society and receive recommendation from the local government.
- **Regarding screening without exclusion of economic interests,** FDI in multi-brand retailing follows the government route and is subject to prior approval. Single-brand retailing also follows the government route beyond 49% FDI. Only cash and carry wholesale activities follow the automatic route, and do not require prior approval.

There are restrictions in other areas as well which are as follows.

Policy Area 2: Restrictions to Movement of People

- **The restrictions are mainly horizontal restrictions** related to employment visa and duration of stay of intra-corporate transferees, contractual and individual services suppliers.

Policy Area 3: Other Discriminatory Measures

- **There are horizontal restrictions** related to Public Procurement.
- **There are restrictions related to national standards deviating from International**

standards. In India, while framing regulations or specifying standards, the Food Authority takes into account international standards and practices, where international standards or practices exist or are in the process of being formulated, unless it is of the opinion that taking into account such prevalent practices and conditions or international standards or practices or any particular part thereof would not be an effective or appropriate means for securing the objectives of such regulations or where there is a scientific justification or where they would result in a different level of protection from the one determined as appropriate in the country. Most of the Select 9 countries have adopted Hazard Analysis and Critical Control Points (HACCP).

- **Discriminatory access to certain settlement methods:** The RBI has policies to direct bank credit to sectors that are deemed socially or economically important by the government. Like in most other emerging economies, the share of consumer credit remains very low in India. This again is a social obligation and cannot be considered as discriminatory.

Policy Area 4: Barriers to Competition

- **There are some restrictions with very low weightage** like prices or fees being regulated. Upper limit on shop opening hours and limit on the range of products a retailer may carry.

Policy Area 5: Regulatory Transparency

- **There are horizontal restrictions** related to communicating regulation to the public and the public comment procedure. There are also procedural restrictions related to cost to obtain business visa, time and cost to register a company, number of mandatory procedures, etc.

Thus, this sector is one of the sectors with many restrictions in India, next only to Indonesia, despite many recent policy reforms. Foreign equity cap is the major restriction in retail trade though it

is not there for wholesale trade. As pointed out by the OECD there are different conditions for different form of distribution services like cash and carry wholesale trading, e-commerce activities, single-brand product retailing and multi-brand product retailing.

- **In Wholesale Trading**, Cash and Carry Wholesale is the most liberal segment with no foreign ownership restrictions throughout India. However, if the retailer has a foreign owner, e-commerce is allowed only for business to business (B2B) transactions, and only for so-called marketplace e-commerce, where the trader does not hold inventory. B2B marketplace e-commerce traders may not source more than 25% of sales from one vendor. FDI is not permitted in inventory-based e-commerce, where a vendor sells on his own account.
- **In Retail Distribution** there is a distinction between single-brand and multi-brand retailers. FDI up to 49% through the automatic route and up to 100% through the government route is allowed for single-brand retailers. But there are several conditions attached like products should be single brand only and should be sold under the same brand internationally. In respect of proposals involving foreign investment beyond 51%, sourcing of 30% of the value of goods purchased, needs to be done from India, preferably from MSMEs, village and cottage industries, artisans and craftsmen, in all sectors. Sourcing norms will not be applicable upto three years from commencement of business i.e. opening of the first store for entities undertaking single brand retail trading of products having 'state-of-art' and 'cutting-edge' technology and where local sourcing is not possible. Since there have not been major negative effects, since this policy has been implemented there is a need to consider relaxation of some conditions related

to single brand retail to encourage foreign investment and trade.

- **In the case of Multi-brand Retailing**, FDI is allowed up to 51% through the government route in states that decide to implement the policy with 12 states choosing to implement it; a minimum investment of US\$ 100 million is required of which half must be made in back-end infrastructure such as processing, manufacturing, design, quality control and logistics; at least 30% of the value of procurement must be made from Indian MSMEs, and government has first right to procurement of agricultural products; and retail sales outlets must be set up only in cities with a population of more than 1 million inhabitants and the retailers are not permitted to engage in e-commerce.

The latest E-commerce rules reworks the rules for marketplace models. The country's top e-tailers Flipkart and Amazon were operating "hybrid" marketplaces, which were anchored by inventory-based operations through a network of controlled sellers. E-tailers were influencing prices of goods on their platforms through various means, including direct price discounts, covering marketing expenses (marketing campaigns, EMI, exchange offers) and extending concessional logistics services (packaging, courier, returns) wallet cash backs. They involved various intermediaries and group entities in the chain to divide these discounts and spread losses, which impacted the domestic retail sector. To make things clear, in December 2018, the Government has come out with the circular which states that FDI is not permitted in inventory-based e-commerce. Further an e-commerce entity providing a marketplace will not exercise ownership or control over the inventory i.e. goods purported to be sold.

While genuine social concerns related to Kirana shops (Mom and Pop shops) should be taken into

consideration including their modernization, regulations in retail trade need to keep pace with the changes. Some of the reforms in this sector include the following.

- **Model Shops and Establishments Act:** The Central Government introduced The Model Shops and Establishment (Regulation of Employment and Condition of Services) Act 2016 (hereinafter referred as The Model Bill) on 29th June 2016 for the overall benefit and growth of the Indian retail sector. The Model Bill is a progressive move since it enables states to choose to keep shops and other such establishments open 24x7 all through the year. This would help in employment generation and will also benefit the consumers in terms of more convenience and accessibility. So far only Maharashtra has adopted it with the recent amendment of the Maharashtra Shops & Establishments Act 1948 in line with the Model Bill. There is a need to encourage other states to adopt the Model Act.
- **Label declarations of prepackaged commodities (Legal Metrology) :** Under Section 2(l) of the Metrology Act, pre-packed commodity is defined as “a commodity which without the purchaser being present is placed in package of whatever nature, whether sealed or not, so that the product contained therein has a pre-determined quantity.” Rule 4 of the Metrology Rules states that once a commodity is classified as a pre-packed commodity, it has to securely affix a label to it and make such declarations as are required to be made under the rules. The ambit of “pre-packed commodity” is wide in nature and currently, it would even include items such as strawberries, mushrooms, corn, lassi etc. packed by the retailer for protection and hygienic purposes; Garments are packaged only to keep them dust free though they are sold openly after removing packing material; the sunglasses tested by the buyer for his suitability; the footwear purchased after

trying and satisfying about the size and quality. The Central Act considers these commodities also as a pre-packaged commodity. So, there is a need for a practical approach. Prepackaged Commodity rules and acts are consumer welfare legislations with the objective of protecting the rights of consumers. The Act is meant for the commodities which are sold in a closed container, quality of which (and in some cases quantity) cannot be inspected prior to the purchase. The commodities which are always purchased after trying and satisfying about the size and quality should not come under the purview of the Legal Metrology Act.

- **E-enablement of Small Retailers:** There is a strong need to motivate all the small retailers to prepare GST ecosystem and accept digital payment. Government needs to create an e-enabled ecosystem with a higher level of compliance. This will also ensure a speedy change of the cash economy in India. Affordable and accessible billing system (both hardware and software) will be one of the key elements for early and widespread adoption of e-enablement.

10. Engineering Services

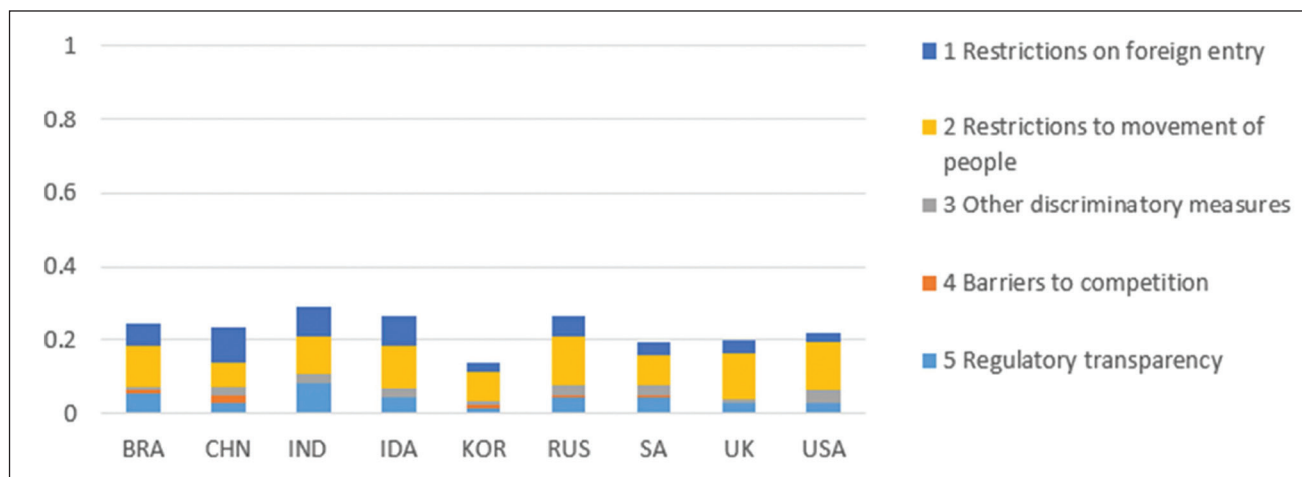
In Engineering services, the highest STRI Values are for Slovak Republic (0.573) followed by Poland (0.432), Portugal (0.404) and Slovenia (0.390). The lowest value is for Latvia (0.105) followed by Chile (0.113). India is in the medium range (0.290), along with China (0.234) and Indonesia (0.265).

In this sector the restrictions are only horizontal in nature, with the share of horizontal restrictions in total at 100% both in terms of value and numbers.

India and the Select 9 Countries: Comparison

Among the Select 9 countries, the highest STRI score in this sector is for India closely followed by Russia, Indonesia and Brazil. The lowest STRI is in Korea (Figure 4.19).

Figure 4.19: STRI-Engineering Services, 2017



Analysis of STRI Restrictions by Major Policy Areas

In India the restrictions are mainly in 3 Policy Areas, namely, Restriction to Movement of People (Policy Area 2), Restrictions on Foreign Entry (Policy Area 1) and Regulatory Transparency (Policy Area 5). There are no restrictions under Barriers to Competition (Policy Area 4).

Policy Area 2: Restrictions to Movement of People

- **India does not have any quotas** for intra-corporate transferees, contractual and independent services suppliers.
- **There are horizontal restrictions** under the policy measure of labour market tests related to visas and duration of stay for intra-corporate transferees, contractual and independent services suppliers.
- **There are no regulations under qualification recognition.** Engineering is not a regulated profession in India and does not fall under the purview of any Act. However, there exists a system of foreign degrees recognition from Association of Indian Universities (AIU). Engineering Bill was prepared in 2010 but was not tabled in Parliament.

Policy Area 1: Restrictions on Foreign Entry

- **FDI in engineering services in India** follows the automatic route and does not need

approval from the government. Engineering services are not regulated and there are no equity restrictions. There are also no specific performance requirements and also no screening requirements.

- **There are other horizontal restrictions** related to cross-border M&As and cross-border data transfer; residency requirement for managers and at least one of the Board of Directors though there is no nationality clause; acquisition and use of land; and conditions on subsequent transfer of capital and investments.
- **Surprisingly and unlike other countries, in India engineering services are not regulated.** General company law applies for legal form of business entity. Only a natural person, who is an Indian citizen and resident in India shall be eligible to incorporate a one-person company. Since engineering services are not regulated there is also no condition regarding licensing. There is however a system of foreign degrees recognition from Association of Indian Universities. **In USA** both Board of Directors and Managers of a professional services corporation must be locally licensed and of a foreign professional service corporation must be licensed in their jurisdiction. **China and Brazil** also have conditions related to licensing.

Policy Area 5 : Regulatory Transparency

- **There are the horizontal restrictions** like legal obligations to communicate regulations to the public and adequate public comment procedures.
- **There are also the procedural issues** like time, cost and procedures to obtain a construction permit.

Policy Area 4 : Barriers to Competition

There are no restrictions in this policy area.

- Though the horizontal restrictions related to appeal of the decisions by regulatory bodies and the Competition Amendment Bill not being passed are there, they have not been assigned STRI values by OECD as they are possibly considered less relevant in this sector.
- **There are no specific provisions for mandatory fee setting** in the law as Engineering is not a regulated profession. China, Brazil and South Africa have regulations related to professional fees.

There are some restrictions in Policy Area 3 as well.

Policy Area 3 : Other Discriminatory Measures

There are only the horizontal restrictions related to public procurement. Taxes and subsidies are levied on a non-discriminatory basis and therefore there is no STRI contribution.

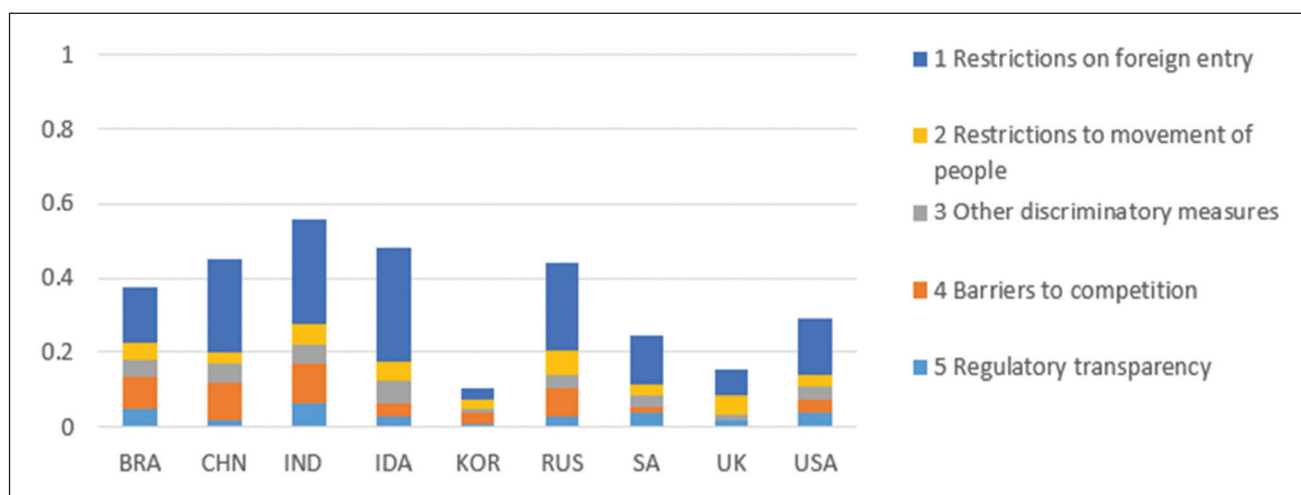
Thus, India has relatively few restrictions in the Engineering sector and does not even have the restrictions found in other countries like licensing and fee setting. Despite this, its STRI score in this sector is higher than that of other countries. The OECD has stated that due to the general regulatory environment, India's index is still among the highest. Being a skilled-labour intensive sector, restrictions on movement of people carry a high weight in the index for this sector. While horizontal restrictions automatically add to the STRI score of the sector,

the method of weighting the parameters by OECD also needs a relook.

Some comments and suggestions related to this sector are the following:

- **The Engineering Bill:** The OECD has stated that this has been tabled in the Parliament, but is yet to be passed. This information given by OECD is not correct as pointed out by the service providers. The Government had prepared only a draft Bill and discussed it in an inter-ministerial meeting in Feb 2011, but it was never presented to the Parliament. The Government decided not to proceed with the Bill. However, there is a need for engineering bill as proper rules and regulations are needed and it is important even from the social point of view. The need for the Engineers' Bill, to be enacted, was strongly felt post Gujarat earthquake. The action to draft the bill was initiated by the Ministry of Human Resources (MHRD). The first draft was circulated in the year 2007. Subsequently, in 2009, the final draft was circulated. The dwindling standards in engineering education and ethics among engineers are leading to sub-standard products and public amenities. The Volvo pollution control certification episode, the arrest of Roorkee IIT professors, the Kolkata flyover collapse etc., are just a few recent examples. Unless the engineers are made responsible, they will not be empowered to implement the standards. Accountability is attached to responsibility. The empowered council will help to regulate and improve the profession / practice of engineering. Hence, the Engineers' Act is needed to improve the commitment and responsibility of the engineers, even if it adds to STRI scores.
- **Need for professional License:** While there is no need to have a license to provide these services in India, there is a need to consider imposing the condition that Board of Directors and Managers should have a professional license from an

Figure 4.20: STRI-Insurance Services, 2017



organization which has the authority to give license in this profession. Most of the other countries have this condition.

- **Infact not much liberalization is possible in this sector** as Engineering services in India are not restrictive compared to many other countries which are more restrictive than India and our engineers are not able to provide services there. There is a need to work out reciprocal arrangements.
- **In India there are also no thresholds above which tender is mandated for services.** In the case of goods, it is Rs. 25 lakhs. Industry feels that in the case of engineering sector the threshold can be Rs. 50 lakhs.
- **Another suggestion is to have online system** in the case of both tendering and also obtaining constructions permits.

11. Insurance

The highest STRI Values in this sector is for India (0.556) followed by Indonesia (0.484), China (0.451) and Russia (0.442). In insurance sector in India, the contribution of horizontal restrictions is 59.3% in terms of value and 56.3% in terms of numbers. This implies that the contribution of sector specific restrictions is equally important in this sector.

India and the Select 9 Countries: Comparison

This sector is a restricted sector in India. Among the Select 9 countries. India has the highest STRI value followed by Indonesia, China and Russia as can be seen in Figure 4.20. Korea is the most liberal in the Select 9 countries with the lowest STRI Value is (0.105).

Analysis of STRI Restrictions by Major Policy Areas

The major restrictions in India are under Restrictions on Foreign Entry (Policy Area 1) and Barriers to Competition (Policy Area 4).

Policy Area 1: Restrictions on Foreign Entry

- **Foreign equity restrictions: In India**, 49% FDI is permitted for life, non-life and re-insurance. **In China** also there are foreign equity restrictions for life insurance. **In Russia**, also there are foreign equity restrictions for the first two types of insurance. **In Indonesia**, it is more liberal with equity restriction of 80% for all 3 forms of insurance. **In US**, STRI Value is given as zero for all the above three forms of Insurance, though it is stated that Insurance is regulated exclusively at the state level. **Korea** has no restrictions in all three forms of Insurance.
- **There are the horizontal restrictions related to limits to the proportion of shares that can be acquired by foreign investors in publicly-**

controlled firms (life, non-life and reinsurance):

In India, government equity in public sector general insurance firms cannot be less than 51%. Prior to the 2015 amendment, this threshold was 100%. Disinvestment policy also states that in all cases of disinvestment of central public sector enterprises, the Government must retain at least 51% equity and management control. Disinvestment policy also states that in case of CPSEs disinvestment, Government must retain 51% equity and management control. Similar restrictions are found in China, Indonesia and Russia in all three forms of insurance. **In the case of Korea**, for life insurance where there is a STRI score, the restriction is that Korea Post is ranked at the 5th among the 5 largest life insurance firms in South Korea by volume of total assets in 2014 and 2015. Korea Post is a public institution and so its stocks are not traded in the market. In the case of non-life insurance where there is no STRI value the Korea Trade Insurance Corporation (K-SURE) is a fund-management-type quasi-government institution established by the Export Insurance Act. All types of export credit insurance products are reserved for K-SURE. No shares of K-SURE are traded in the market. Korea Workers' Compensation & Welfare Service (KCOMWEL) is another fund-management-type quasi-government institution established by the Industrial Accident Compensation Insurance Act. Workers' compensation is reserved for KCOMWEL. No shares of KCOMWEL are traded in the market

- **There are also other horizontal restrictions** in India, like residency requirements for Managers and for at least one of the Board of Directors for life, non-life insurance and reinsurance; restriction on cross-border data flows; restrictions related to acquisition and use of land and real estate by foreigners and for conditions on subsequent transfer of capital and investments. In the case of subsequent transfer

of capital and investments, as pointed out by the service providers, in addition to the pricing restrictions, the same is also subject to the limits of foreign investments allowed in the sector and limits applicable for type/category of the foreign investors (they being individuals, FPI/FIIs, etc.).

- **In case of restrictions on cross-border M&As** for life, non-life and reinsurance **in India** there are conditions related to pricing. Similar restrictions are found in US, China and Russia. As pointed out by the service providers, in India the Foreign Exchange Management (Transfer or Issue of Security by a Person Resident Outside India) Regulations prescribe the price at which even the shares can be issued to the person resident outside India, which may be required in case of M&As. **In USA**, the restriction is in one state New York where NY insurance companies are authorized to consolidate or merge with domestic (i.e. NY) or foreign (i.e. from other states) insurance companies, but not with alien (i.e. from other countries) insurers.
- **Commercial presence through a company incorporated in India is needed to provide both life and non-life insurance and MAT in India.** Regarding commercial presence for reinsurance, foreign insurers can set up branch offices in India. This is however available only to foreign insurers registered or certified to operate in a country with which India has signed a Double Taxation Avoidance Agreement. Similar restrictions are found in most of the Select 9 countries. In US there are restrictions in New York state.
- **There are also conditions related to local availability test, under re-insurance**, the insurer must offer an opportunity to other Indian reinsurers (including the GIC) to participate in the risk transfer before placing outside India. Other countries like China and even UK have similar restrictions. In US the restriction is in New York state though no STRI scores are given.

- **Regarding legal form for life and non-life insurance, branch offices of foreign insurers are not permitted to place business in India.** But for reinsurance, reinsurers can open branch offices in India. Except US, UK and Korea most of the other Select 9 countries have restrictions under this measure.
- **Regarding quotas or economic needs test for life and non-life,** there are restrictions like the controller must be satisfied that the volume of business likely to be available to the applicant will be adequate and interest of general public will be served, etc. **China** also has similar restrictions. **For USA,** while the STRI value is '0' for this parameter for life insurance as no quotas apply, the superintendent can refuse to issue or renew a license if in his judgement such refusal will promote the interests of the people of the state. **This is a subjective judgement and should have been considered as a restriction by OECD.**
- **In the case of reinsurance also there is the economic needs test in India** as the IRDA may permit the number of reinsurers keeping in view the orderly growth of the insurance and reinsurance market, national interest, etc. The controller must also be satisfied of the volume of business available to the applicant and public interest.
- **Regarding period of time since an applicant's incorporation in its home country before obtaining a license in India,** there are restrictions only under reinsurance as no necessary period of time is mentioned in the legislation for life and non-life insurance, but for reinsurance it is 10 years. China and Russia have restrictions in all three forms of insurance. In China it is 30 years and in Russia 5 years under all three forms of insurance. In some countries like Korea it is three years.
- **Regarding criteria to obtain a license in India,** foreign companies are not allowed to obtain a license for life and non-life insurance. In the case of reinsurance, foreign reinsurer can reinsure risks written by Indian insurers. They may operate through a branch office and registration with IRDA is required. Eligibility criteria for foreign reinsurer also includes the demonstration of possessing a minimum specified net owned fund (Rs. 5000 crores). There are no similar requirements for domestic insurance applicants. However, the minimum capital requirements for branch office is not higher than that required for domestic insurance applicants. Also, registration is only possible for foreign insurers registered or certified to operate in a country with which India has signed a Double Taxation Avoidance Agreement. Other countries including USA have similar restrictions. **In USA,** foreign insurers authorized to do business in New York state must deposit with the superintendent or as trustee assets an amount at least equal to 150% of the capital required to be maintained by a domestic stock insurer licensed to do the same kinds of insurance.
- **Screening is also there in India** with proposals for investment by foreign investors under the Government route (i.e., with FDI exceeding 49% of foreign equity) considered by the relevant ministries or regulatory authorities and CCEA. Screening is not explicitly based on economic interests. **China and US** also have such requirements. In US the reason is threats to national security.

Policy Area 4: Barriers to Competition

- **There are restrictions on asset holdings of the insurer incorporated or domiciled outside India** as assets should be held in India in a Trust for the discharge of the liabilities and shall be vested in trustees residents in India. Exception is only to

the extent of foreign assets held outside India. This restriction is there for both life and non-life insurance. In the case of non-life insurance, premiums or fees are regulated by the IRDA Tariff Advisory Committee. This is for both foreign and domestic insurers. Other countries except US, UK and Indonesia have such regulations and it is for the purpose of prudential regulation and consumer protection purposes.

- **There are no restrictions in India regarding regulations of premium or fees for life insurance unlike China and Brazil. But for non-life insurance it is regulated by the IRDA Tariff Advisory Committee.**
- **Approval by regulatory authorities needed for new products and services and also for new rates or fees for both life and non-life insurance.** The insurer has to justify rates, terms and conditions, etc. and needs confirmation in writing from IRDA that it has no further queries with respect to the product. **These could possibly be relaxed and could be checked at the time of filing the product or at the time of giving new rates instead of stringent conditions like confirmation in writing from IRDA that there are no further queries.**
- **Regarding national/state/provincial government control of at least one major firm,** under life insurance in India, LIC continues to be the market leader with highest premiums collected. In non-life insurance which is liberalized, government is still the sole owner of four former non-life general insurance company subsidiaries, NIC, NIACL, OFC and UIIC, as well as being the main authority over non-life insurance agencies. China and Korea also have such restrictions. In reinsurance, GIC is the sole reinsurer currently in the Indian reinsurance market. Countries like China, Russia and Indonesia also have such restrictions. However, India can think of disinvestment in some government-controlled insurance companies.
- **Regarding publicly controlled firms, undertakings being subject to rules that affect competition with private insurers for both life and non-life,** GIC receives statutory cession of a percentage set by IRDA (5%) on each and every reinsurance policy. But regulation empowers IRDA to impose upto 30% for life and 20% for non-life reinsurance. Even China and Korea do not have this restriction. **Only Brazil,** has this restriction where all private insurers must subscribe shares of ZRBs.
- **There are limits on share of risks that can be ceded by insurers to reinsurers with retention limits of Rs. 1 lakh to Rs. 30 lakhs for life and maximum possible retention commensurate with its financial strength, quality of risks and volume of business, in the case of non-life insurers.**
- **The government can also overrule the supervisor and also has discretionary control over funding of the supervisory agency.** Further as pointed out by the service providers, the Central Government also has the power with regard to matters like the manner in which it shall be determined which of the transactions of an insurer are deemed to be insurance business transacted in India for the purposes of the Insurance Act and the form and procedure in which an appeal may be prepared to Securities Appellate Tribunal. Other countries like US, China, Brazil, Russia and South Africa in the Select 9 countries also have such conditions.

There are restrictions in other policy areas as well.

Policy Area 2: Restrictions to Movement of People

Here besides the horizontal conditions like employment visa and duration of stay for intra corporate transferees, contractual and individual services suppliers, there are the following two sector-specific conditions.

- **Laws or regulations establishing a process for recognizing the qualifications gained abroad.**

(Broking and Agency services): The regulation is that among the people eligible to be entered in the register of actuaries any person who has passed such other examination and completed such other training outside India as is specified as being equivalent to the examination and training specified under this Act for membership of the Institute. In the case of any person belonging to any of the classes mentioned in this subsection who is not permanently residing in India, the Central Government or the Council may impose such further conditions as it may deem necessary or expedient in the public interest. This restriction is found in most of the Select 9 countries.

- **Appointed actuaries must be nationals** and membership at the Actuarial Society of India is also required. Further as pointed out by the service providers, appointment of an Appointed Actuary is regulated by the IRDAI (Appointed Actuary) Regulations, 2017 which requires due experience and specialisation. The Appointment has to be specifically approved by IRDAI. Among the Select 9 countries, South Africa is the only other country where a statutory actuary must be permanently resident in South Africa.

Policy Area 3: Other Discriminatory Measures

Besides the horizontal restrictions related to Public Procurement there are some sector-specific restrictions like the following:

- **Regarding deviation from international standards - Accounting rules (IFRS),** India has not adopted the IFRS Standards. However, the 2015 Indian Accounting Standards Rules (Ind AS) is based on and substantially converged with the IFRS Standards. However, section 5 of the Ind AS Rules explicitly excludes insurance and banking companies from applying these standards, and instead they are required to follow the standards prescribed by the Reserve Bank of India. The RBI announced plans to apply the Ind AS for these institutions from 2018-2019 onwards. Further

as pointed out by service providers, Insurance & Banking companies were to move to Ind AS from April 1, 2018 onwards. Subsequent to the issuance of IFRS 17 by IASB in May 2017, IRDAI (Insurance Regulatory and Development Authority of India) in June 2017 has deferred the implementation of Ind AS for insurance companies by 2 years to April 1, 2020 onwards. Additionally, in April 2018 RBI has deferred the implementation for Banking Companies by one year to April 1, 2019 onwards. Only China and Indonesia have this restriction. In China, companies must comply with the Chinese Accounting Standards for Business Enterprises, issued in February 2006. The national standards, however, were substantially converged with IFRS. Indonesia has not adopted IFRS standards.

- **Regarding mandatory cession to domestic reinsurers (Life and Non-Life),** GIC receives statutory cession of a percentage set by the IRDA. Currently, this is set at 5% on each and every reinsurance policy but the relevant regulation empowers IRDA to impose up to 30%. GIC is the sole reinsurer in the Indian reinsurance market. This restriction is also given under Policy Area 4 which in fact is double counting affecting total STRIs. China and Indonesia have these restrictions.
- **Limits on the share of risks that can be ceded to foreign reinsurers (Life and Non-Life):** In India, under the 2015 Amendment Act, re-insurance by foreigners means the insurance of "part of" one insurer's risk by another insurer who accepts the risk for a mutually acceptable premium. The Ministry of Finance interprets this as "excluding the possibility of 100% ceding of risk to a re-insurer". As pointed out by the service providers, while there are no specified limits, the IRDAI Regulation prescribes requirements on obtaining best terms for cessions and offer for participation (order of preference) in ceding reinsurance. However, this requirement shall no longer be mandatory from January 1, 2019. China, Brazil and Indonesia have similar restrictions.

Policy Area 5: Regulatory Transparency

- **There are only horizontal restrictions** related to legal obligations to communicate regulations to public within reasonable time prior to entry into force; adequate public comment procedure; and procedural issues related to cost and duration of visas and cost and number of working days to complete all mandatory procedures to register a company. In the context of completing mandatory procedures as pointed out by the service providers, apart from incorporating and registering a company which is governed by the Companies Act, 2013, an insurance company is required to get a license from IRDAI to act as an insurer.

Thus, Insurance is one of the highly regulated sectors in India. The major restrictions are related to foreign equity restrictions in India and other countries. Foreign branches are also not allowed in this sector though joint ventures are allowed. Licenses are needed and subject to economic needs tests and commercial presence to do insurance business. Insurance brokers and notaries must have a local license and qualifications from local institutions.

Re-insurance is more open than other forms of insurance in India for foreign countries and cross-border re-insurance is allowed. India is also liberal

under Policy Area 2 for actuarial services as is the case with all other countries and there is also good scope for exports of actuarial services.

While careful examination needs to be done regarding relaxing the foreign equity conditions and domination of public sector companies in Insurance as there are many social obligations, some segments of insurance like health insurance can be liberalized. Some other restrictions that can be liberalized are related to approval of new products and services where confirmation in writing is needed from IRDA that there is no further query; and the condition of ceding a percentage of the reinsurance policy to GIC.

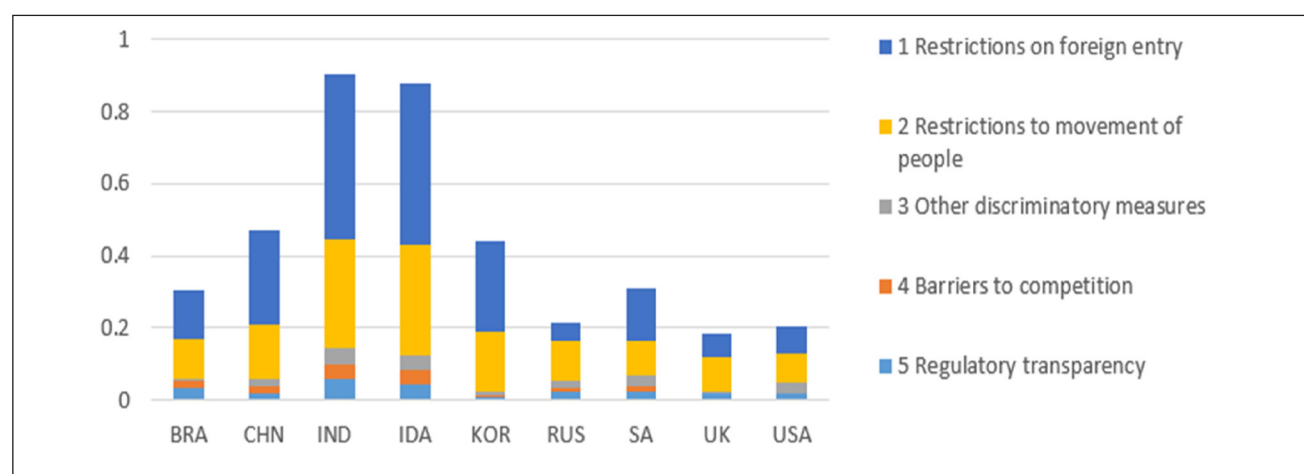
12. Legal Services

The highest STRI value in this sector is in Luxembourg (1.0) and Poland (1.0) followed by India (0.906) and Indonesia (0.879). The lowest STRI value is in Latvia (0.078). In the legal services, horizontal restrictions contribute around 61.7% to STRI in value terms and 63.5% in terms of numbers.

India and the Select 9 Countries: Comparison

India's legal services are highly restrictive. Among the Select 9 countries, USA, UK and Russia have less restrictions and India has the highest restrictions in Legal services followed by Indonesia as can be seen in Figure 4.21.

Figure 4.21: STRI-Legal Services, 2017



Analysis of STRI Restrictions by Major Policy Areas

The very high values in this sector in India are mainly due to Policy Area 1: Restrictions of Foreign Entry and Policy Area 2: Restrictions to Movement of People.

Policy Area 1: Restrictions on Foreign Entry

- **The two major restrictions are related to foreign equity restrictions with foreign law firms not being permitted to establish business in India both in domestic and international law.** Among the select countries, only India and Indonesia have foreign equity restrictions both on domestic law and international law. **China** does not have restrictions in these 2 parameters though consulting on legal affairs is included in the prohibited category of the catalogue for the guidance of Foreign Investment Industries for domestic law.
- **The other two major restrictions are related to equity restrictions applying to not licensed individuals or firms** wherein the Indian advocates are not permitted to enter into profit sharing arrangements with the persons other than Indian advocates both in domestic and international law. This restricts non-licensed individuals to invest in legal services providing company in India. **Indonesia** also has similar restrictions as a foreigner is not allowed to establish law firms or representative office in Indonesia both for domestic and international law. The only way a foreigner can access the market is through the employment by local firms as adviser to foreign law. **China** has restriction only in the case of domestic law in this parameter though law firms practicing Chinese laws are reserved for lawyers locally qualified. Foreign law firms may establish representative offices to practice law other than Chinese law. Brazil and Korea have restrictions only in the case of Domestic law. **In Brazil**, shares in law firms can be held only by lawyers registered with the regulatory authority (Order of Brazilian

Lawyers - OAB]. No such requirements apply for international law. **In Korea**, only lawyers can have equity in Korean law firms, but there is no such restriction on Foreign Legal Consultants firms.

Other than the above four restrictions, India has STRI values though small against all the parameters in this Policy Area mainly as a result of the above major restrictions. Indonesia also has similar restrictions. China and Korea have many of the following restrictions but not the first four high weighted major restrictions. The other restrictions in India in this area are as follows.

- **One of the prominent restrictions is related to legal form in domestic law** wherein proprietorship and partnership / limited liability partnership are only permitted modes of practice for law firms in India. Other modes of practice such as Limited Liability Corporation are not permitted.
- **Two other important restrictions though with relatively small weightage are that commercial association is prohibited between lawyers and other professionals and also between locally and not locally licensed lawyers.** Thus, an advocate shall not enter into a partnership or any other arrangement for sharing remuneration with any person or legal practitioner who is not an advocate under the Advocates Act 1961 (which includes other professions and not locally licensed lawyers). **While Indonesia and Korea have these restrictions, China does not have this restriction.**
- **Another restriction is related to prohibitions on hiring locally licensed lawyers.** In India, a locally licensed lawyer shall not enter into a partnership or any other arrangement for sharing remuneration with any person or legal practitioner who is not an advocate under the Advocates Act 1961. Thus foreign firms cannot hire locally licensed lawyers for providing legal service on host country law i.e. Indian law.

- **There are horizontal restrictions** like restrictions related to cross-border M&As and cross-border data flows. In both domestic and International law there is the nationality clause applicable to all members of the Board of Directors and also the condition that they should be licensed professionals qualified to practice the law of the land and the residency clause for the Managers and atleast one of the Board of Directors. Other horizontal restrictions are related to acquisition and use of land and real estate by foreigners; restrictions on the type of shares or bonds held by foreign investors and conditions on subsequent transfer of capital and investment, etc.
- **Regarding screening** though there is no provision related to screening in India, foreign investment in legal services is itself not allowed. Thus there is no effect of this provision.

Policy Area 2: Restrictions to Movement of People

Besides the horizontal restrictions related to visa and duration of stay for intra corporate transferees, contractual and independent services suppliers, there are some sector-specific restrictions as follows:

- **License or Authorization needed to practice both domestic and international law:** In India, Legal services can be provided only by the advocates, recognized by The Advocates Act, 1961. An Advocate has to be on roll of one of the state bar councils and has to pass All India Bar Examination. After passing the examination, the candidate will be awarded "Certificate of Practice" by the Bar Council of India.
- **Nationality or Citizenship is required to practice both domestic and international law:** In India, Legal services can be provided only by the advocates, who are citizens of India. Foreigners are not permitted to become an Advocate. There is a provision in the Act that the Bar Council of India may prescribe the conditions subject to

which foreign qualifications in law obtained by persons other than citizens of India shall be recognized for the purpose of admission as an advocate under this Act on Reciprocity basis. However, there is no residency or domicile requirement in India to become an advocate both for domestic and International law.

- **Law or Regulations for recognizing qualifications abroad: In India, Legal services can be provided only by the advocates,** who are citizens of India. Foreigners are not permitted to become an Advocate. There is a provision in the Act that the Bar Council of India may prescribe the conditions subject to which foreign qualifications in law obtained by persons other than citizens of India shall be recognized for the purpose of admission as an advocate under this Act on Reciprocity basis. These conditions come under many parameters again and again.
- **There is also a temporary license system in India:** Fly in- Fly out practice in India was recently the subject of a court case at the High Court of Madras. In its judgment on 21st February 2012, the High Court stated "There is no bar either in the Act or the Rules for the foreign law firms or foreign lawyers to visit India for a temporary period on a fly in and fly out basis, for the purpose of giving legal advice to their clients in India regarding foreign law or their own system of law and on diverse international legal issues".

There are restrictions in other Policy Areas as well.

Policy Area 3: Other Discriminatory Measures

- **The restrictions in this Policy Area are basically in the horizontal restrictions** related to public procurement and taxes and subsidies.

Policy Area 4: Barriers to Competition

- **Here also the restrictions are basically the horizontal restrictions** like appeal of the decisions by regulatory bodies, redressal when business practices restrict competition, etc.

- **There is one more restriction related to advertising. In India**, any form of advertisement is prohibited for advocates and law firms. An advocate shall not solicit work or advertise, either directly or indirectly, whether by circulars, advertisements, touts, personal communications, interviews not warranted by personal relations, furnishing or inspiring newspaper comments or producing his photographs to be published in connection with cases in which he has been engaged or concerned. The sign-board or name-plate or stationery should not indicate that he is or has been President or Member of a Bar Council or of any Association or that he has been a Judge or an Advocate General. Law firms are not allowed to publish their work or area of expertise on their website. Only USA, Brazil and Indonesia have these restrictions. **In USA**, there are various conditions imposed on lawyers' advertisements but these are mainly to prevent misleading information being used in advertising. **In Indonesia**, Code of ethics for advocates prohibits advertisement with the purpose to solely attract attention. **In Brazil**, the articles establish limitations regarding the content and the means of communication for legal services advertisements. China doesn't have any restrictions in this regard. **In China**, in general, lawyers are allowed to advertise their firms, specialty skills and strengths, practice experience and results as well as fee standards. **This is one area where relaxation can be thought of atleast to the extent of US regulations.**

Policy Area 5: Regulatory Transparency

- **These are the horizontal restrictions** related to obligations to communicate regulations to public, adequate public comment procedure and cost & time to obtain visa, etc.

Thus, in India legal services, both national and international law can be provided and law firms can be setup only by licensed Indian lawyers who are Indian nationals or citizens. Corporations are not

permitted in this sector and lawyers are not allowed to enter into partnerships or associate with other professions or foreign lawyers. However foreign lawyers can come on temporary license on fly-in fly-out basis. All countries in the STRI database have restrictions similar to India for domestic law, but not in international law, which is more open.

In India the major restrictions are in Policy Area 1 particularly the four parameters related to foreign investment. Any liberalization in these parameters can automatically lead to lower STRI values under other parameters as well. While doing this, there is a need to see whether some parameters which are not restricted now may need to have some restrictions. For example, there is no screening of foreign investment now as foreign equity is not allowed. But if foreign equity investment is allowed, screening may be needed.

The restriction of disallowing Indian lawyers to enter into partnerships or associate with other professions or foreign lawyers could be considered for relaxation. Another area of liberalization is related to relaxing the condition prohibiting hiring of locally licensed lawyers by foreign firms. If this is relaxed it can even help in export of our legal services. Relaxing the rules related to advertisement at least in a limited way can also be thought of.

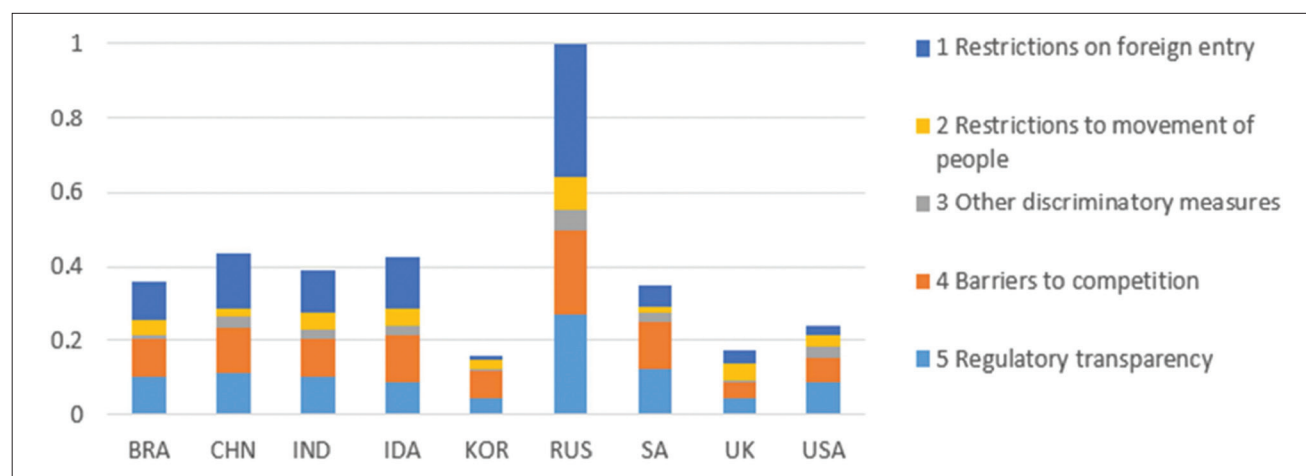
13. Logistics – Cargo Handling

The highest restriction in this sector is in Russia (1.0) distantly followed by China (0.437) and Indonesia (0.423) and then India (0.389). The lowest restriction is in Portugal (0.152) followed by Germany (0.153). In this sector, the contribution of horizontal restrictions is around 72.7% in terms of value and 73% in terms of numbers.

India and the Select 9 Countries: Comparison

Among the Select 9 countries, Korea has the least restrictions followed by UK and USA. Russia, China and Indonesia have higher STRIs than India in this sector as can be seen in Figure 4.22.

Figure 4.22: STRI-Logistic Cargo Handling Services, 2017



Analysis of STRI Restrictions by Major Policy Areas

In the Indian case, the STRI values are relatively high in Policy Area 1: Restrictions on foreign entry, Policy Area 4: Barriers to competition and Policy Area 5: Regulatory transparency.

Policy Area 1: Restrictions on Foreign Entry

- **There are no foreign equity restrictions in this sector.** In India, the 2016 edition of the Consolidated FDI Policy Circular liberalized ground handling services in airport allowing foreign investment without the need to obtain prior Government approval (automatic route). Cargo handling service in railway and port are not included in the FDI Policy Circular, thus there are no equity restrictions in these sectors. Thus, Foreign Investment follows the automatic route with no need for government approvals by foreign investors.
- **There are the horizontal restrictions** regarding proportion of shares foreigners can acquire in publicly controlled firms in cargo handling – air, ports, road facilities, rail facilities which is 51% equity and management control in all cases of disinvestment of central PSES; restrictions on cross-border M&As and cross-border data flows; the residency requirement for Managers and at least one of the Board of Directors; restrictions related to acquisition and use of land and real

estate by foreigners; restrictions on subsequent transfer of capital and investments which are subject to pricing guidelines.

- **Besides the horizontal restrictions there are some conditions** which are not considered as restrictions like licensing requirements for cargo handling at airports. However, this is not subject to quotas or economic needs test and foreigners may apply for it as well.

Policy Area 4: Barriers to Competition

The Restrictions in this Policy Area are mainly sector-specific and include the following:

- **There is the restriction that self-handling is prohibited for cargo handling at airports**, wherein foreign airlines shall not be allowed to engage themselves in self-handling. There is however an exception wherein the cargo airlines, which have their own cargo aircrafts, may undertake self-handling in their hub airports. In the case of ports, self-handling is not explicitly allowed, but the law doesn't prohibit it either. So, it is not considered as a restriction. Third party handling is expressly permitted in India. Among the other Select 9 countries, only Russia has restrictions under this parameter. Most other countries neither explicitly allow, nor prohibit it.

- **Contracts for service provision are awarded through competitive bidding in India** in both airports and ports for cargo handling. Only in the case of pilotage services at ports, only Indian nationals are allowed to bid.
 - **Regarding national, state or provincial government control** with at least the major firm in the sector, for airports there is the Airport Authority of India; for ports, the SCI; and for rail cargo handling, the Indian Railways. There are no state-owned road transport companies in India. Except UK, Korea and USA, all other countries in Select 9 countries have similar restrictions.
 - **Regarding the public controlled firms being exempt from the application of the general competition law, in India**, while no STRI value is assigned as public sector undertakings are not excluded from competition rules, they receive a competitive advantage by being categorized under one of the three levels of financial autonomy: 1. Maharatna; 2. Navratna; or 3. Miniratna. Depending on their categorization (which is done based on a set of financial criteria), they become eligible for investment benefits.
 - **Regarding the restriction of separation of accounts required for cargo handling** at airports, ports, railways, there is no explicit mention in law. So, OECD has given them STRI values.
 - **Regarding the restriction of cross-subsidization being prohibited** for cargo handling at airports, ports and rail facilities, cross-subsidization is not explicitly allowed, but the law does not prohibit it either. So STRI values are given by OECD for them as in the case of other countries.
- foreign suppliers; restrictions regarding cost to obtain a business visa, etc. Regarding exemption for temporary entry / transit of truck drivers, there is no special treatment. They must obtain a business visa which is granted for a period of up to 5 years. Thus, there is a STRI value in this case. Flight crew of scheduled operators are eligible for visa exemption by applying for a temporary landing permit allowing for a stay of upto 7 days without charges. Similarly, seamen are exempt from visa requirements for 15 days from the date of entry provided they hold a temporary landing permit.
- **There are the procedural restrictions** related to number of working days to complete all mandatory procedures to register a company; total cost to complete all official procedures required to register a company; number of mandatory procedures to register a company; individual licensing / registration requirements imposed on warehousing, freight forwarding and brokerage services; and time taken for customs clearances.
 - **There is a separate licensing system** for all subsectors of the logistics sector. Other countries in the Select 9 also have licensing requirements for some sub sectors of logistics sector.
 - **There are also some positive measures by India aimed at facilitation** : To foster foreign investment, India has established an Authority for Advanced Rulings (AAR). As a facilitation measure single window for customs procedure is also available through the Indian customs EDI -systems (ICES).

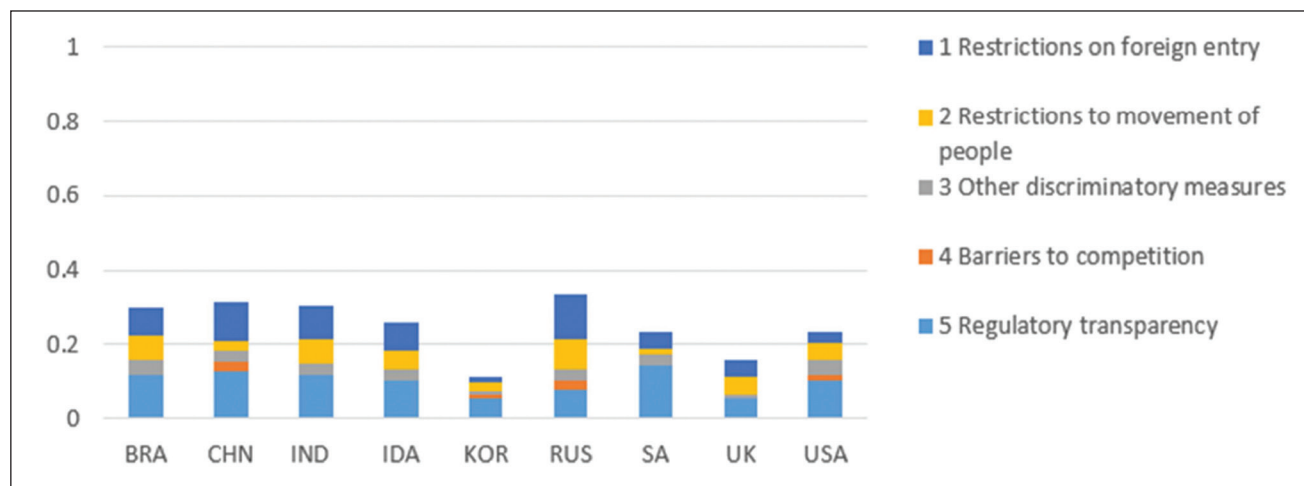
The restrictions in the other two policy areas are basically horizontal restrictions.

Policy Area 5: Regulatory Transparency

- **There are horizontal restrictions** like legal obligation to communicate regulations to the public and also for adequate public comment procedure open to interested persons including

Policy Area 2: Restrictions to Movement of People

- There are only horizontal restrictions related to visas.

Figure 4.23: STRI-Logistic Custom Brokerage Services, 2017

Policy Area 3: Other Discriminatory Measures

- **There are horizontal restrictions** related to public procurement, taxes and subsidies.
- **Regarding national standards on transport packages**, BIS has recently revised the national standards to align with ISO 3394 requirement.

Thus, this sector has few restrictions in India and any reforms in this sector can be made only by reforming the horizontal restrictions and some sector specific restrictions in Policy Area 4: Barriers to Competition like, control by government through one major government firm in Air, Rail and Sea cargo. In some parameters like separation of accounts, cross-subsidization, etc, while there is no restriction, explicitly mentioning that there is no restriction can help in removing their contribution to STRI scores.

14. Logistics-Customs Brokerage

The highest STRI value in this sector is in Mexico (1.0) followed distantly by Iceland (0.374), Chile (0.346), Russia (0.334), Costa Rica (0.317), China (0.314) and India (0.303). The lowest STRI values are in Latvia (0.094), followed by Korea (0.114) and UK (0.157). Restrictions are relatively low in this sector in India compared to other sectors. The contribution of horizontal restrictions is high at 81.6% in terms of value and 80.8% in terms of numbers. Thus, there are very few sector specific restrictions.

India and the Select 9 Countries: Comparison

Among the Select 9 countries, the highest STRI is in Russia followed by China and then India. Korea followed by UK have the lowest STRI as can be seen in Figure 4.23.

Analysis of STRI Restrictions by Major Policy Areas

The Policy Areas with relatively higher STRI values for India are Policy Area 5: Regulatory transparency, Policy Area 1: Restrictions on foreign entry and Policy Area 2: Restrictions to movement of people.

Policy Area 5: Regulatory Transparency

- **The major restrictions are the common horizontal restrictions** like the legal obligations to communicate regulations to the public within a reasonable time prior to entry into force, wherein there is no minimum statutory time period between publication and entry into force of Acts; adequate public comment procedure open to interested persons including foreign suppliers, wherein there is no obligation to hold consultations with all stakeholders; Visa processing time, number of documents to obtain a Visa and cost to obtain a Visa, etc; number of working days to complete all mandatory procedures to register a company, total cost to complete all official procedures to register a company; number of mandatory procedures to

register a company; and time taken for customs clearance. As in the case of Logistics: customs handling sector, there is no special treatment for truck drivers and they have to obtain a business visa which is granted for a period of upto 5 years. Flight crew of scheduled operators are eligible for visa exemption by applying for a temporary landing permit allowing for a stay of upto 7 days without charges. Similarly, seamen are exempt from visa requirements for 15 days from the date of entry provided they hold a temporary landing permit.

- **Some Positive facilitation measures have also been implemented by India :** To foster foreign investment, India has established an Authority for Advanced Rulings (AAR). As a facilitation measure, single window for customs procedure is also available through the Indian customs EDI -systems (ICES).

Policy Area 1: Restriction on Foreign Entry

- **The restrictions are the common horizontal restrictions** on cross-border M&As; cross-border data flows; residency requirement for Managers and atleast one of the Board of Directors; acquisition of land and real estate by foreigners which is not allowed for some countries due to strategic reasons; and pricing guidelines for subsequent transfer of shares between persons resident in India and outside India.

Policy Area 2: Restrictions to Movement of People

- **Here also there are the horizontal restrictions** like labour market tests for intra-corporate transferees, contractual and independent service suppliers wherein employment visa is needed and this shall not be granted for jobs for which qualified Indians are available; and limitation on duration of stay for all 3 types of service providers.
- **Licensing** is needed to provide this service.
- **There is the nationality clause** as a precondition

for granting a customs brokerage license.

- **No residency required to practice (customs brokerage) in India**, but only Indian citizens can obtain a customs brokers license before working in a customs brokerage firm. Some other countries also have similar conditions. **In Brazil**, only Brazilians can provide this service. **In South Africa**, there is no nationality clause. But only person located in the country can obtain the license. **Russia** needs citizenship to get license. While in **UK** no license is required to practice. **In USA** to get a license, examination has to be passed and this exam can be taken only by US citizens.

There are some horizontal restrictions in the other two Policy Areas also.

Policy Area 3: Other Discriminatory Measures

- **There are only horizontal restrictions** related to public procurement, taxes and subsidies.
- **As a facilitation measure**, the Authorized Economic Operators (AEO) scheme is also available for foreigners.

Policy Area 4: Barriers to Competition

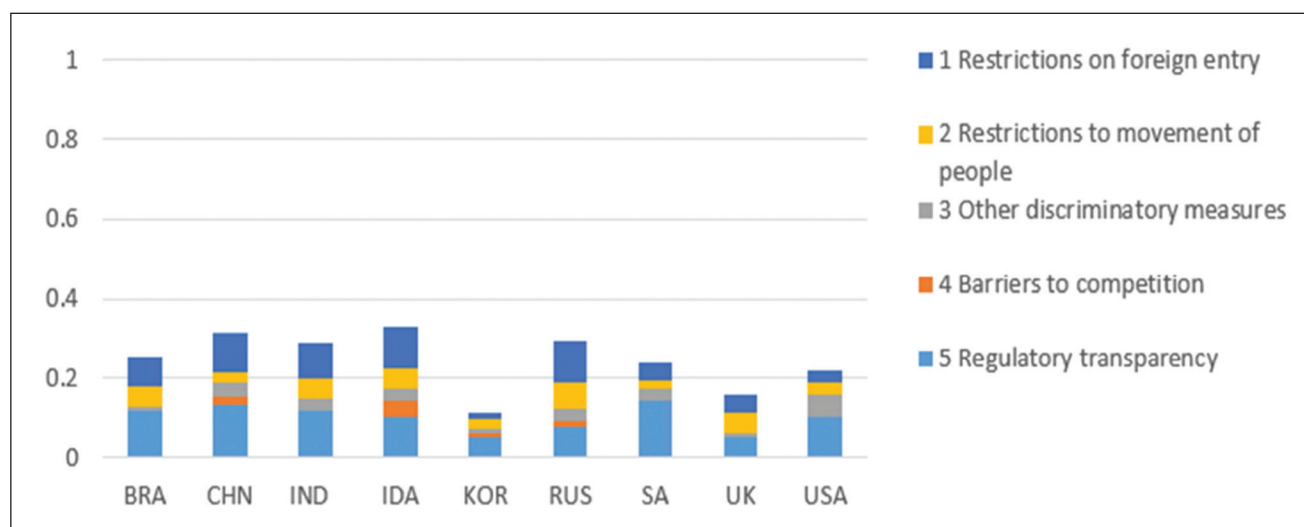
- **Here also there are only horizontal restrictions** like appeal of the decisions of the regulatory bodies; and redressal mechanism for firms when business practices restrict competition in a given market.

Thus, in Logistics: Customs Brokerage sector also the restrictions are mainly horizontal restrictions particularly in Policy Areas 5, 1 and 3 and if there are any reforms in these three areas, then STRI values can become less. Procedural issues related to Ease of Doing Business is one immediate area to be tackled in this sector as in other sectors.

15. Logistics - Freight-Forwarding

STRI scores are low in this sector for all countries. The highest STRI value for this sector is in Iceland [0.360] followed by Indonesia [0.328], China [0.317],

Figure 4.24: STRI-Logistic Freight Forwarding Services, 2017



Costa Rica [0.307], Russia [0.294] and then India [0.290]. The lowest STRI is in Korea [0.116]. In this sector, the contribution of horizontal restrictions to total STRI is 86.3% in terms of value and 87.5% in terms of numbers. Thus, sector specific restrictions are few.

India and the Select 9 Countries: Comparison

Among the Select 9 countries, Indonesia, China and Russia have higher STRI scores than India. Korea has the lowest score followed by UK as can be seen in Figure 4.24.

Analysis of STRI Restrictions by Major Policy Areas

While the STRI value for India is low in this sector, the restrictions are mainly in Policy Area 5: Regulatory Transparency and Policy Area 1: Restrictions on Foreign Entry.

Policy Area 5: Regulatory Transparency

- **There are the horizontal restrictions** like legal obligation to communicate regulations; wherein there is no statutory period between publication and entry into force of Acts; adequate public comment procedure wherein there is no obligations to hold consultations ; procedural/ transactions costs, like number of working days to complete all mandatory procedures to register a company, total cost to complete all official

procedures required to register a company, number of mandatory procedures to register a company, time taken for customs clearance, cost and time to obtain business visa, etc. As in the case of other logistics services there is no special treatment for truck drivers regarding visas. The Visa exemption for flight crews is for a stay of 7 days and seamen for 15 days provided they have temporary landing rights.

- **There is also a separate licensing requirement** in all sub-sectors of the logistics services.
- **To foster foreign investment**, India has established an Authority for Advanced Rulings (AAR). As a facilitation measure, single window for customs procedure is also available through the Indian customs EDI -systems (ICES).

Policy Area 1: Restrictions on Foreign Entry

- **In Logistics sector, there are no foreign equity restrictions.** Foreign investment follows the Automatic route and prior approval of Government or RBI is not needed.
- **Here there are many horizontal restrictions** related to cross-border M&As; cross-border data flows; residency requirement for Managers and at least one of the Board of Directors; acquisition and use of land and real estate not being allowed

for some countries; and pricing regulations regarding transfers of shares between persons resident in India and persons resident outside India.

- **There are no restrictions for freight forwarders undertaking business in the domestic market** as long as the necessary license (in the case of freight transportation by road) or registration are obtained.

There are some Restrictions in other Policy Areas as well.

Policy Area 2 : Restrictions to Movement of People

- **There are only horizontal restrictions** related to visas and duration of stay.

Policy Area 3 : Other Discriminatory Measures

- **There are only horizontal restrictions** related to public procurement, taxes and subsidies.
- **The facilitation measure** of the Authorized Economic Operators (AEO) scheme is accessible for foreigners also.

Policy Area 4 : Barriers to Competition

- **There are horizontal restrictions** like appeal of the decisions of the regulatory bodies; redressal mechanism for firms when business practices

restrict competition in a given market.

- **Prices charged for freight forwarders are not regulated** : While there is no STRI value for India under this parameter, there are pricing guidelines for rail freight transport to and from private freight terminals. The government may also impose directions regarding fixing of fares and price carried by road.

Thus, in this sector also the restrictions are few and mainly horizontal restrictions in Policy Areas 5 and 1 and any reforms can take place only in these areas.

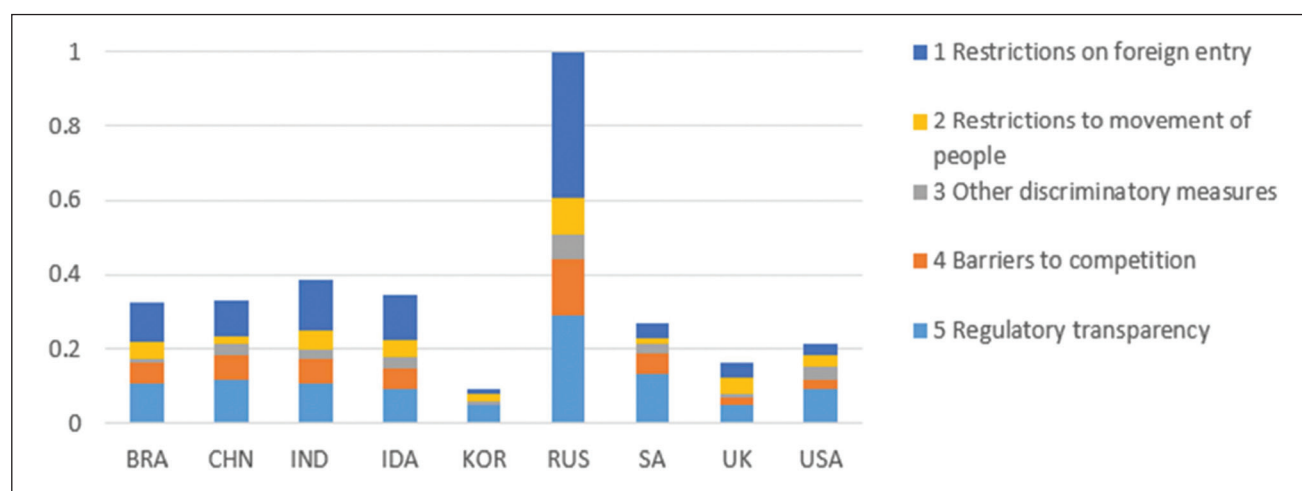
16. Logistics-Storage and Warehouse

The highest STRI value in this sector is in Russia (1.0) distantly followed by India (0.383). The lowest STRI value is in Germany (0.141). The share of horizontal restrictions in total STRI is 84.9% in terms of value and 85.3% in terms of numbers. Thus, the sector specific restrictions are few.

India and the Select 9 Countries: Comparison

Among the Select 9 countries, Russia has the highest STRI distantly followed by India. However, in the Indian case, STRI value is not high compared to other sectors. The next highest STRI value is for Indonesia followed by China and Brazil. Korea has the lowest STRI value as can be seen in Figure 4.25.

Figure 4.25: STRI-Logistic Storage and Warehouse, 2017



Analysis of STRI Restrictions by Major Policy Areas

The major Policy Areas which contributed to the STRI values are Policy Area 1: Restrictions on Foreign Entry and Policy Area 5: Regulatory Transparency.

Policy Area 1: Restrictions on Foreign Entry

- **In Logistics sector, there are no foreign equity restrictions.** Foreign investment follows the Automatic route and prior approval of Government or RBI is not needed.
- **There are horizontal restrictions** like the 51% equity and management control in all cases of disinvestment of CPSEs for storage and warehouse at airports, ports, road facilities and rail facilities; restrictions on cross-border M&As and cross-border data flows; residency requirement for Managers and at least one of the Board of Directors; restrictions on acquisition and use of land and real estate for some countries; and pricing guidelines for transfer of shares between persons resident in India and persons resident outside India.

There are some requirements like the following which are not considered as restrictions and so no STRI value is given.

- **A warehouse license** is required to run a public or private bonded warehouse. A warehouseman only needs to register his/her facility and no license is required.
- **There is a registration requirement for warehousing business.** The warehouses issue negotiable warehouse receipts which is a commonly used form of guarantee and tool for transfer of ownership for commodities stored in warehouses.
- **There is no statutory monopoly on road freight transport** in India even though Central Warehousing Corporation (CWC) is a government owned company.

Policy Area 5: Regulatory Transparency

- **There are the horizontal restrictions** like no minimum statutory time period between publication and entry into force of Acts of Parliament, no obligations to hold consultations with all stakeholders about proposed legislations; procedural/ transactions costs related to obtain a business visa, number of working days to complete all mandatory procedures to register a company, total cost to complete all official procedures required to register a company and time taken for customs clearance.
- **Visa Exceptions :** There is no special treatment for truck drivers. They must obtain a business visa which is granted for a period up to 5 years. The Visa exemption for flight crews is for a stay of 7 days and seamen for 15 days provided they have temporary landing rights.
- **There is a separate licensing requirement** in all sub sectors of the logistics services.

In other Policy Areas also there are some restrictions.

Policy Area 2: Restrictions to Movement of People

- **There are only horizontal restrictions** related to visas and duration of stay.

Policy Area 3: Other Discriminatory Measures

- **There are only horizontal restrictions** related to public procurement, taxes and subsidies.
- **The facilitation measure** of the Authorized Economic Operators (AEO) scheme is available for foreigners also.
- **There are some conditions** in this Policy Area which are not necessarily restrictions like the BIS standards revised to align with international standards for transport packages.

Policy Area 4: Barriers to Competition

- **Here also there are horizontal restrictions** like appeal of the decisions of the regulatory bodies; redressal mechanism for firms when business practices restrict competition in a given market.

Besides the horizontal restrictions there are following sector specific restrictions in this Policy Area.

- **Regarding awarding contracts for service provisions** through competitive bidding for storage and warehouse at ports, there is no mention in the law and thus a STRI value is assigned by OECD. Except Brazil, Korea and Indonesia, all other countries in the Select 9 have STRI values as in many of these countries it is not explicitly stated.
- **In the case of at least one major firm being controlled by government in storage and warehousing** at ports, road facilities and rail facilities, there is the CWC which is a government-controlled PSU, but not excluded from competition, though it has a competitive edge by being classified as Maharatna, Navaratna and Miniratna.

Thus, in this sector also the restrictions are mainly horizontal restrictions in policy areas 1 and 5 and reforms related to horizontal restrictions can automatically help in liberalizing this sector as well.

17. Maritime Transport

In this sector, the highest STRI values are for Indonesia (0.499) followed by China and Russia (0.405 for both), India (0.398) and then US (0.371). The

lowest STRI value is for Latvia (0.127) followed by Germany (0.176) and France (0.180). The contribution of horizontal restrictions to total STRI of this sector is 68.2% in value terms and 68.6% in terms of numbers.

India and the Select 9 Countries: Comparison

Among the Select 9 countries, Indonesia, China and Russia have higher STRI values than India while USA has marginally lower STRI value. UK has the lowest STRI value among these countries as can be seen in Figure 4.26.

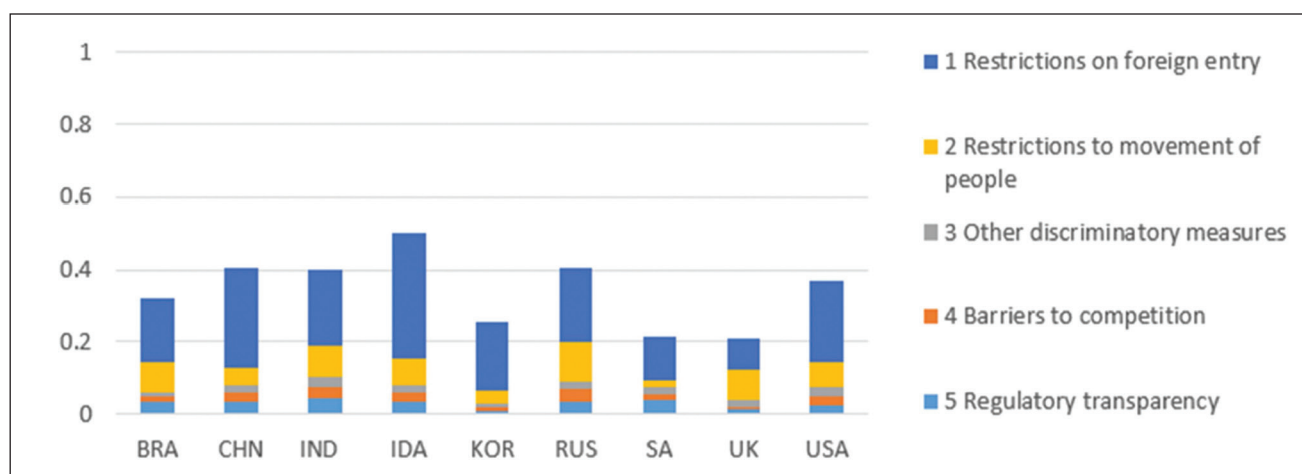
Analysis of STRI Restrictions by Major Policy Areas

In the case of India, the major restrictions are Policy Area 1: Restrictions to Foreign Entry (0.207) and Policy Area 2: Restriction to Movement of People (0.086).

Policy Area 1: Restrictions on Foreign Entry

- India allows FDI up to 100% subject to applicable laws and regulations. So, there is no STRI value for this for India. 100% FDI under automatic route is also allowed for port development projects. USA also has no foreign equity limit for foreign trade, but for coastal trade at least 75% of the interest of the corporation should be with US citizens. Yet no STRI value has been given by OECD for US under this parameter. China and Korea are less restrictive in this parameter.

Figure 4.26: STRI-Maritime Transport Services, 2017



The major restrictions in India in this Category are the horizontal restrictions which include the following.

- **The limits to proportion of shares that can be acquired by foreign investors in publicly controlled firms:** OECD has pointed out that SCI is a public sector enterprise and majority of the company stocks must be government owned. 80.12% of the shares is government owned and 19.88% is disinvested. In addition, in all cases of disinvestment of CPSEs, the government must retain at least 51% equity and management control. However, as pointed out by the industry, disinvestment has taken place and the government holds only 63.75% shares with 36.25% shares disinvested.
 - **Restrictions on cross-border M&As:** A foreign company can with prior approval of RBI, merge into a company registered under this Act or vice versa.
 - **Restrictions to own and / or register vessels under national flags:** To register an Indian ship, the applicant has to be a citizen of India, or a company of a body established by or under any Indian central or state Act which has its principle place of business in India or a cooperative society which is registered or deemed to be registered under the Indian Cooperative Societies Act. Other select countries like US, China and Korea also have restrictions in this area.
 - **There are also horizontal restrictions** related to cross border data flows; residency clause for Managers and atleast one of the Board of Directors; acquisition and use of land and real estate by foreigners; pricing conditions for subsequent transfer of shares; and restrictions related to cross border data flows.
- Regarding sector specific restrictions, there are some observations as follows:
- **Cargo reservations or preferences: In the US** the share of cargo required to be carried by US flag vessels is military cargo 100%, Exim bank 100%, civilian agencies cargo at least 50% and Agricultural cargo at least 50%. **In India**, as per the OECD database for liner shipping, at least 40% of the cargo carried by the liner shipping companies must be reserved for Indian flag ships. Preference will be given to Indian flag vessels for government cargoes, exports from India on CIF / C&F and imports into India on FOB / FAS basis. Indian flag vessels will have the first right of refusal for carrying such cargo and only thereafter can foreign flag ships be allowed to be chartered / taken on International rental basis. Kandla has priority berthing for coastal vessels. Many other countries also have restrictions in this sector. However, as stated by industry sources, sector specific restrictions in Indian shipping are only in paper, instead foreign ships enjoy special privileges. The stated policy of the government of India is exports from India on CIF / C&F and imports into India on FOB/FAS basis; Indian flag vessels have the first right of refusal for carrying all Indian cargo and only thereafter can foreign flag ships be allowed to be chartered and all major ports in India have to give 40% discount to Indian coastal vessels. However, the reality in India is that 96% of Indian EXIM cargo is carried on non-Indian ships. Further, relaxation has been given to foreign flag vessels since May 2018 for coastal movement of (a) EXIM Transshipment Containers and (b) Empty Containers; coastal movement of agriculture, horticulture, fisheries and animal husbandry commodities; and coastal movement of fertilizers.
 - **Cargo sharing agreements: India** has 6 bilateral / plurilateral Cargo sharing agreements. **USA** also has one with Brazil. **Korea** has bilateral maritime transport agreements with number of countries, but none of these have cargo sharing scope.

- **Foreign flagged ships are partially excluded from cabotage (coastal shipping):** In India movement of coastal trade is generally reserved for Indian flag vessels. However, as per a regulated order of priority, foreign registered ships may be granted a license to operate in Indian coastal trade. In 2015-16, 28% of coastal cargo was carried by foreign flagships. Also, in Kandla Port there is priority berthing for coastal vessels/shipping. Further as pointed out by service providers, a foreign flag ship is not required to obtain a license from the Director General of Shipping for engaging in coastal trade of India, for carriage by sea of agricultural, fisheries, animal husbandry and horticultural commodities and cargo in containers. In countries like the US, Indonesia and China cabotage is fully reserved for domestic ships. **In US,** The Jones Act requires that merchandise that is transported by water between US points be carried by US built vessels, registered in the United States, owned and manned by US citizens. **In Indonesia,** Foreign ships are prohibited to operate in the domestic coastal transport. **In China,** Foreign (flagged and owned) vessels are not allowed to operate maritime transport services between Chinese ports. It is however possible for foreign-flagged, but wholly Chinese-owned, vessels to perform cabotage between Shanghai and other Chinese ports.
- **Restrictions on chartering of vessels:** In India as per the OECD, the Director General Shipping exercises control over the chartering of foreign ships by Indian companies and foreign ships by Indian parties. The Foreign ships can be chartered when it is verified that no Indian ships are available for transport of the cargo in question. These licensing rules have been relaxed in May 2018 as stated earlier. OECD has given a STRI score for this parameter. However as pointed out by the service providers, this is not really a

restriction and the stipulation of Right of First Refusal (RoFR) does not give any price preference to Indian vessels. The Indian vessels have to perform the same task at the price offered by foreign ships. Therefore, RoFR does not increase the cost of transportation despite the fact that input costs paid by Indian shipping companies are far higher and they are liable to pay taxes in India.

Policy Area 2: Restrictions to Movement of People

- **India has horizontal restrictions** related to labour market tests with employment visa required and is not given for jobs where qualified Indians are available in the case of intra-corporate transferees, independent and contractual service suppliers. There are also the common procedural horizontal restrictions related to limitation of duration of stay (related to visas) for intra-corporate transferees, contractual and independent service suppliers.
- **Laws or regulations related to recognizing qualifications gained abroad:** OECD database states that Foreigners are allowed to apply for Indian certificates of employment in certain areas of shipping by taking courses in India. However as pointed out by industry sources, Merchant Shipping Act 1958 has a provision to recognise certificates issued by other countries for qualifications to be employed on Indian ships.
- **License or Authorization required to practice:** Though no STRI score is given, OECD database states that Officers of ship must obtain a certificate of competency from the Central Government or a duly authorized person. As pointed out by Industry sources, a license (Recruitment & Placement Service License) is required for employment of seafarers on ships not owned by the company as per the Merchant Shipping Act 1958.

There are restrictions in other Policy Areas also.

Policy Area 3: Other Discriminatory Measures

- **There are the horizontal restrictions** related to public procurement. These types of restrictions are also found in other countries and are needed as the Public Procurement (Preference to Make in India), Order 2017 dated 15th June, 2017 is intended to give teeth to the 'Make in India' policy. This order is applicable for goods, services and contracts for both goods and services and gives 20% price preference to an Indian company and the Ministry of Shipping has been named as one of the nodal ministries for the implementation of this policy. However as pointed out by Industry sources this policy has not been implemented by the Ministry of Shipping.
- **Regarding taxes and subsidies** no STRI score is given by OECD as taxation in India is levied on a non-discriminatory basis. Residents and people conducting business in India are subject to the same tax provisions. Infact foreign suppliers are in a more advantageous position than domestic suppliers. As pointed out by the Industry, foreign seafarers do not pay taxes in India when they work on the Indian coast; foreign suppliers of shipping services like foreign container companies are carrying cargo without payment of GST for such services; foreign suppliers do not pay duties on imported bunkers used in Indian waters; and Foreign suppliers of shipping services also do not pay 5% IGST on ship import as the Indian companies pay.
- **Discrimination in the use of marine services, use of port terminal services, use of ancillary services, port tariffs and other port related fees:** Kandla Port is currently India's largest port in terms of cargo handled and vessel traffic. Tariffs are different for coastal (cabotage) and foreign going (can be foreign or Indian owned) vessels in a range of areas such as port facilities, pilotage, berthing,

mooring, anchoring, refueling, water supply and provision of electricity. JNPT handles the major part of container traffic of India's ports. Rates of port facilities here are also discriminatory between coastal (cabotage) and foreign going vessels. **This should not be considered as a restriction as there is no discrimination between Indian and foreign service providers.**

Policy Area 4: Barriers to Competition

- **Restrictions related to national, state or provincial government control on at least one major firm in the sector:** In India, government holds 80.12% share in SCIs equity and capital with remaining 19.88% share disinvested. However, after disinvestment, the above shares have become 63.75% and 36.25% respectively. This restriction has also been mentioned in Policy Area 1 and thus in a way is leading to double counting.
- **Certain types of shipping agreements partially exempt from national competition laws:** As stated by the OECD on 5 February 2015, the Indian Government, with the objective of promoting efficiency and productivity, exempted the Vessels Sharing Agreements of the liner shipping industry from the anti-competitive provisions of the Competition Act, for a period of one year. However, companies are not allowed to engage in practices involving fixing of prices, limitation of capacity and allocation of market, and customers. Vessel sharing has however, only been made exempt in the liner shipping industry. For the tramp shipping industry, such agreements are not exempt from the purview of the CCI. During the said period of one year, the Director General (Shipping), the Ministry of Shipping and the Government of India will monitor Vessel Sharing Agreements. This exemption has been extended for another year in 2016, and once again in 2017 and further for 3 years w.e.f. 4th July 2018. The

industry has cautioned the Indian government and policy makers on the risks/dangers of giving free access to the international shipping container shipping lines who enjoy world-wide monopolies and the economic/commercial risk from this to Indian trade including making Indian exports uncompetitive due to monopolistic and predatory pricing of liner services.

- **Port concessions granted with exclusive rights to operate the port infrastructure:** In India, except for any dock, berth, wharf, quay, stage, jetty, pier, warehouse, shed, etc at any port set apart for the use of the officers of customs at the port, all rates and other charges payable, for the storage of goods have to be paid to the Port Authority.

Policy Area 5: Regulatory Transparency

- **There are the horizontal restrictions** related to legal obligation to communicate regulations to the public within a reasonable time prior to entry into force; adequate public comment procedures; issues related to obtaining visa, cost of visa and documents needed to obtain visa. Seamen are exempted from visa requirements for a period of 15 days from the date of entry provided they hold a temporary landing permit.

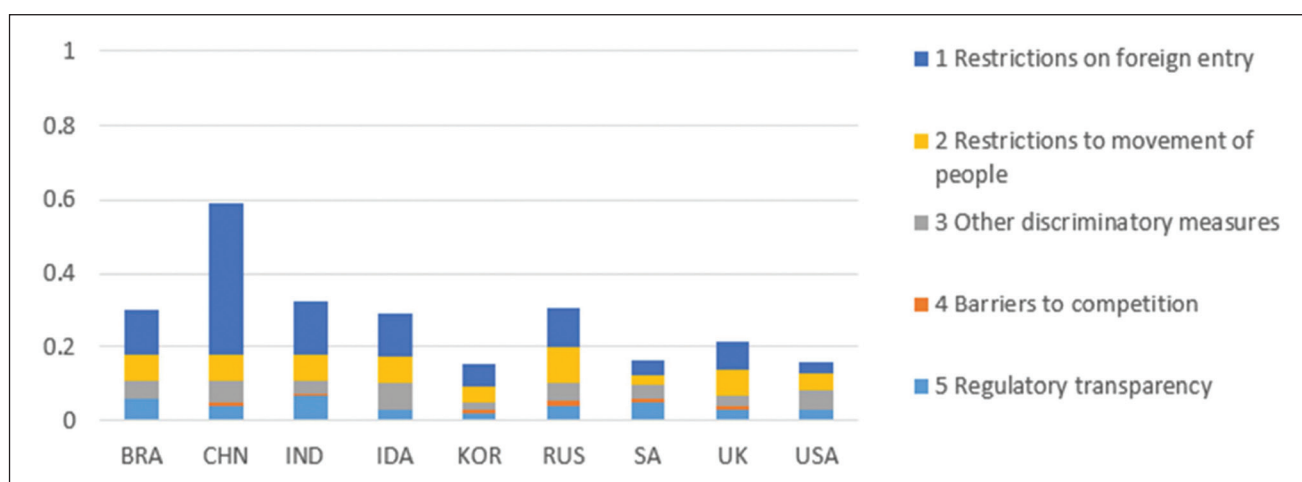
Thus, there are both horizontal and sector-specific restrictions in this sector. As pointed out by service providers these are to gain employment for Indian seamen and shipping assets, and ensure minimum supply chain assuredness for India. The rules are not discriminatory against the foreign seaman or shipping asset and restrictions are only in paper and not in practice. Cargo reservation is, in fact, practiced in the EU and USA.

While this sector has restrictions, other countries also have such restrictions, some not so explicit. Besides there are subsidies and conditions of use of national ships by other countries. There is also the issue of monopolistic practices by the Liner shipping companies.

While there are no restrictions in India on maximum foreign equity share allowed as in China, Korea and Indonesia, there are limits on share that can be acquired by foreign investors in public limited companies.

While in USA, China and Indonesia there are restrictions like Foreign-flagged ships are fully excluded from cabotage without any exception, in India it is not fully restrictive and Foreign-flagged

Figure 4.27: STRI-Motion Pictures Services, 2017



ships are excluded from cabotage if no Indian ships are available.

Port tariffs are not discriminatory but based on the government's stated goal that there is a need to induce a modal shift of cargo from road and rail to sea and hence the discounted fares to Indian ships.

18. Motion Pictures

The highest STRI values in this sector are in China (0.591) followed by Iceland (0.376), India (0.325) and Russia (0.303). The lowest STRI value is in Japan (0.105). Horizontal restrictions contribute 87.9% in terms of value and 88.9% in terms of numbers. Thus, sector specific restrictions are few.

India and the Select 9 Countries: Comparison

Among the Select 9 countries, China has the highest restrictions. Other countries have much lower restrictions with India having the second highest STRI closely followed by Russia, Brazil and Indonesia. Korea has the lowest STRI in this sector as can be seen in Figure 4.27.

Analysis of STRI Restrictions by Major Policy Areas

The major policy areas contributing to India's STRI value in this sector are Policy Area 1: restrictions on foreign entry distantly followed by Policy Area 2: restrictions to movement of people and Policy Area 5: regulatory transparency.

Policy Area 1: Restrictions on Foreign Entry

- **Foreign equity restrictions:** In India, Investments in the motion pictures sector has been liberalized under the 2016 Negative Investment List. The liberalization covers, among others, investments in film production and screening in movie theatres, which were excluded from foreign investment under the previous 2014 List. **Only China** has STRI value in this policy measure as FDI in this sector is in the prohibited list in China.
- **Horizontal restriction regarding limits to the proportion of shares that can be acquired by foreign investors in publicly-controlled firms:** In

India there are horizontal restrictions in this sector like the limits to the proportion of shares that can be acquired by foreign investors in publicly controlled firms wherein the NFDC is a state-owned enterprise engaging in film production, distribution and financing and is owned entirely by the government. Besides there is the condition that in all cases of disinvestments of CPSEs, the government must retain at least 51% equity and management control. In the Select 9 countries, besides China which prohibits FDI in this sector, UK and Russia have STRI values. **In UK**, The British Broadcasting Corporation and Channel 4, which control BBC Films and Film 4 Productions respectively, do not have shareholders. **In Russia**, in state owned unitary enterprises a private person cannot own shares. Mosfilm and Lenfilm are unitary enterprises.

- **There are also horizontal restrictions** related to cross border M&As and cross border data flows; residency clause for Managers and at least one of the Board of Directors; acquisition and use of land, real estate by foreigners restricted in the case of some countries; and pricing guidelines for subsequent transfer of capital and investment.

There are some sector specific restrictions which include the following:

- **Import duty:** In India, there is the import duty on instant print film in flat at 10%, 25%, 50%, 75% and 100% for 5 different HS codes. Though the restriction is found in most of the other countries in the Select 9 countries, it is relatively less in other countries. **In Korea** the duty is 8% on cinematographic films and DVDs and in **USA**, MFN rate is 1.4% for sound recordings on motion-picture film suitable for use in connection with motion-picture exhibits, while there is no import duty on DVDs.

- **There is the restriction in India related to statutory monopoly on copyrights management**, wherein the central government shall not ordinarily register more than one copyright society to do business in respect of the same class of works. None of the other Select 9 countries have this restriction.
- **There are also other restrictions on foreign entry** like films intended for public exhibition in India must be certified by the CBFC which is based on suitability to different audiences. CBFC can also refuse certification on various grounds.

Policy Area 2: Restrictions to Movement of People

- **There are horizontal restrictions** like labour market tests in the form of employment visa and limitation on duration of stay for intra-corporate transferees, contractual and individual service suppliers. These types of restrictions are also found in other Select 9 countries.
- **Recognition of qualifications:** Like other Select 9 countries, in India also licensing is not required for recognition of qualifications.

Policy Area 5: Regulatory Transparency

- **There are horizontal restrictions** like no minimum statutory period between publication and entry into force of Acts of Parliament; no obligation to hold consultations with all stakeholders on proposed legislation; procedural/transaction costs issues like costs to obtain business visa, possessing valid visa, number of working days to complete all mandatory procedures to register a company, total cost to complete all official procedures required to register a company and number of mandatory procedures to register a company.
- **Copyrights:** Like other countries, India's Copyrights Act is strict and Copyright infringement or abetting the infringement

are criminal offences. There are also explicit provisions on violation of copyrights in the digital realm (digital piracy).

There are also restrictions in other Policy Areas.

Policy Area 3: Other Discriminatory Measures

- There are the horizontal restrictions related to public procurement.

There are also some conditions which are not restrictive like the following:

- **Exclusive rights to authorize or prohibit reproduction and distribution of their work or prohibit communication to the public of their work:** These are protected in the domestic law. India is a signatory to the Berne convention and TRIPS, but not to the WIPO Copyright treaty.
- **Foreign Right holders can join copyrights societies in India** and copyright societies in India can enter into agreement with any foreign society for administering in India the rights administered in a foreign country by such foreign society or organisation.

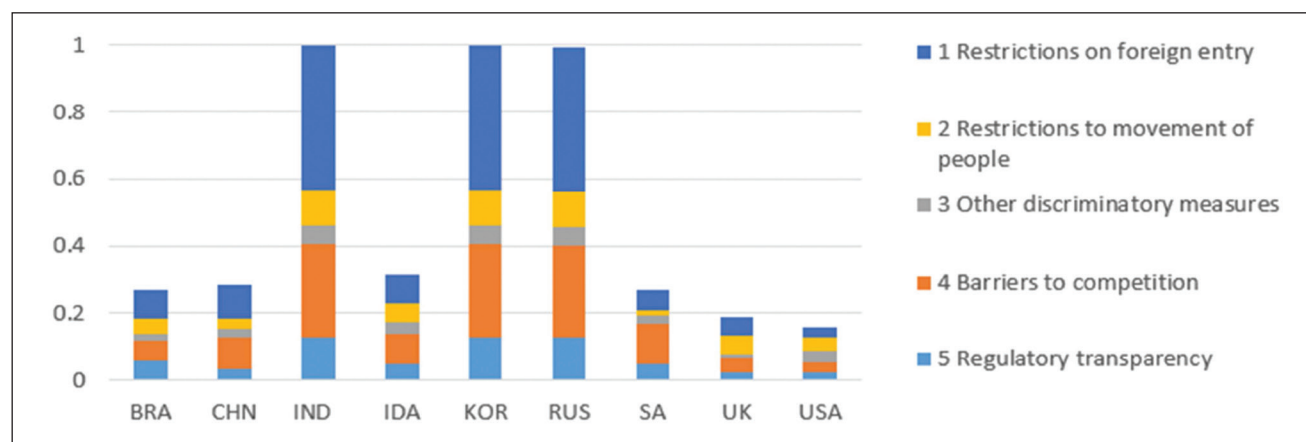
Policy Area 4: Barriers to Competition

The sector specific measure is as follows:

- **National, State or Provincial government control on any major firm in the sector:** In India, the National Film Development Corporation (NFDC) is fully owned by the government of India and produces, finances and distributes films. Besides India, China, Russia and even UK has this restriction, but the remaining countries in the Select 9 countries don't have this restriction. This is one area where liberalization can be thought of.

Thus, this sector has many horizontal restrictions besides some sector specific restrictions. Some of the areas of liberalization can include liberalization related to NFDC which is fully government owned;

Figure 4.28: STRI-Rail Freight Transport Services, 2017



lowering import duties on instant print film; and regarding statutory monopoly on copyrights management with the central government not ordinarily registering more than one copyright society to do business in respect of the same class of works.

19. Rail Freight Transport

India, Korea and Israel have the maximum and highest STRI value (1.0) in this sector, followed by Russia (0.994). China has a low STRI value (0.286). The lowest STRI value is in Australia (0.139) followed by the US (0.157). The contribution of horizontal restrictions to STRI in this sector is 73.8% in terms of value and 75.3% in terms of numbers. Thus, sector specific restrictions are less in this sector.

India and the Select 9 Countries: Comparison

Among the Select 9 countries, India and Korea have the highest and maximum STRI scores followed by Russia. All the other countries in this group have low STRI values in this sector, USA having the lowest followed by UK as can be seen in Figure 4.28.

Analysis of STRI Restrictions by Major Policy Areas

The high STRI values in India are due to restrictions on foreign entry (Policy Area 1), followed by barriers to competition (Policy Area 4) and restrictions to movement of people (Policy Area 2).

Policy Area 1: Restrictions on Foreign Entry

In this Policy Area, India has major restrictions both horizontal and sector-specific. India has restrictions in almost all parameters while USA has only in few parameters.

- **FDI** : According to the Consolidated FDI Policy effective from 28 August 2017, railway operations are on the list of prohibited sectors and reserved for Indian Railways, a state-owned enterprise. This is the single most high weighted parameter in India, like Korea and Russia. On the other hand, 100% foreign equity is permitted through the automatic route for construction, operation and maintenance of railway infrastructure. OECD has pointed out that there are five models through which private, including foreign participation can take place in India. These are i) Non-Government Private Line Model, ii) Joint Venture Model, iii) Build, Operate and Transfer model, iv) Capacity augmentation with funding provided by customers, v) Capacity augmentation through annuity model. All five models require that the freight operations over the infrastructure are undertaken by Indian Railways, which will pay a user fee to the owner. Container transport by rail, which accounts for roughly 5% of Indian rail transport has been liberalized recently. In contrast **US** has no restrictions and in **China** rail

freight transport services have been liberalized in 2015. In **Indonesia**, foreigners can invest in building and operating their own track.

- **Limits to proportion of shares in publicly controlled firms : Indian Railways** is wholly-owned by the Indian Government and not open to private ownership, domestic or international. In addition, there is the horizontal restriction of 51% equity by government and management control in all cases of disinvestment of CPSEs. In **Korea**, KO Rail is entirely state-owned, though there is no explicit law that would prohibit the government from selling shares to other entities. **Russian** railways are wholly government owned by the Russian Federation government and not open to private investment, domestic or international. Foreign investment is only allowed up to 49%, and subject to authorisation from the government, for the acquisition of rolling stocks. Even **UK** has restrictions under this policy measure. In UK, the four largest rail freight operators are DB Cargo UK, Freightliner, GB Rail freight and Direct Rail Services (DRS). Of all these, DRS is a wholly-owned subsidiary of the state-owned Nuclear Decommissioning Authority. **Only US, China and Brazil do not have restrictions under this policy measure.** In **US**, where no STRI score is given for this policy measure, state government controls Alaska railroad, but the company is not one of the major firms in the sector. In AMTRAK (National Railroad Passenger Corporation), Secretary of Transportation sits on the Board of Directors. However, AMTRAK provides passenger services only. No major rail freight company is under the control of the state or provincial government.
- The other horizontal restrictions in India are related to cross-border M&As wherein the RBI's prior approval is needed for a company to merge into a company registered under the Companies Act of 2013; restrictions on cross-border data

flows for India; residency condition wherein Managers and atleast one of the company's Board of Directors must be residents of India; acquisition and use of land and real estate by foreigners being restricted; and pricing guidelines for subsequent transfer of shares between persons resident in India and persons resident outside India.

Some of the sector specific restrictions in this Policy Area are the following:

- **Performance requirements: In India**, for container train operators, locomotives must be supplied only by the Indian Railways. **USA, Korea and China** do not have these restrictions.
- **Transit rights: In the Indian case**, transiting rail traffic is possible from Nepal and Bhutan, on the basis of bilateral treaties. No transit traffic is possible from other neighboring countries. **USA and Korea** have no restrictions and in **China** Intergovernmental agreement was signed by China in 2006 and 18 member states on Trans-Asian Railway Network. The restriction in India is reasonable given the security concerns.
- **Access rights for international combined transport, rail transport and international rail transport:** India allows only transit rights for Nepal and Bhutan with which it has bilateral treaty.
- **Commercial presence to provide cross-border services: In India**, allowing transit traffic only for 2 countries has also resulted in this restriction. **In US** as party to NAFTA, commercial presence requirement is not there for cross-border provision of services. However, to provide domestic rail freight transport services, they need to be registered companies.
- **Allowing only joint ventures under other restrictions:** There is STRI value for India under the parameter which is probably because FDI in Rail operations is not allowed.

- **Market share under monopoly in the sector:** Indian railways and its subsidiaries functioning under the Ministry of Railways are the only train operators in India except in container rail transportation. Even in this latter segment CORCOR, a subsidiary of Indian Railways, has a 75% market share. However, no STRI score has been assigned for this for India and other Select 9 countries by OECD as it is a Memo item.
- **Quotas or Economic needs test in the allocation of licenses:** In India, no licenses are granted as FDI is not permitted in Indian Railway transport. Exceptions include only container transportation operations where licenses are granted but are not subject to any quota.
- **Screening:** The STRI value in this parameter is due to the fact that FDI is not allowed in train operations.

Policy Area 4: Barriers to Competition

In this Policy Area also, there are many restrictions.

- **Horizontal measure of appeal of the decisions by the regulatory body, In India,** there is no effective appeal mechanism. Further the Ministry of Railways is the regulator as well as owner of Indian Railways and combines the roles of regulator and operator. In January 2016 a proposal was made for the development of an independent Railway Development Authority of India. **In the case of US,** the OECD states that affected parties are entitled to judicial review.
- **The horizontal measure of redressal when business practices restrict competition:** In India, any person can request competition commission to enquire into anti-competitive practices. Decisions of commission can be appealed to the competition Appellate tribunal and compensation claimed. But competition commission cannot order such compensation.
- **Access to railway infrastructure or running rights: In India,** only government owned railway has access to railway infrastructure. **In US** there are no restrictions; **in China** the policy guides and encourages private capital and **in Korea** access to rail network is granted on equitable grounds to all operators who are willing to carry out rail services. **India can at least think of access for private sector in use of railway infrastructure.**
- **Access fees being regulated and regulation of prices for rail services:** In India, this is not really applicable as only government owned railways has access to railway infrastructure.
- **Pricing guidelines:** India has pricing guidelines with respect to private freight terminals (sidings).
- **Other policy measures** like access to bottleneck services, transfer or trading of infrastructure capacity, cooperation in allocation of infrastructure capacity over more than one network, inter switching being mandated, inter switching rates being regulated, dispute settlement mechanism. In India, only the government owned railway has access to rail infrastructure for the purpose of operating national rail transport.
- **Railway agreements being exempt from competition law:** Here also there is statutory monopoly of Indian railways and private sector and foreign investment is prohibited.
- **National, state or provincial government control of at least one major firm in the sector:** The Indian Railways and its subsidiaries are state owned.
- **There are also restrictions related to publicly controlled firms** being exempted from application of general competition law and also other restrictions in barriers to competition.
- **Restrictions under minimum capital requirements,** though the companies [Amendment] Act of 2015 removed the minimum capital requirements.

- **Restrictions on advertising:** only comparative advertising is allowed.
- **The policy that government can overrule the decision of the regulator:** In India, the Ministry of Railways, and through it, the Indian Railways function as regulators. There is no independent regulator but in January 2016, a proposal has been made for the development of an independent Rail Development Authority of India.

Thus, most of the restrictions and STRI value is because of government monopoly and lack of privatization.

Policy Area 2 : Restrictions to Movement of People

- **Quotas for intra-corporate transferees, contractual suppliers and independent services suppliers:** In India, there are no specific restrictions. However, STRI values are given by OECD for this parameter.
- **Labour market tests for intra-corporate transferees, contractual services suppliers and independent services suppliers:** These are horizontal restrictions related to employment visa and duration of stay.
- **Laws or regulations establishing a process for recognizing qualifications gained abroad:** Certificates for professions like train drivers (known as loco pilots) must be obtained locally from the Railway Recruitment Board in the region where they will operate.

There are some restrictions in other sectors as well.

Policy Area 3: Other Discriminatory Measures:

- **The restrictions are mainly the horizontal restrictions** like public procurement and taxes though taxation in India is levied on a non-discriminatory basis.

Policy Area 5: Regulatory Transparency

- **Here also the restrictions are mainly the horizontal restrictions** related to obligation to

communicate regulations as there is no minimum statutory time period between publication and entry into force of an Act; lack of adequate public comment procedure as there are no obligations to hold consultations with all stakeholders; and procedural regulations related to visa processing time, costs and number of documents needed. These are basically issues related to Ease of Doing Business.

Thus, this sector is one of the highly restrictive sectors. However, the two important restrictions are related to Foreign Investments in train operation services being disallowed and monopoly by a government owned company, i.e. Indian Railways which is fully government owned. These two restrictions have a cascading effect on other policy measures automatically leading to STRI scores in other measures as well. Since the restrictive policy is affecting this sector, there is a need to seriously examine liberalization in this sector. Even if the government has reservations in opening train operation services for foreign investment, atleast greater internal liberalization can be thought of in Rail Freight transport. This will facilitate the Indian private companies to compete on an equal footing with the public sector company. Relaxing the monopoly even partially can help in avoiding the cascading effect and lead to fall in STRIs in other parameters as well. Another area of liberalization is related to giving access to private sector to use Indian Railways infrastructure.

There are also issues related to private sector not being able to compete with the public sector monopoly i.e., CONCOR due to lack of a level playing field. Private players in the sector are working under a handicap, as they have to acquire land for Container Terminals (infrastructure) at a high cost and face great difficulty in acquisition, etc. The older player i.e. CONCOR, a PSU of the railways has been given Railway Land at a subsidized rate. The rate charged for land is on the basis of payment per TEU handled

and is independent of the market rate of land or a percentage of the market rate as was adopted by Railways as a policy for all others in different fields, in the year 2006-07 when the PPP initiative of providing the facility to Private Container Train Operators (CTO's) was launched. Hence even if the utilisation of a terminal is insignificant, the PSU pays a pittance as lease charge to the Government. When the PPP initiative was launched, all Container Train Operators signed a Model Concession Agreement (even Railways own PSU, viz. CONCOR) by which Ministry of Railways promised a level playing field and a non-discriminatory environment for all Container Train Operators. This clause has not been followed. Hence the private CTO's continue to work under a handicap. Though an investment of Rs. 5000 crores have been made by the private train operators almost all of them are making losses for the last 11 years of their existence. The cumulative losses in this period amounts to around Rs. 3000 crores as per Industry sources. So, a Regulatory Authority is needed to adjudicate amongst the Container Train Operators; as also between the Ministry of Railways & the Private Container Train Operators. The Independent Regulator should have powers of implementation and should not be just a recommendatory body.

20. Road Freight Transport

The highest STRI value is in Mexico (0.630), followed

by Iceland (0.418) and Costa Rica (0.402). The lowest STRI value is in South Africa and Australia (0.136 for both). India also has a relatively low STRI value (0.285) for this sector. In this sector the share of horizontal restrictions in total STRI is 87.8% in terms of value and 84% in terms of numbers. There are no major sector specific restrictions.

India and the Select 9 Countries: Comparison

Among the Select 9 countries, Indonesia has the highest STRI in this sector. Though India has a very low STRI in this sector, among the Select 9 countries, India has the second highest STRI followed by Russia. Korea has the lowest STRI among these countries as can be seen in Figure 4.29.

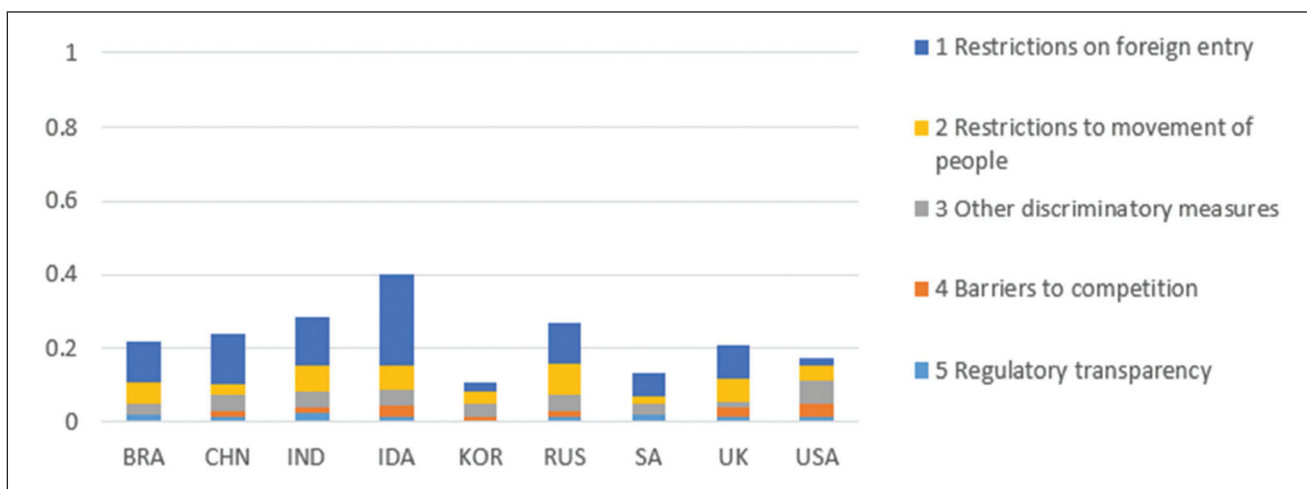
Analysis of STRI Restrictions by Major Policy Areas

The major Policy Areas with restrictions are Policy Area 1: Restrictions on foreign entry followed by Policy Area 2: Restrictions to movement of people.

Policy Area 1: Restrictions on Foreign Entry

- **Maximum foreign equity restrictions:** In India, there are no foreign equity restrictions as this sector is fully open to foreign investment and follows the automatic route with no government approval needed and therefore no screening needed. **Only Indonesia** has foreign equity restrictions in this sector with the Negative Investment List restricting foreign ownership to no more than 49% of the share capital.

Figure 4.29: STRI-Road Freight Transport Services, 2017



- **Even for proportion of shares that can be acquired by foreign investors in publicly controlled firms**, the STRI value is 'nil' though there is the general condition that government must retain 51% equity and management control in case of disinvestment of CPSEs.
- **The restrictions in this sector are basically horizontal restrictions** related to cross-border M&As and cross-border data flows; residency requirement for Managers and at least one of the Board of Directors; restrictions related to acquisition and use of land and real estate by foreigners from some countries; and pricing guidelines for transfer of shares between persons resident in India and persons resident outside India. These are just general regulatory conditions. **Thus, this sector is among the sectors with lowest restrictions in India.**

Policy Area 2: Restrictions to Movement of People

- **These are mainly the horizontal restrictions** related to employment visa and duration of stay for intra corporate transferees, contractual and independent services suppliers.
- **One specific regulation in this sector is related to the process of recognizing qualifications gained abroad for road freight truck drivers.** In India, students, having obtained their qualifications from foreign countries or under foreign system in India, are required to obtain an Equivalence Certificate from Association of Indian Universities (AIU). But there is no process codified in this that provides substantive criteria and administrative procedures for engineering degree recognition. The 'Engineering Bill' had been tabled in parliament in 2010 but it is yet to be passed. Other countries like Korea, UK, Russia and Indonesia have similar conditions for Road Freight Truck Drivers.

There are some restrictions in other Policy Areas as well.

Policy Area 3: Other Discriminatory Measures

- **Horizontal restrictions:** The restrictions in this Policy Area are only related to public procurement.

Policy Area 4: Barriers to Competition

- **The only restriction in this Policy Area is related to regulation of prices of fees**, wherein the government can intervene and issue directions regarding fixing of fares and freights.

Policy Area 5: Regulatory Transparency

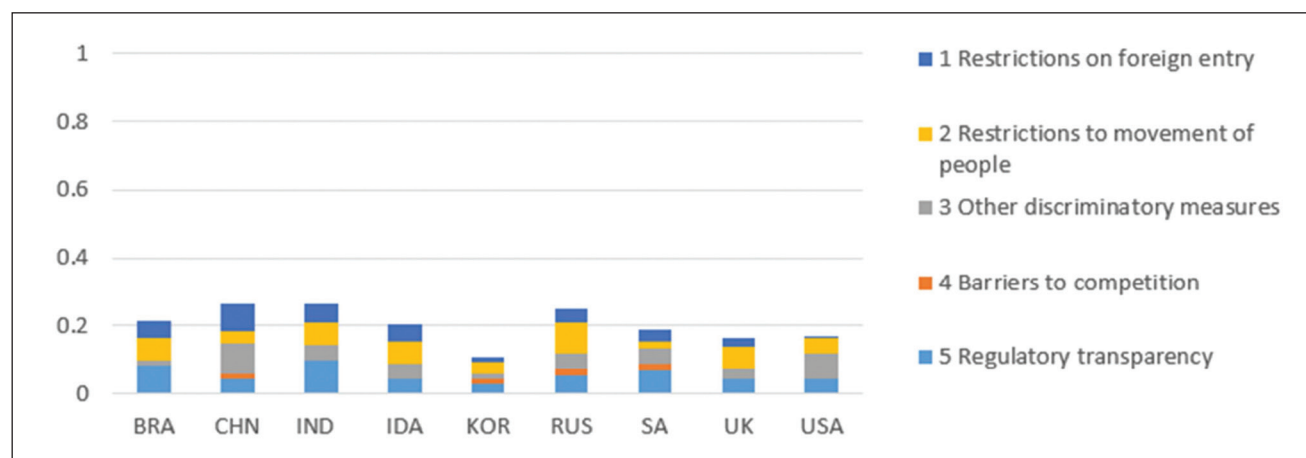
- **Here also the restrictions are mainly the horizontal restrictions** related to obligation to communicate regulations as there is no minimum statutory time period between publication and entry into force of an Act; lack of adequate public comment procedure as there are no obligations to hold consultations with all stakeholders; and procedural regulations related to visa processing time, costs and number of documents needed. These are basically issues related to Ease of Doing Business.
- **There is no special treatment for truck drivers** and they must obtain a business visa which is granted for a period of 5 years.

Thus, this sector is fully open to foreign investment in India with very few restrictions. Except the horizontal restrictions like residency, acquisition of land, subsequent transfer of capital, M&A restrictions, public procurement, visas, etc, there are no other major restrictions. So, any relaxation in restrictions can take place by liberalizing horizontal restrictions and procedural issues related to Ease of Doing Business particularly in Policy Areas 1 & 2.

21. Sound Recording

The highest STRI value in this sector is in Iceland [0.372] followed by Italy [0.290], Belgium [0.288], Israel [0.282] and Switzerland [0.282]. The lowest STRI value is in Japan [0.107] followed by Korea [0.111].

Figure 4.30: STRI-Sound Recording Services, 2017



India has a relatively low STRI value (0.267) in this sector. In this sector the contribution of horizontal restrictions to total STRI is 91.8% in terms of value and 91.3% in terms of numbers. Thus, sector specific restrictions are very few.

India and the Select 9 Countries: Comparison

This sector is more open with few restrictions. While the STRI value in this sector of India is low, among the Select 9 countries, India has highest STRI value followed by China and Russia. Korea has the lowest STRI values among these countries as can be seen in Figure 4.30.

Analysis of STRI Restrictions by Major Policy Areas

The contribution to the STRI value in this sector is mainly due to Policy Area 5: Regulatory Transparency followed by Policy Area 2: Restrictions to Movement of People & Policy Area 1: Restrictions to Foreign Entry.

Policy Area 5: Regulatory Transparency

- **There are the horizontal restrictions** like no minimum statutory time period between publication and entry into force of Acts of Parliament; no obligations to hold consultations with all stakeholders though proposed legislations must be published; procedural and transactions costs issues like cost to obtain business visa, need for valid international

document for all foreign nationals, number of working days and total cost to complete all mandatory procedures to register a company and number of mandatory procedures to register a company.

- **There are infact some measures which are actually very positive in India like the Copyrights Act.** Under the Copyright Act, it is a criminal offence to knowingly infringe or abet the infringement of copyrights. The minimum punishment is six months imprisonment and a minimum fine of Rs. 50,000. Articles 65A and 65B of the Copyright [Amendment] Act introduce explicit provisions on violations of copyrights in the digital realm [digital piracy]. Both civil remedies [fines] and criminal ones [imprisonment] are there for the unauthorized distribution, broadcast or communication to the public of copyrighted works.

Policy Area 2: Restrictions to Movement of People

- **There are only the horizontal restrictions** under labour market tests related to visas for intra-corporate transferees, contractual services suppliers and independent services suppliers and limitation on duration of stay for intra-corporate transferees, contractual services suppliers and independent services suppliers.

- **The policy measure of recognizing qualifications gained abroad** does not apply as license is not required.

Policy Area 1: Restrictions on Foreign Entry

- **There are no restrictions on the maximum foreign equity share allowed in music.** Foreign investment follows the automatic route and Screening is not needed.
- **Limits on proportion of shares acquired by foreign investors in publicly-controlled firms:** There are nil STRI Scores in this policy measure for India. While there are no other conditions, the government has to retain 51% equity and management control in all cases of disinvestment of CPSEs.
- **The restrictions are mainly the horizontal restrictions** on cross-border M&As and cross-border data flows; restrictions related to residency of Managers and at least one of the Board of Directors; acquisition and use of land and real estate by foreigners restricted for some countries; and pricing guidelines for subsequent transfer of shares between persons resident in India and persons resident outside India.
- **There is one sector specific restriction related to the statutory monopoly on copyright management,** wherein under Article 33 of the copyright Act, the Central Government shall not ordinarily register more than one copyright society to do business in respect of the same class of works. For the management of rights related to music, however, both the Indian Performing Right Society Limited and Phonographic Performance Limited have been registered under this Article. Other than India, China and Brazil have restrictions in this policy measure, other countries in Select 9 do not have this restriction.

There are some restrictions in other Policy Areas as well.

Policy Area 3: Other Discriminatory Measures

- **There are the horizontal restrictions** related to public procurement and taxes though no STRI value is given in the case of taxes.
- **There is infact an exclusive right for authors, performers and producers of Sound Recording** to authorize or prohibit reproduction and distribution of their work; and communication to the public of their work. The exclusive rights are protected in domestic law and India is a signatory to the Berne convention and TRIPS, but not to WIPO copyright treaty.
- **Regarding foreign right holders allowed to join local copyrights management body,** foreign natural persons not resident in India cannot join directly. But foreign right holders may tie up with a local music label or content aggregator. Then Phonographic Performance Limited (PPL) can register the sound recording and route royalties earned to this local label or aggregator.

Policy Area 4: Barriers to Competition

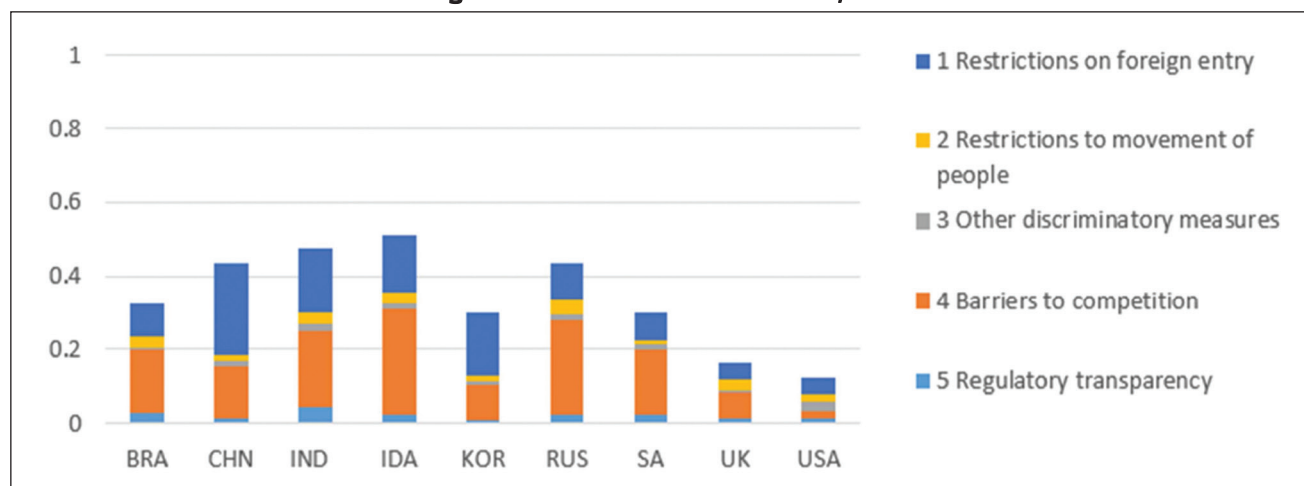
- There are only the horizontal restrictions related to appeal of the decisions by the regulatory bodies and redressal when business practices restrict competition. However, no STRI value is given for them.

Thus, this sector has few restrictions and mainly the horizontal restrictions. One area where some streamlining can be thought of is related to the condition on copyrights where the central government does not ordinarily register more than one copyright society to do business in respect of the same class of work.

22. Telecommunication

The highest STRI Values in this sector are in Indonesia [0.513] followed by India [0.475], Russia [0.437] and China [0.436]. The lowest STRI Value

Figure 4.31: STRI-Telecom Services, 2017



is in Denmark (0.114) followed by Ireland and US (0.124 for both). Despite substantial liberalization in recent years, the sector continues to have relatively high restrictions compared to other countries. The contribution of horizontal restrictions to total STRI in this sector is 64.8% in terms of value and 69.1% in terms of numbers.

India and the Select 9 countries : Comparison

Among the Select 9 countries, Indonesia has the highest STRI score followed by India, Russia and China. USA has the lowest STRI score followed by UK as can be seen in Figure 4.31.

Analysis of STRI Restrictions by Major Policy Areas

The relatively high STRI Values in India for this sector are due to Policy Area 4: Barriers to Competition and Policy Area 1: Restrictions on Foreign Entry.

Policy Area 4: Barriers to Competition

- **In India there are horizontal restrictions in this sector** related to the decisions by the regulatory body can be appealed wherein any person can appeal an adverse decision of the Telecom Regulatory Authority of India before a Telecom Disputes Settlement and Appellate Tribunal within 30 days from the date on which the decision is received.
- **Wholesale access prices are regulated (mobile and internet):** Access charges are stipulated

in regulations such as those referenced in the sources. However, there is no STRI Value in fixed line for wholesale access prices being regulated. USA, China, UK, Brazil and South Africa do not have this restriction. In Brazil for example, for mobile, the prices for the use of the Internet service shall be fixed by the providers (market-driven); and for internet the current System of Wholesale Offer Negotiation is set by Anatel's Resolution 600 of 2012, according to which Brazil has a self-regulation put forward by a private Wholesale Offers Supervisory Entity. Only if the regulator detects that the wholesale market is being manipulated in a discriminatory way, a set of command-and-control regulations is triggered, therefore as a sanction to bad behavior of the market players and as a recognition that the self-regulation did not work as expected.

- **Unbundling of the local loop is required and local loop unbundling prices are regulated in India,** though the comment for both says that TRAI has recommended government for Internet Telephony permitting ISPs to introduce Local Loop Unbundling and regulatory measures for equitable and reasonably priced access to wholesale bandwidth to all service providers in both Access and Backhaul Networks. Among the other Select 9 countries, only USA, UK and Korea do not have these restrictions.

- **Co-location or site sharing is mandated for both fixed and mobile:** In India, sharing of passive telecom infrastructure is allowed by DOT. However, sharing of active infrastructure amongst service providers based on mutual agreements is permitted but limited only to antenna, feeder cable, Node B, radio access network and transmission system. OECD has assigned a STRI score for fixed line but not for mobile though the conditions are same for both. Countries like USA, UK and Korea do not have these restrictions. **In the case of US** mandatory site sharing applies to all incumbent local exchange carriers for fixed line. But for mobile, the regulation of the placement, construction and modification of personal wireless service facilities is done by the state or local government. The Middle-Class Tax Relief and Job Creation Act establishes that the state or local government “may not deny, and shall approve” any eligible facilities request for a modification of an existing wireless tower or base station that does not substantially change the physical dimensions of such power or base station. This includes collocation of new transmission equipment. **In UK** under the Electronic Communications Code, a code operator, where practicable, shall share the use of electronic communications apparatus. Co-location / site sharing is a potential remedy when competition concerns are identified, but not mandated by default. Industry sources feel that Infrastructure sharing, including complete active infrastructure sharing should be encouraged.
- **Resale of public telecommunications services to other suppliers of telecommunications services, including foreign suppliers are mandated:** In India this is mandated for fixed line, but not for mobile. This restriction is not found in USA, UK, Korea and South Africa. **In South Africa**, an electronic communications network service licensee must lease access to the network upon request.
- **Secondary spectrum trading allowed:** Spectrum trading is allowed only between two access service providers holding the following licenses: CMTS, UASL, UL(AS) and UL with authorization of access service in a licensed area. All spectrum bands earmarked for access services by the licensor will be treated as tradable spectrum bands. For this policy measure no STRI Value is given.
- **Wholesale/Retail roaming rates are regulated:** In India, wholesale/Retail international roaming charges are not regulated but remain under ‘forbearance’. This means that the service providers are free to set rates but the TRAI can intervene and set prices if this is necessary to maintain the competitiveness of the market. This restriction is found in all the countries except UK in the Select 9 countries. **In US**, automatic roaming is a common carrier obligation for commercial mobile radio service carriers. There is a determination from the FCC not to impose rate regulation on roaming agreements. CFR requires commercial mobile broadband providers to provide data roaming to other carriers “on commercially reasonable terms and conditions”.
- **Number portability is required (fixed):** In India, Fixed line number portability is not required as of now and TRAI has been considering this area for a few years. **In the case of mobile** there is no STRI Value as voice over internet protocol number portability is not required as of now. **But for internet** there is STRI Value as there is no number portability though there is the condition that every access provider shall facilitate in its entire network, mobile number portability to all subscribers. USA, UK, Russia, Korea and South Africa do not have restrictions in this policy measure in all three forms of telecommunications. **In South Africa**, for example, the Authority is required to provide regulations to facilitate number portability under the Electronic Communications Act.

- **Dialing purity is required for both fixed and mobile:** In India, there is STRI Value under this policy measure for both fixed and mobile. This restriction is found in Russia and Indonesia besides India. In UK and South Africa, national number format comprises of 10 digits.
- **Vertical separation is required for fixed, mobile and internet:** In India, accounting separation is required and Service providers must submit to the TRAI a manual which explains how this requirement is implemented in the organization. Ex-post modifications to the manual must be notified to the TRAI. In addition, financial and audit reports must also be submitted every accounting year to demonstrate the separation. Only USA does not have this restriction under all three forms of telecommunication and UK under mobile and internet. In USA, for fixed line, there is functional separation of Bell Operating companies and accounting separation of regulated and non-regulated activities; for mobile, FCC's Open Internet Order forbears the application of section 272 to broadband Internet services, which entails functional separation; and for internet, the rule contains regulation on mobile services and no vertical separation requirements are mentioned.
- **Contracts for universal services obligations are assigned on a competitive basis:** In India, provision of household telephones in rural and remote areas may be determined by the central government from time to time. This is a social obligation and not a restriction as given by OECD. Korea, Russia and South Africa also have similar conditions. In US, also eligible telecom carriers designated by the states, or in some cases, the FCC are required to offer voice telephony service and may receive support from the Federal Universal services support mechanisms, to which all telecom providers must contribute. But no STRI Value is given.
- **Restrictions on advertising:** In India a direction issued by TRAI lists a number of conditions on advertisement design, material, content, language, on time publication, etc., that must be met by service suppliers. **None of the other Select 9 countries have this restriction. This is one area for reforms.**
- **National/State/Provisional government control of at least one major firm in the sector:** In India, there are 5 public sector undertakings: Bharat Sanchar Nigam Limited (BSNL); Indian Telephone Industries Limited (ITI); Mahanagar Telephone Nigam Limited (MTNL); Telecommunications Consultants India Limited (TCIL); Bharat Broadband Nigam Limited (BBNL). Among them, BSNL is the largest provider of fixed line services with a market share of 60.28% (in 2015). USA, UK, Korea and Brazil do not have this restriction. In UK, for example there is no state-owned companies. In Korea, KT was privatized in 2002.
- **Restrictions on minimum capital requirements:** In India, while the companies (Amendment) Act of 2015 removed the minimum capital requirements, application for license for some services still have conditions on minimum capital requirement. Only Korea and Russia have this restriction besides India. **This is another area which can be considered for reforms.**

Policy Area 1: Restrictions to Foreign Entry

- **There are no restrictions under maximum foreign equity share for fixed, mobile and internet** with 100% foreign equity allowed - 49% through automatic route (i.e. without prior approval) and beyond that through the government route. China, Korea and Indonesia have restrictions in this policy measure among the Select 9 countries. There is a need to consider whether investment through the automatic route can be increased to 79%.

- **There is the horizontal restriction** related to the limit to the proportion of shares that can be acquired by foreign investors in publicly controlled firms, with the condition that government must retain at least 51% equity and management control in all cases of disinvestment of CPSEs. Besides India, Russia and Indonesia have restrictions in this Policy measure. In UK and USA there are no state owned or publicly controlled firms in this sector.
- **The other horizontal restrictions** are residency clause for Managers and atleast one of the Board of Directors; restrictions on cross-border M&As for fixed, mobile and internet; restrictions related to cross-border data flows; restrictions regarding acquisition and use of land and real estate by foreigners for entities from some countries; and pricing guidelines for subsequent transfer of shares between persons resident in India and persons resident outside India. Regarding residency requirements for Board of Directors, Industry feels that the entire Board of Directors for newly incorporated companies could be permitted to be non-residents for a finite period initially, say 12 months. Upon completion of this time window, the entity should comply with the requirement of at least one director being a resident.
- **Commercial presence required to provide cross-border services for fixed, mobile and internet:** In India, domestic telecommunication traffic must be hauled or routed inside India. USA, UK and South Africa do not have these restrictions. In Korea, commercial presence is required. But a foreigner can provide common telecommunications services without commercial presence if he/she enter into an agreement for the cross-border provision.
- **Nationality clause:** In India, there is the nationality clause for majority of directors. There is no nationality clause for managers, however if high level managerial positions (e.g., CEO or CFO) are held by foreign nationals, they must undergo a security vetting by the Government.
- **Screening without exclusion of economic interests for fixed, mobile and internet:** In India, proposals for investment by foreign investors under the government route (FDI exceeding 49%) are approved by the sector regulator and local governments (in consultation with DIPP). Screening is not explicitly based on economic interests. Except Brazil and South Africa all other countries have this restriction. However, in Russia, there is no restriction in mobile and internet with the foreign investor having the same right and guarantee as local investor.
- **There are also other restrictions on foreign entry like security clearance:** In India, security clearance is needed for foreign nationals taking up managerial positions in an Indian company. The clearance is done by MHA on yearly basis. In case anything adverse is found during security, vetting, decision of MHA shall be binding on the company. Furthermost the chief officer in charge of technical network operations and the chief security officer should be a resident Indian citizen.

There are some restrictions in other Policy Areas also.

Policy Area 2: Restriction to Movement of People

- **There are only the horizontal restrictions** under labour market tests related to visas for intra-corporate transferees, contractual services suppliers and independent services suppliers and limitation on duration of stay for intra-corporate transferees, contractual services suppliers and independent services suppliers.

Policy Area 3: Other Discriminatory Measures

- **There are the horizontal restrictions** related to public procurement and taxes though no STRI score is given in the case of taxes.

Policy Area 5: Regulatory Transparency

- **There are the horizontal restrictions** like no minimum statutory time period between publication and entry into force of Acts of Parliament; no obligations to hold consultations with all stakeholders though proposed legislations must be published; and procedural / transactions costs issues like cost to obtain business visa.

Thus, this sector has many restrictions despite substantial liberalization in recent years mainly due to Policy Area 4: Barriers to competition and Policy Area 1: Restrictions to foreign entry which in turn is due to the general regulatory framework faced by foreign investors.

While there are restrictions in this sector in India, similar restrictions are also found in many other countries. While there are no restrictions on maximum foreign equity shares allowed in fixed, mobile and internet, as in other sectors, there are limits to the proportion of shares that can be acquired by foreign investors in publicly controlled firms. There are nationality and residency restrictions i.e., majority must be nationals and residents. As in other sectors, the conditions related to acquisition and use of land and real estate by foreigners, subsequent transfer of capital and investment and M&A restrictions (for fixed, mobile and internet) exist. There are no restrictions related to performance requirements as in Brazil, South Africa and Indonesia and even US (fixed line). As in most other countries commercial presence is required to provide cross border services (fixed, mobile, internet). Only USA, UK and South Africa do not have these conditions. There are also restrictions like Data flow transfers to countries with substantially similar privacy protection or consent by government authority and public procurement restrictions as in other services. As in other services, there are restrictions which are in the nature of procedural delays. Most of these are

horizontal measures.

OECD has pointed out that under barriers to competition, the main contribution to the index comes from lack of best practice pro-competitive regulation in the fixed line segment of the market where the government owns the major supplier. For instance, interconnection is regulated through the Telecommunications Interconnection (Reference Interconnect Offer) Regulation from 2002, which mandates interconnection, but largely leaves to the parties to agree on the terms through negotiations. In the fixed line segment, the incumbents, two state-owned enterprises, probably have considerable bargaining power.

There are also many sector specific restrictions though small under barriers to competition as in most of the other countries. These are related to unbundling of local loop, unbundling local loop prices, wholesale and retail roaming regulation, number portability required for fixed line and internet, dialing parity required for fixed and mobile and vertical separation required for fixed, mobile and internet, contracts for universal services obligations assigned on a competitive basis, restrictions on advertising and minimum capital requirements.

Thus, there are many policy measures where reforms are needed. So, there is a need to review the regulations in this sector in the light of recent developments.

A recent TRAI paper has also highlighted different strategies as follows:

- Strategies for enhancing ease of doing business, establishment of an online platform for G2B activities, rationalise licensing and regulatory regime, attract investment equivalent to US\$ 100 billion in communication sector, and to leapfrog India into the top-50 nations in international rankings.

- Strategies to achieve 'unique mobile subscriber density' and mobile network coverage targets, and to provide enhanced data connectivity to all the Gram Panchayats.
- Strategies to enable access for wireline and wireless broadband services at affordable prices; to develop public WLAN hotspots; to achieve broadband subscription targets; to facilitate RoW permissions; and to achieve backhaul connectivity targets on optical fiber.
- Strategies to enable access for IoT/M2M sensors/devices.
- Strategies for setting up of data centres; developing ecosystem for indigenous digital platforms and services; establishing India as a global hub for research and development, innovation, cloud computing, content hosting and delivery, and data services; to become net positive in international trade of telecommunication systems and services; and job creation in ICT sector.
- Strategies for protecting interest of consumers, data protection regime, and modernizing public safety and emergency communications networks

The above suggestions need to be considered for implementation.

23. Tourism

Tourism has not been included in the STRI database of OECD, however based on inputs from Industry sources, some of the STRIs have been listed by us on the lines of OECD system though STRI scores have not been assigned to them. However, this list of restrictions is not an exhaustive list.

The service trade restrictions in this sector, Policy Area-wise are as follows:

Policy Area 1: Restrictions on Foreign Entry:

- **Foreign equity restrictions: maximum foreign equity share allowed:** In this sector 100 percent

FDI is permitted under automatic route allowing full FDI into all developments projects including construction of hotels, resorts, recreational facilities and city and regional level infrastructure. 100 percent FDI is permitted under automatic route subject to some conditions.

- **Equity restrictions applying to not licensed individuals or firms (100, <50, >50, 0):** There is no such restriction. However, IATA accreditation is necessary to book tickets on behalf of IATA member airlines. Full accreditation authorizes travel agents to sell international and/or domestic tickets on behalf of IATA member airlines. It also allows access to IATA's Billing and Settlement Plan (BSP), an efficient interface for invoicing and payment between the agent, airlines and transport providers.
- **There are many horizontal restrictions** like restrictions on cross border M&As and Cross border data flows; acquisition and use of land and real estate by foreigners; and conditions on subsequent transfer of capital and investment. These restrictions are similar to those in other sectors.
- **Performance requirements:** Under the voluntary scheme of organizing the tourism sector, Ministry of Tourism has prescribed conditions for recognizing a tour operator as an Approved Inbound Tour Operator which include minimum paid up capital of Rs. 3 Lakh (Rs. 50,000 for North Eastern, remote and rural areas); minimum turnover of Rs. 25 Lakh (Rs. 5 Lakh for North Eastern, remote and rural areas); minimum operation of 1 year before the date of application; minimum office space of 150 sq. ft. (100 sq. ft. for hilly areas above 1000 meters from sea level); income tax returns for the last/current assessment year should have been filed; and service tax registration and full payment of assessed service tax for the preceding year.

- **Other restrictions on foreign entry:** There are some other restrictions like the following:

➤ For the monuments protected under the Ancient Monuments and Archaeological Sites & Remains Act, 1958 [24 of 1958], the ITOs should deploy / engage the services of Regional Level Tourist Guides trained and licensed by Ministry of Tourism, Government of India or other guides authorized by the Government of India or under orders of the Hon'ble Court(s). For other monuments and destinations, the guides authorized under the orders of the appropriate authority, if any, of the concerned monument/destination should be deployed / engaged by tour operators.

➤ Tour operators shall contract/use approved specialized agencies in the field of adventure options and related services for the tourists.

- **Commercial presence is required in order to provide cross-border services:** Under the voluntary scheme of organizing the tourism sector, Ministry of Tourism has prescribed conditions for recognizing a tour operator as an Approved Inbound Tour Operator which include minimum office space of 150 sq. ft. (100 sq. ft. for hilly areas above 1000 meters from sea level); ITO should have an office under the charge of the owner or a full time staff adequately trained/experienced in matters regarding transport, accommodation, currency, customs regulations and general information about tourism and travel related services; and minimum four qualified staff out of which at least one should have diploma/degree in tourism and travel management from an institution recognized by AICTE.
- **Legal form: only joint ventures are allowed:** There is no such restriction. Any legal entity, i.e. proprietorship, partnership, LLP, company, etc.,

may operate in the tourism sector.

Policy Area 2: Restrictions to Movement of People

- **There are horizontal restrictions** like labour market tests and limitation on duration of stay for intra-corporate transferees, contractual and independent services suppliers. The conditions are the same as in other sectors.
- **License or authorization is required to practice:** Registration with IATA is necessary for being able to book airline tickets. However, registration with IATO is voluntary.

Policy Area 3: Other Discriminatory Measures

- **There are horizontal measures** related to treatment of foreign suppliers regarding taxes and eligibility to subsidies; and public procurement. The conditions are the same as in other sectors.

Policy Area 4: Barriers to Competition

- **There are horizontal measures** related to appeal of the decisions by the regulatory body; and redressal for firms when business practices restrict competition in a given market.
- **Minimum capital requirements:** The Companies Amendment Act, 2015 removes the words “of one lakh rupees or such higher paid-up share capital” relating to Private Limited Company thereby necessitating ‘No minimum capital requirement’ for starting a private limited company. The words “of five lakh rupees or such higher paid-up capital,” has also been removed wherein it pertains to the minimum paid-up share capital of a Limited Company. Hence, a public limited company can also be started without a minimum capital of rupees five lakhs. However, under the voluntary scheme of organizing the tourism sector, Ministry of Tourism has prescribed the conditions for recognizing a tour operator as an Approved Inbound Tour Operator which includes

minimum paid up capital of Rs 3 Lakhs, though it is Rs 50,000 for North Eastern, remote and rural areas.

Policy Area 5: Regulatory Transparency

- **There are horizontal restrictions** like the legal obligation to communicate regulations to the public within a reasonable time prior to entry into force; adequate public comment procedure open to interested persons, including foreign suppliers; range of visa processing time (days); multiple entry visa for business visitors; cost to obtain a business visa (US\$); number of documents needed to obtain a business visa; and number of mandatory procedures to register a company. These are similar to the conditions in other sectors.

Thus, the tourism sector has few restrictions and is quite open. Many of the restrictions are horizontal in nature and some are procedural conditions. Among the suggestions for this sector it is recommended that e-visa application form should be available in foreign language of all the major emerging countries with less number of attachments which should be confined to not more than two pages. Another Suggestion is related to the conditions of recognizing a tour operator as an approved inbound tour operator. Here the condition of minimum four qualified staff out of which one should have diploma/degree in tourism and travel management can be modified as follows:

- Turnover between Rs. 25 lakh and Rs. One Crore – condition of one staff having Diploma / Degree in Tourism & Travel Management is not needed.
- Turnover Rs. One Crore & above – There should be a minimum of two qualified staff out of which at least one should have Diploma / Degree in Tourism & Travel Management from a recognized University, IITTM or an institution approved by AICTE.

- Turnover Rs. Four crore & above - There should be a minimum of four qualified staff out of which at least one should have Diploma / Degree in Tourism & Travel Management from a recognized University, IITTM or an institution approved by AICTE.

Mapping the STRIs : Sector-Wise

An attempt has been made here to map the restrictions and classify them in each sector by using the data in OECDs STRI DATABASE. Both the STRI contribution (Value) and Number of Policy measures under each category of restrictions (HR, MR, LR and NR) for the 5 policy areas for all the 22 sectors are given in Table No. 4.2.

Inferences and Suggestions : General

The inferences and suggestions based on Table 4.2 are the following :

- **Only 6 Sectors have Policy measures falling under HR.** They are [1] Accounting Services, [2] Architecture Services [3] Courier Services, [4] Legal Services [5] Rail Freight Transport and [6] Road Freight Transport. Except Road Freight Transport, all the other sectors are highly restricted Sectors as indicated by the total STRI Values of these Sectors. HR category appears 19 times(19 policy measures) across sectors under the 5 policy areas. In all these Sectors, the Policy Measures under the HR Category fall mainly under Policy Area 1: Restrictions on Foreign Entry. In all these Sectors, except Road Freight Transport, the Policy measures under HR category under Policy Area 1 are related to foreign equity restrictions. In the case of Road Freight Transport which actually has low total STRI scores, the 6 Policy Measures falling under HR are the restrictions like Managers and atleast one of the Board of Directors should be residents, conditions related to acquisition and use of land and real estate by foreigners and subsequent transfer of capital and investments, restrictions

**Table No. 4.2: Policy Measures and Contribution of India's STRIs (2017) :
Sector Wise and Policy Area Wise by Categories**

Sector/ Policy Areas	Number of Policy Measures					STRI Contribution			
	Total	HR	MR	LR	NR	Total STRI	HR	MR	LR
Accounting services									
1:Restrictions on foreign entry	34	4	28		2	0.48	0.16	0.32	
2:Restrictions to movement of people	26	1	21		4	0.24	0.02	0.22	
3:Other discriminatory measures	7			7		0.05			0.05
4:Barriers to competition	7			6	1	0.05			0.05
5:Regulatory transparency	10			7	3	0.06			0.06
Accounting services Total	84	5	49	20	10	0.88	0.18	0.54	0.16
Air transport									
1:Restrictions on foreign entry	65			40	25	0.29			0.29
2:Restrictions to movement of people	10			6	4	0.02			0.02
3:Other discriminatory measures	9			6	3	0.04			0.04
4:Barriers to competition	45			30	15	0.17			0.17
5:Regulatory transparency	14			7	7	0.04			0.04
Air transport Total	143			89	54	0.56			0.56
Architecture services									
1:Restrictions on foreign entry	29	1	22		6	0.29	0.03	0.25	
2:Restrictions to movement of people	18		13		5	0.21		0.21	
3:Other discriminatory measures	6		3		3	0.03		0.03	
4:Barriers to competition	7		4		3	0.04		0.04	
5:Regulatory transparency	10		6		4	0.08		0.08	
Architecture services Total	70	1	48		21	0.65	0.03	0.62	
Broadcasting									
1:Restrictions on foreign entry	30		16		14	0.30		0.30	
2:Restrictions to movement of people	10			6	4	0.03			0.03
3:Other discriminatory measures	19			3	16	0.02			0.02
4:Barriers to competition	9			4	5	0.03			0.03
5:Regulatory transparency	16			7	9	0.04			0.04
Broadcasting Total	84		16	20	48	0.43		0.30	0.14
Commercial banking									
1:Restrictions on foreign entry	34		22		12	0.27		0.27	
2:Restrictions to movement of people	10			6	4	0.03			0.03
3:Other discriminatory measures	14			7	7	0.06			0.06
4:Barriers to competition	20			5	15	0.05			0.05
5:Regulatory transparency	15		10		5	0.10		0.10	
Commercial banking Total	93		32	18	43	0.52		0.37	0.14
Computer services									
1:Restrictions on foreign entry	22		7		15	0.10		0.10	
2:Restrictions to movement of people	11		6		5	0.10		0.10	
3:Other discriminatory measures	5		3		2	0.04		0.04	
4:Barriers to competition	8				8	0.00			
5:Regulatory transparency	10		6		4	0.12		0.12	
Computer services Total	56		22		34	0.36		0.36	

**Table No. 4.2: Policy Measures and Contribution of India's STRIs (2017) :
Sector Wise and Policy Area Wise by Categories (continued)**

Sector/ Policy Areas	Number of Policy Measures					STRI Contribution			
	Total	HR	MR	LR	NR	Total STRI	HR	MR	LR
Construction									
1:Restrictions on foreign entry	24		7		17	0.10		0.10	
2:Restrictions to movement of people	16		6		10	0.07		0.07	
3:Other discriminatory measures	11		7		4	0.10		0.10	
4:Barriers to competition	8				8	0.00			
5:Regulatory transparency	10		6		4	0.08		0.08	
Construction Total	69		26		43	0.35		0.35	
Courier services									
1:Restrictions on foreign entry	24	1	7	16		0.21	0.02	0.11	0.08
2:Restrictions to movement of people	11			11		0.06			0.06
3:Other discriminatory measures	5		4	1		0.05		0.04	0.00
4:Barriers to competition	21		6	15		0.13		0.07	0.06
5:Regulatory transparency	17		7	10		0.12		0.08	0.04
Courier services Total	78	1	24	53		0.56	0.02	0.30	0.24
Distribution services									
1:Restrictions on foreign entry	30		17		13	0.23		0.23	
2:Restrictions to movement of people	10			6	4	0.03			0.03
3:Other discriminatory measures	11			5	6	0.04			0.04
4:Barriers to competition	21		7		14	0.07		0.07	
5:Regulatory transparency	16			7	9	0.06			0.06
Distribution services Total	88		24	18	46	0.44		0.30	0.13
Engineering services									
1:Restrictions on foreign entry	29		7		22	0.08		0.08	
2:Restrictions to movement of people	18		6		12	0.10		0.10	
3:Other discriminatory measures	6			3	3	0.03			0.03
4:Barriers to competition	7				7	0.00			
5:Regulatory transparency	10		6		4	0.08		0.08	
Engineering services Total	70		19	3	48	0.29		0.26	0.03
Insurance									
1:Restrictions on foreign entry	67		3	37	27	0.28		0.04	0.24
2:Restrictions to movement of people	16			8	8	0.05			0.05
3:Other discriminatory measures	15			8	7	0.05			0.05
4:Barriers to competition	26			17	9	0.10			0.10
5:Regulatory transparency	13			7	6	0.07			0.07
Insurance Total	137		3	77	57	0.56		0.04	0.52

**Table No. 4.2: Policy Measures and Contribution of India's STRIs (2017) :
Sector Wise and Policy Area Wise by Categories (continued)**

Sector/ Policy Areas	Number of Policy Measures					STRI Contribution			
	Total	HR	MR	LR	NR	Total STRI	HR	MR	LR
Legal services									
1:Restrictions on foreign entry	36	4	30		2	0.46	0.15	0.31	
2:Restrictions to movement of people	22	1	20		1	0.31	0.03	0.28	
3:Other discriminatory measures	6			6		0.04			0.04
4:Barriers to competition	7			6	1	0.04			0.04
5:Regulatory transparency	10			7	3	0.06			0.06
Legal services Total	81	5	50	19	7	0.91	0.17	0.59	0.14
Logistics cargo-handling									
1:Restrictions on foreign entry	25		9		16	0.11		0.11	
2:Restrictions to movement of people	10			6	4	0.04			0.04
3:Other discriminatory measures	6			3	3	0.03			0.03
4:Barriers to competition	22		10		12	0.10		0.10	
5:Regulatory transparency	24		9		15	0.10		0.10	
Logistics cargo-handling Total	87		28	9	50	0.39		0.32	0.07
Logistics customs brokerage									
1:Restrictions on foreign entry	22		6		16	0.09		0.09	
2:Restrictions to movement of people	12			8	4	0.07			0.07
3:Other discriminatory measures	7		3		4	0.03		0.03	
4:Barriers to competition	9				9	0.00			
5:Regulatory transparency	25		9		16	0.12		0.12	
Logistics customs brokerage Total	75		18	8	49	0.30		0.24	0.07
Logistics freight forwarding									
1:Restrictions on foreign entry	24		6		18	0.09		0.09	
2:Restrictions to movement of people	10			6	4	0.05			0.05
3:Other discriminatory measures	7		3		4	0.03		0.03	
4:Barriers to competition	8				8	0.00			
5:Regulatory transparency	24		9		15	0.12		0.12	
Logistics freight forwarding Total	73		18	6	49	0.29		0.24	0.05
Logistics storage and warehouse									
1:Restrictions on foreign entry	26		10		16	0.14		0.14	
2:Restrictions to movement of people	10			6	4	0.05			0.05
3:Other discriminatory measures	7			3	4	0.03			0.03
4:Barriers to competition	14		6		8	0.07		0.07	
5:Regulatory transparency	24		9		15	0.11		0.11	
Logistics storage and warehouse Total	81		25	9	47	0.38		0.31	0.07
Maritime transport									
1:Restrictions on foreign entry	31		12		19	0.21		0.21	
2:Restrictions to movement of people	11		7		4	0.09		0.09	
3:Other discriminatory measures	8			5	3	0.03			0.03
4:Barriers to competition	14			4	10	0.03			0.03
5:Regulatory transparency	14			7	7	0.04			0.04
Maritime transport Total	78		19	16	43	0.40		0.29	0.10
Motion pictures									
1:Restrictions on foreign entry	28		10		18	0.15		0.15	
2:Restrictions to movement of people	11		6		5	0.07		0.07	
3:Other discriminatory measures	16		3		13	0.03		0.03	
4:Barriers to competition	9			1	8	0.01			0.01
5:Regulatory transparency	15			7	8	0.07			0.07
Motion pictures Total	79		19	8	52	0.33		0.25	0.08

**Table No. 4.2: Policy Measures and Contribution of India's STRIs (2017) :
Sector Wise and Policy Area Wise by Categories (continued)**

Sector/ Policy Areas	Number of Policy Measures					STRI Contribution			
	Total	HR	MR	LR	NR	Total STRI	HR	MR	LR
Rail freight transport									
1:Restrictions on foreign entry	27	1	26			0.43	0.06	0.38	
2:Restrictions to movement of people	11		3	8		0.11		0.05	0.06
3:Other discriminatory measures	6			6		0.05			0.05
4:Barriers to competition	18		18			0.28		0.28	
5:Regulatory transparency	11		11			0.13		0.13	
Rail freight transport Total	73	1	58	14		1.00	0.06	0.83	0.11
Road freight transport									
1:Restrictions on foreign entry	23	6			17	0.13	0.13		
2:Restrictions to movement of people	11			7	4	0.07			0.07
3:Other discriminatory measures	6		3		3	0.05		0.05	
4:Barriers to competition	12		1		11	0.01		0.01	
5:Regulatory transparency	14			8	6	0.03			0.03
Road freight transport Total	66	6	4	15	41	0.28	0.13	0.06	0.09
Sound recording									
1:Restrictions on foreign entry	25			7	18	0.06			0.06
2:Restrictions to movement of people	11		6		5	0.07		0.07	
3:Other discriminatory measures	14		3		11	0.05		0.05	
4:Barriers to competition	11				11	0.00			
5:Regulatory transparency	15		7		8	0.10		0.10	
Sound recording Total	76		16	7	53	0.27		0.21	0.06
Telecommunication									
1:Restrictions on foreign entry	36			19	17	0.18			0.18
2:Restrictions to movement of people	11			6	5	0.03			0.03
3:Other discriminatory measures	5			3	2	0.02			0.02
4:Barriers to competition	40			21	19	0.21			0.21
5:Regulatory transparency	12			6	6	0.05			0.05
Telecommunication Total	104			55	49	0.48			0.48

Source: Computed from OECD STRI database

Note: Here the STRIs have been divided into 4 categories based on the binary scores as follows. No Restrictions NR [STRI Value=0], Low Restrictions [LR] [0<STRI Value <= 0.0099], Medium Restrictions [MR] [0.0099 < STRI Value <=0.0199] and High Restrictions [HR] [0.0199 < STRI Value]

on cross-border M&As and cross-border data flows. None of these are considered as highly restrictive in other sectors and indicates a basic flaw in the OECD method of giving weights. Sometimes for the same Policy Measure with similar conditions different weights are given. Leaving this exception, the high restrictions in these sectors are basically related to foreign equity restrictions. In Accounting and Legal Services, there is one policy measure falling under HR category, which is related to limitation on duration of stay of intra-corporate transferees. Here also the conditions are the same as in

other sectors but the weightage given is higher. Thus, mainly the High Restrictions (HR) are due to Foreign Equity restrictions. In Accountancy and Legal Services, out of the 84 and 81 policy measures, 5 restrictions under HR Category contribute around one fifth of the total STRI Value in these sectors. In Architecture Services, Courier Services and Rail Freight Transport, there is only one policy measure under HR.

- Leaving the No Restrictions (NR) Category, the bulk of the restrictions in most of the sectors fall under MR. Only in Air Transport

and Telecommunications there are no policy measures under MR Category and all policy measures with restrictions are in LR Category. In Computer Services, all the policy measures with restrictions fall under the MR Category only.

- **Leaving the NR category where there are no restrictions, Policy Area-wise, bulk of the Policy measures in most of the sectors fall under Policy Area 1 : Restrictions on Foreign Entry and Policy Area 2: Restrictions to Movement of People** under the MR and HR Categories and many are horizontal restrictions.
- **In terms of contribution to STRI Value, bulk of the contributions are from MR Category in most sectors.**

Based on the above analysis and the sector-wise analysis in this chapter, some of the policy measures for liberalization in different sectors are given. While in general horizontal measures in all sectors wherever possible need to be considered for liberalization, sector-wise some areas that can be considered for liberalization are given below.

Inferences and Suggestions: Sector-Wise

Accountancy:

- **Condition of locally licensed individuals can practice:** Most of the restrictions under different Policy Measures including Foreign equity restrictions are due to only one condition that only locally licensed individuals i.e. CAs can practice in India. Because of this condition there are restrictions under many parameters. There is a need to see whether this condition can be relaxed.
- **There are restrictions under many policy measures because of the condition that corporation is prohibited in the case of this sector. Commercial**

association between accountants and auditors is prohibited. Commercial association is possible only with locally licensed CAs. Reforms in this area are needed particularly if India wants to make accounting and auditing a major area for exports.

- **There are restrictions relating to recognition of foreign degrees.** While it is on a reciprocity basis, foreigners can completely redo the University degree, exam and compulsory practice in India. This is another area which can be considered for reforms.
- **Internal Audit and Concurrent Audit can be considered for liberalization.** Financial accounting and Management reports may not be considered for liberalization at present taking into account the regulatory angle.

Air Transport:

- **Disinvestment:** One major area of liberalization is related to disinvestment of Air India which is now being done by the Government.
- **Rationalization of slot allocation** is another area of reforms, as at present it is on the basis on historic rights.
- **While pricing regulation** is there on certain domestic routes under UDAN scheme, this cannot be considered as a restriction as it serves a social obligation.

Architecture service:

- **The major restriction in this sector is that only locally licensed individuals i.e. 'Architect' shall become partners and hold equity shares in Architect firms** and no person other than a citizen of India shall be entitled to practice as an architect in India. There is a need to consider relaxation in this condition.

- **There is also a condition related to recognition of qualifications** as there are no established procedures for individual applications from Indian or foreign applicants to recognize degrees earned from other universities. There are conditions like need to take local exams and completely redo the university degree to practice in India. There is a need for reforms in this area.
- **In India there is also a condition prohibiting Architects from advertising professional services** or allowing the name to be included in advertisement or to be used for publicity purposes. There is a need to see whether this condition could be relaxed.

Broadcasting:

- **The major restriction in this sector is that terrestrial television is monopolized.** However, this restriction is also found in other countries as well and may be needed due to various concerns. However, exemption to Prasar Bharati from tax on income is affecting the competition of private players. There is a need to see whether this disparity could be removed.
- **There is also a condition of allowing registering of only one copyright society to do business with respect to same class of works.** There is a need to see if this condition can be relaxed.
- **Some issues related to FM Radio Broadcasting** include the issue of removal/reduction of minimum reserve price for Phase 3 auctions, freedom of airing news/current affairs and equating national caps to city caps which is 15% for the former and 40% for the latter.

Commercial Banking:

- **Regarding Foreign Equity**, at present 74% foreign equity investment is allowed of which 49% is

through the automatic route and remaining through the government route. There is a need to see whether this can be relaxed by allowing the full 74% foreign equity through automatic route.

- **Regarding licensing requirements**, the criteria says that relevant forms needed for licenses are annexed to banking regulation 3 of the scheme for WOS. However, it states that these criteria are minimum and not an exhaustive list and the final decision will be that of RBI. Licensing procedures can be streamlined.
- **In the case of commercial presence for deposit taking and payment services**, there is the condition that only after 5 years of operation a bank can be fully owned by a foreign entity. This can be reduced to, say, 3 years.
- **Regarding screening of investment**, Public interest test must be mandatorily undertaken by Reserve Bank of India keeping in view the larger economic benefits for the development of the country. At present it is done by the RBI, but is not a requirement. Though this is a restriction, this is needed from the regulatory angle.
- **Regarding the supervisor having authority over licensing and enforcement of prudential measures**, RBI should continue to have full autonomy in this respect.
- **Regarding branch authorization policy**, foreign banks are required to submit their internal branch expansion plans on an annual basis. There are also many conditions related to it including opening branches in unbanked areas. Foreign banks are also subject to the special expansion criteria. This is an area to be examined for reforms also keeping in mind the social concerns.

Computer Services:

- **Restrictions are few in this sector in India, despite India being on the top of STRI restrictions for this sector. Most of the restrictions are horizontal.** Generally speaking, all aspects in computer services can be liberalised, excluding sensitive areas like security (CERT-IN, etc.), entities handling and processing direct benefits transfer, entities holding biometric data of citizens, etc. The step being taken by India to insist that all data must reside on servers located in India is a good decision. While this may be viewed as restrictive, it is a pattern that most developed countries follow.
- **Some other aspects that can be considered for liberalising or enhancing the Ease of Doing Business** could include permitting the entire Board of Directors for newly incorporated companies to be non-residents for a finite period initially, say 12 months. Upon completion of this time window, the entity should comply with the requirement of at least one director being a resident; and fast-tracking approvals for completing mandatory processes for setting up a company.
- **There is also a need to address the issues of taxation for start-ups** which is resulting in these entities registering themselves in other countries which offer a favourable treatment. For example, the differential treatment on capital gains from unlisted shares between residents and non-residents.

Construction:

- **Under public procurement** there is a condition of past experience of completion of work with any government in order to qualify for enlistment in government approved contracts. This measure prevents foreign firms to qualify for government projects in the beginning as their global project

execution capabilities are not considered. This needs to be considered for liberalization.

- **In the case of building design code standards and construction product standards,** the National Building code provides standards for building construction in India wherein reference to International standards is not made. There is a need to adopt international standards.

Courier Services:

- **The Courier Services in India has many restrictions which are due to the existence of a dominant Government player, India Posts and Government's role in fixing rates for postage, etc.** Though foreign investment is allowed in courier services under the automatic route, activity relating to distribution of letters is excluded and reserved for India Posts. There is a need to open up even this activity for private players.
- **Major reforms are needed in the case of India Posts, including streamlining subsidies given to India Post.** At present India Posts with a huge infrastructure is not fully utilized, though of late Post Offices are catering to some social reforms' activities of the government. Given the fast pace at which communications are changing, **it is high time to make major reforms in this sector by even disinvesting.** There is also a need to see how the **large infrastructure of the post offices including the buildings can fetch a handsome revenue for the government.**

Distribution Services:

- **FDI: While FDI in single brand retail is allowed 100%, automatic upto 49% and government route beyond 49%, there are many conditions** like products should be single brand only and should be sold under the same brand internationally. In respect of proposals involving foreign investment beyond 51%, sourcing of 30% of the value of goods purchased, needs to be done from India,

preferably from MSMEs, village and cottage industries, artisans and craftsmen, in all sectors. Sourcing norms will not be applicable upto three years from commencement of business i.e. opening of the first store for entities undertaking single brand retail trading of products having 'state-of-art' and 'cutting-edge' technology and where local sourcing is not possible. Since there have not been major negative effects, since this policy has been implemented there is a need to consider relaxation of some conditions related to single brand retail to encourage foreign investment and trade.

- **In Multi Brand Retail Trading, FDI upto 51% is allowed through the Government route. However, there are the conditions** like minimum FDI by foreign investor of US\$ 100 million and atleast 50% of the total FDI in the first tranche of US\$ 100 million should be invested in back-end infrastructure within 3 years; atleast 30% sourcing from MSMEs; retail sales outlet to be set up in cities with a population of more than 10 lakhs; State Governments would be free to take their own decisions in implementing; and retail trading by means of e-commerce is prohibited. Now it is time to further liberalize the sector by relaxing some of the conditions and allowing multi brand retail trade even in tier 2 and tier 3 cities/towns. However, care should be taken to modernize the kirana shops (Mom and Pop Shops).
- **The new e-commerce norms** which prohibits selling of certain products by Amazon, Flipkart, etc. is a new form of restriction which OECD may consider in the STRI in the future. The new e-commerce policy restricts discounts, disallows ownership by sellers on the market

place platform and disallows exclusive product launches which has affected Amazon India and Flipkart operations.

- Some other suggestions for this sector include the following:
 - **Need to implement the Model shops and Establishments Act** which enables states to choose to keep shops and other establishments open 24x7 all through the year. Only Maharashtra has adopted it by making suitable amendments in its Act. Other states need to be encouraged to follow suit.
 - **Metrology Act and rules** should be amended to ensure that pre-packed commodities should strictly follow the definition of pre-package.
 - **Need for E-enablement of small retailers** by encouraging them to prepare themselves for GST ecosystem and accept digital payments with a higher level of compliance.

Engineering Services:

- **Engineering Bill:** There are few restrictions in this sector. Infact, there is no need to have a license to provide these services in India while other countries have it. The Engineering Bill which streamlines many of these procedures needs to be passed in the Parliament.
- **In India there are also no thresholds above which tender is mandated for services.** In the case of goods, it is Rs. 25 lakhs. Industry feels that in the case of engineering sector, the threshold can be Rs. 50 lakhs.
- **Another suggestion is to have online system** in the case of both tendering and also obtaining construction permits.

Insurance:

- **Insurance is one of the highly regulated sectors in India. The major restrictions are related to foreign equity restrictions in India.** Foreign equity is allowed upto 49% through the automatic route. But foreign branches are also not allowed in this sector. Licenses are needed and subject to economic needs tests and commercial presence is needed to do insurance business. There is however the condition that all insurance companies should be Indian controlled. The IRDA has come out with the conditions like mandatory requirement that majority of directors be Indians and requirements on how key management persons are to be appointed. There is a need to examine these conditions for relaxation.
- **There is also the presence of public controlled firms like the LIC and GIC** and Government equity cannot be less than 51% in these public sector firms. There is a need for careful examination regarding liberalization of these public sector units as there are many social obligations for a developing country like India.
- **Mandatory first order preference for Indian reinsurers.** Though Re-insurance is more open than other forms of insurance in India for foreign countries and cross-border re-insurance is allowed, IRDAI regulations require that Indian reinsurers be given a mandatory first order of preference. Even the Re-insurance expert committee of IRDAI has noted concerns about this. This needs to be examined and addressed.
- **India is liberal in actuarial services** as is the case with all other countries and there is good scope for exports of actuarial services.
- **There is a need to consider opening up some segments of insurance like health insurance** to foreign players.
- **Another restriction that needs to be liberalized is related to approval of new products and services** where confirmation in writing is needed from IRDA that there is no further query.
- **The condition of ceding a percentage of the reinsurance policy to GIC** is another area where changes may be considered.

Legal Services:

- **This is a highly restricted sector and 5 parameters fall under the HR category mainly because Foreign law firms are not permitted to establish business in India and thus no foreign equity is allowed.** The membership of the Bar Council of India (BCI) is mandatory to practice law in India. In India legal services, both national and international law can be provided and law firms can be setup only by licensed Indian lawyers who are Indian nationals or citizens. Corporations are not permitted in this sector and lawyers are not allowed to enter into partnerships or associate with other professions or foreign lawyers. However foreign lawyers can come on temporary license on fly-in fly-out basis. All countries in the STRI database have restrictions similar to India for domestic law, but not in international law, which is more open. **In 2016, BCI draft rules proposed opening Indian market to non-litigation services (i.e., services in foreign and international law) and advisory and other services relating to domestic law. This proposal was later rescinded. There is a need to consider opening up of legal services atleast in foreign and international law.**
- **The restriction of disallowing Indian lawyers to enter into partnerships or associate with other professions or foreign lawyers** could also be considered for relaxation.
- **Another area of liberalization is related to relaxing the condition prohibiting hiring of locally licensed lawyers by foreign firms.** If this

is relaxed it can even help in export of our legal services.

- **Relaxing the rules related to advertisement** atleast in a limited way can also be thought of.

Logistics Services:

- **Horizontal restrictions:** There are 4 categories of logistics services - cargo handling, customs brokerage, freight forwarding and storage & warehouse. There are few restrictions in all these services in India. The major restrictions are horizontal in nature and reforms related horizontal restrictions can automatically lead to further opening of these services.
- **Government control through major public sector firm:** One major area of reform in the case of cargo handling is related to the control by Government through one major public sector firm in Air, Rail and Sea Cargo. There is a need to have more competition.
- **Explicitly mentioning that there are no restrictions:** In some parameters like separation of accounts, cross-subsidization, etc while there is no restriction, explicitly mentioning that there is no restriction can help in removing their contribution to STRI scores.
- **Procedural issues related to Ease of Doing Business** is one immediate area to be tackled in this sector.

Maritime Transport:

- **Disinvestment in SCI:** There are both horizontal and sector-specific restrictions in this sector. Most of the restrictions under MR category are due to horizontal restrictions. There is also the restriction on proportion of shares that can be acquired by foreign investors in publicly controlled firms due to the presence of SCI. Here there is a need to consider disinvestment in SCI.
- **In the maritime space, on ground, India has the least restrictions as 96% of EXIM trade and 28%**

of coastal cargo was carried by foreign ships in 2015-16. India is a victim of predatory pricing and monopolistic behavior of the international container shipping companies. Their pricing tactics render Indian exports uncompetitive but they don't find mention in STRIs of any country. Possibly they fall under no man's land! The cabotage rules are only in paper and recent changes in policy have given privileges to foreign ships.

- **While this sector has restrictions, other countries also have such restrictions, some not so explicit.** Besides there are subsidies and condition of use of national ships by other countries. There is also the issue of monopolistic practices by the Liner shipping companies.

Motion Pictures:

- **Government control in NFDC:** There are few restrictions in this sector. The major restriction in this sector is related to the proportion of shares that can be acquired by foreign investors in the public controlled firm NFDC, which is entirely owned by the government. There is a need to examine whether complete Government control is needed in a public sector institution in film industry.
- **Import Duties:** Another policy measure to be considered is related to lowering import duties on instant print film.
- **There is a statutory monopoly on copyrights management** with the central government not ordinarily registering more than one copyright society to do business in respect of the same class of works. There is a need to consider relaxing this condition.

Rail Freight Transport:

- **This sector is one of the highly restrictive sectors. The two important restrictions are related to Foreign Investments in train operation services being disallowed and monopoly by**

a government owned company, i.e. Indian Railways which is fully government owned. These two restrictions have a cascading effect on other policy measures automatically leading to STRI scores in other measures as well. Since the restrictive policy is affecting this sector, there is a need to seriously examine liberalization in this sector. **Even if the government has reservations in opening train operation services for foreign investment, atleast internal liberalization in the form of greater privatization can be thought of in Rail Freight transport.** This will facilitate the Indian private companies to compete on an equal footing with the public sector company. Relaxing the monopoly even partially can have a cascading effect and lead to fall in STRIs in other parameters as well.

- **Another area of liberalization is related to giving access to private sector to use Indian Railways infrastructure** which at present is fully Government owned and access is only for Government owned railway.
- **An independent regulator can be set up and the private players should be able to compete on a level playing field with the PSU i.e. CONCOR.** Private players in the sector are working under a handicap, as they have to acquire land for Container Terminals [infrastructure] at a high cost and face great difficulty in acquisition, etc. The older player i.e. CONCOR, a PSU of the railways has been given Railway Land at a subsidized rate.

Road Freight Transport:

- **Ease of Doing Business issues:** This sector is fully open to foreign investment in India with very few restrictions. The restrictions are mainly horizontal in nature. Even though there are 6 parameters under HR category all of them are related to horizontal restrictions. So, any relaxation in restrictions can take place by liberalizing horizontal restrictions and procedural issues related to Ease of Doing Business.

Sound Recording:

- **Ease of Doing Business issues:** This sector has few restrictions and mainly the horizontal restrictions. So, here also any relaxation in restrictions can take place by liberalizing horizontal restrictions and procedural issues related to Ease of Doing Business.
- **Copyrights issues:** One area where liberalization can be thought of is related to the condition on copyrights where the central government does not ordinarily register more than one copyright society to do business in respect of the same class of work.

Telecommunication:

- **Number of Restrictions:** Despite substantial liberalization in recent years, this sector has many restrictions but none in the HR and MR categories. So, it is the number of restrictions that have led to the relatively high STRI in this sector.
- **Government Monopoly issue:** One major restriction is because of the Government holding equity in many telecommunication firms. There are 5 public sector undertakings with BSNL being the largest provider of fixed line services.
- **Unbundling of local loop:** There are restrictions related to unbundling of the local loop and the local loop unbundling prices being regulated.
- **Regarding co-location,** sharing of passive telecom infrastructure is allowed by DOT. However, sharing of active infrastructure amongst service providers based on mutual agreements is permitted but limited only to antenna, feeder cable, Node B, radio access network and transmission system. This needs to be addressed.
- **Number portability** is not available in the case of internet. This could be considered.

- **Restrictions on minimum capital requirements,** which is a horizontal restriction is another area which can be considered for reforms in this sector.
- **Some other restrictions are related to one-time licensing fee and remote access policy** wherein India requires telecom service providers to receive pre-approval for each of their network operations centers (NOCs) before those NOCs can remotely access network in India. Since many global telecommunications service providers routinely provide network services from numerous NOCs distributed globally, many approvals are needed leading to bureaucratic delays. This needs to be addressed.

Tourism:

- **Ease of Doing Business issues:** This sector has not been included by OECD in its STRI. However, based on industry sources our analysis indicates that this sector has few restrictions and is quite open. Many of the restrictions are horizontal in nature and some are procedural conditions - Ease of Doing Business issues which needs to be addressed.
- **One suggestion is to make e-visa application form available in foreign language of all the emerging countries** with less number of attachments which

should be confined to not more than two pages.

- **Another Suggestion is related to the conditions of recognizing a tour operator as an approved inbound tour operator.** Here conditions like minimum four qualified staff out of which one should have diploma/degree in tourism and travel management can be relaxed.

Thus the restrictions in the different sectors are varied though there are the common horizontal restrictions related to foreign investment, cross-border M&As, proportion of shares that can be acquired in public controlled companies, conditions on subsequent transfer of capital and investment, restrictions on acquisition and use of land and real estate by foreigners, residency requirements, regulations on cross-border data transfers, employment visa and duration of stay, public procurement, taxes and subsidies, appeal of the decision of regulatory bodies and redressal mechanism, legal obligation to communicate regulations, public comment procedure and procedural regulations related to Ease of Doing Business. As can be seen from the above analysis, the experiences of different services vary. Other than horizontal issues, sector-wise issues differ and consequently sector-wise policies also vary. So, a bunch of policies related to liberalization of these services have been indicated above.

Annexure 1: OECD's STRI values of 44 countries in 2017

Sector	Accounting	Air transport	Architecture	Broadcasting	Commercial banking	Computer	Construction	Courier	Distribution	Engineering	Insurance
Australia	0.223	0.304	0.167	0.195	0.177	0.167	0.173	0.367	0.115	0.137	0.183
Austria	0.328	0.402	0.301	0.402	0.220	0.280	0.240	0.213	0.177	0.304	0.241
Belgium	0.439	0.471	0.345	0.268	0.247	0.318	0.292	0.295	0.239	0.251	0.215
Canada	0.268	0.401	0.210	0.303	0.184	0.180	0.243	0.386	0.260	0.179	0.213
Chile	0.081	0.157	0.112	0.282	0.208	0.139	0.117	0.486	0.113	0.113	0.164
Czech Republic	0.279	0.426	0.268	0.191	0.159	0.189	0.164	0.169	0.115	0.269	0.142
Denmark	0.263	0.398	0.160	0.215	0.175	0.194	0.205	0.199	0.143	0.160	0.165
Estonia	0.207	0.417	0.399	0.219	0.188	0.245	0.199	0.196	0.128	0.209	0.125
Finland	0.324	0.448	0.227	0.262	0.216	0.279	0.236	0.239	0.238	0.228	0.250
France	0.642	0.399	0.469	0.245	0.177	0.162	0.191	0.149	0.175	0.121	0.134
Germany	0.223	0.377	0.203	0.191	0.152	0.170	0.130	0.130	0.106	0.204	0.131
Greece	0.304	0.424	0.241	0.252	0.228	0.279	0.302	0.212	0.227	0.239	0.236
Hungary	0.314	0.437	0.301	0.232	0.248	0.302	0.273	0.233	0.176	0.299	0.219
Iceland	0.359	0.512	0.364	0.448	0.368	0.462	0.454	0.480	0.350	0.375	0.359
Ireland	0.215	0.374	0.203	0.189	0.145	0.165	0.163	0.148	0.140	0.162	0.113
Israel	0.344	0.443	0.314	0.353	0.254	0.321	0.356	0.485	0.189	0.325	0.255
Italy	0.339	0.411	0.272	0.304	0.182	0.267	0.218	0.252	0.180	0.195	0.239
Japan	0.204	0.403	0.165	0.266	0.206	0.170	0.128	0.263	0.121	0.123	0.180
Korea	1.000	0.423	0.185	0.276	0.148	0.100	0.125	0.364	0.089	0.137	0.105
Latvia	0.101	0.407	0.105	0.148	0.124	0.114	0.134	0.137	0.090	0.105	0.121
Lithuania	0.165	0.410	0.190	0.165	0.190	0.182	0.167	0.153	0.127	0.146	0.136
Luxembourg	0.259	0.437	0.215	0.152	0.195	0.209	0.193	0.172	0.184	0.216	0.150

Annexure 1: OECD's STRI values of 44 countries in 2017 (Continued)

Sector	Legal	Logistics cargo-handling	Logistics customs brokerage	Logistics freight forwarding	Logistics storage and warehouse	Maritime transport	Motion pictures	Rail freight transport	Road freight transport	Sound recording	Telecom
Australia	0.136	0.235	0.189	0.191	0.184	0.187	0.154	0.139	0.136	0.145	0.191
Austria	0.427	0.203	0.211	0.214	0.216	..	0.262	0.236	0.241	0.276	0.150
Belgium	0.307	0.265	0.245	0.248	0.236	0.291	0.267	0.273	0.256	0.288	0.210
Canada	0.165	0.218	0.173	0.159	0.166	0.190	0.230	0.167	0.152	0.172	0.333
Chile	0.136	0.231	0.346	0.187	0.180	0.214	0.162	0.221	0.127	0.147	0.270
Czech Republic	0.252	0.201	0.168	0.170	0.190	..	0.154	0.207	0.174	0.170	0.186
Denmark	0.269	0.158	0.136	0.138	0.147	0.208	0.175	0.186	0.225	0.204	0.114
Estonia	0.501	0.212	0.174	0.176	0.160	0.260	0.216	0.231	0.247	0.183	0.213
Finland	0.185	0.273	0.200	0.202	0.241	0.295	0.236	0.290	0.285	0.222	0.221
France	0.610	0.183	0.141	0.143	0.173	0.180	0.228	0.216	0.218	0.170	0.167
Germany	0.243	0.153	0.130	0.144	0.141	0.176	0.173	0.193	0.187	0.139	0.158
Greece	0.501	0.240	0.219	0.221	0.212	0.355	0.232	0.235	0.228	0.216	0.160
Hungary	0.764	0.247	0.223	0.226	0.241	..	0.269	0.261	0.250	0.252	0.188
Iceland	0.567	0.368	0.374	0.360	0.370	0.360	0.376	..	0.418	0.372	0.384
Ireland	0.216	0.185	0.155	0.157	0.164	0.197	0.149	0.169	0.196	0.135	0.124
Israel	0.352	0.336	0.279	0.274	0.270	0.277	0.230	1.000	0.196	0.282	0.317
Italy	0.204	0.262	0.230	0.221	0.233	0.313	0.273	0.251	0.256	0.290	0.204
Japan	0.584	0.217	0.156	0.185	0.179	0.208	0.105	0.195	0.149	0.107	0.200
Korea	0.439	0.160	0.114	0.116	0.094	0.254	0.154	1.000	0.108	0.111	0.299
Latvia	0.078	0.123	0.094	0.096	0.098	0.127	0.115	0.171	0.152	0.099	0.140
Lithuania	0.464	0.163	0.165	0.167	0.152	0.193	0.171	0.205	0.193	0.144	0.186
Luxembourg	1.000	0.165	0.155	0.169	0.197	..	0.174	0.225	0.177	0.202	0.135

Annexure 1: OECD's STRI values of 44 countries in 2017 (Continued)

Sector	Accounting	Air transport	Architecture	Broadcasting	Commercial banking	Computer	Construction	Courier	Distribution	Engineering	Insurance
Mexico	0.185	0.369	0.226	0.643	0.367	0.250	0.273	0.465	0.192	0.225	0.255
Netherlands	0.184	0.405	0.182	0.167	0.179	0.205	0.179	0.128	0.149	0.171	0.150
New Zealand	0.170	0.360	0.201	0.173	0.176	0.182	0.166	0.238	0.143	0.188	0.126
Norway	0.339	0.571	0.223	0.313	0.271	0.274	0.306	0.307	0.239	0.221	0.284
Poland	0.246	0.440	0.439	0.361	0.245	0.204	0.225	0.226	0.144	0.432	0.186
Portugal	0.429	0.426	0.401	0.189	0.198	0.216	0.273	0.167	0.189	0.404	0.213
Slovak Republic	0.236	0.436	0.567	0.212	0.212	0.201	0.215	0.199	0.118	0.573	0.155
Slovenia	0.315	0.398	0.387	0.215	0.163	0.179	0.218	0.152	0.129	0.390	0.138
Spain	0.316	0.422	0.232	0.229	0.146	0.235	0.230	0.222	0.140	0.230	0.196
Sweden	0.339	0.424	0.197	0.238	0.197	0.242	0.251	0.217	0.212	0.198	0.214
Switzerland	0.322	0.457	0.287	0.399	0.294	0.350	0.298	0.422	0.219	0.285	0.250
Turkey	1.000	0.564	0.273	0.436	0.257	0.304	0.275	0.484	0.168	0.248	0.240
United Kingdom	0.316	0.405	0.248	0.195	0.176	0.200	0.166	0.194	0.125	0.201	0.155
United States	0.174	0.534	0.189	0.256	0.224	0.180	0.247	0.373	0.156	0.218	0.290
Brazil	0.301	0.566	0.261	0.475	0.464	0.311	0.243	0.552	0.216	0.246	0.374
China	0.391	0.467	0.236	0.678	0.409	0.309	0.298	0.877	0.258	0.234	0.451
Colombia	0.238	0.286	0.208	0.698	0.310	0.270	0.263	0.287	0.154	0.219	0.257
Costa Rica	0.398	0.289	0.263	0.283	0.230	0.286	0.249	0.232	0.210	0.260	0.208
India	0.880	0.563	0.651	0.434	0.517	0.364	0.353	0.560	0.436	0.290	0.556
Indonesia	0.436	0.460	0.300	0.390	0.476	0.291	0.402	0.429	0.621	0.265	0.484
Russia	0.318	0.570	0.280	0.389	0.312	0.328	0.327	0.371	0.223	0.267	0.442
South Africa	0.242	0.463	0.254	0.380	0.308	0.180	0.193	0.466	0.177	0.195	0.245

Source: Compiled from OECD database accessed on 17 Sept 2018 (<https://stats.oecd.org>)

Annexure 1: OECD's STRI values of 44 countries in 2017 (Continued)

Sector	Legal	Logistics cargo-handling	Logistics customs brokerage	Logistics freight forwarding	Logistics storage and warehouse	Maritime transport	Motion pictures	Rail freight transport	Road freight transport	Sound recording	Telecom
Mexico	0.195	0.328	1.000	0.261	0.273	0.355	0.273	0.322	0.630	0.228	0.250
Netherlands	0.244	0.174	0.142	0.144	0.152	0.172	0.179	0.150	0.168	0.155	0.185
New Zealand	0.218	0.303	0.232	0.234	0.235	0.213	0.168	0.207	0.155	0.153	0.211
Norway	0.299	0.266	0.244	0.234	0.224	0.256	0.247	0.259	0.307	0.260	0.338
Poland	1.000	0.187	0.157	0.159	0.155	0.203	0.208	0.229	0.199	0.176	0.197
Portugal	0.471	0.152	0.170	0.143	0.154	0.203	0.174	0.175	0.193	0.176	0.151
Slovak Republic	0.474	0.162	0.176	0.179	0.173	..	0.182	0.228	0.209	0.165	0.160
Slovenia	0.498	0.238	0.160	0.162	0.232	0.273	0.154	0.201	0.206	0.146	0.160
Spain	0.351	0.212	0.210	0.224	0.203	0.217	0.195	0.242	0.196	0.194	0.201
Sweden	0.183	0.252	0.179	0.181	0.186	0.334	0.209	0.241	0.253	0.179	0.170
Switzerland	0.444	0.277	0.283	0.286	0.282	..	0.288	0.299	0.244	0.282	0.261
Turkey	0.673	0.371	0.286	0.285	0.316	0.266	0.249	0.258	0.250	0.247	0.256
United Kingdom	0.184	0.176	0.157	0.159	0.166	0.211	0.212	0.190	0.209	0.164	0.166
United States	0.202	0.241	0.237	0.221	0.213	0.371	0.158	0.157	0.174	0.171	0.124
Brazil	0.307	0.358	0.299	0.255	0.327	0.318	0.299	0.271	0.218	0.214	0.326
China	0.472	0.437	0.314	0.317	0.332	0.405	0.591	0.286	0.237	0.265	0.436
Colombia	0.186	0.316	0.244	0.247	0.235	0.253	0.274	0.259	0.193	0.224	0.281
Costa Rica	0.181	0.379	0.317	0.307	0.336	0.296	0.214	0.342	0.402	0.223	0.266
India	0.906	0.389	0.303	0.290	0.383	0.398	0.325	1.000	0.285	0.267	0.475
Indonesia	0.879	0.423	0.259	0.328	0.347	0.499	0.291	0.315	0.399	0.203	0.513
Russia	0.217	1.000	0.334	0.294	1.000	0.405	0.303	0.994	0.272	0.249	0.437
South Africa	0.311	0.352	0.235	0.238	0.271	0.217	0.166	0.270	0.136	0.188	0.301

Source: Compiled from OECD database accessed on 17 Sept 2018 (<https://stats.oecd.org>)

Export Potential and Strategies/Policies in Key Services Sectors

In this chapter, an attempt has been made to shortlist the major and potential services export markets for identified services. Then strategies and liberalization policies along with export promotion policies both cross-cutting and for the identified sectors have been suggested. This is also based on the STRI analysis and the suggestions of the service providers.

Major and Potential Services Sectors

Identification of major and potential services is done by first taking the growth rate of the different services exports of India; and their share in total services export of India and in world services exports.

Importance of Different Services in India's Exports

The Major Services in India's exports are Computer Software services (IT-BPM) with about 40% share in total exports of services in India in 2017-18 followed by travel (14.5%) and transport (8.9%) which mainly consists of maritime and related services. Business services with a share of 19.1% consists of a wide-ranging set of services of which the category of professional and management consultancy services is important with 9.8% share. But this again consists of many services, sometimes clubbed together. So, they have not been considered for sector-specific analysis. Among these services, the category 'business and management consultancy and public relations' has a share of 6% (Table 5.1). Financial services have a share of 2.6% in India's service exports and mainly consists of financial

intermediation which includes bank charges, collection charges, LC, etc. and are just routine charges. Though financial services have a share of 8.8% in world commercial services exports, there has been ups and downs in its growth with even negative growth in some recent years (Table 5.2). The growth of financial services in India has also been negative in the last 4 years and India's share of this service in world exports of the service has been small (1.2%) (Table 5.3). So, these have not been considered for sector-wise analysis here.

Telecommunications is more important in the domestic sector than the export sector, with a share of only 1.1% in services exports. This does not include installation services for telephone network equipment (included in construction and possibly in project exports) and data base services (included in information services). However, both construction and information services have a very small share in services exports. A potential export area in telecommunications sector is Internet broadband services. Healthcare is another potential sector given the low cost and relatively advanced medical treatment available in India though its share in total services exports at present is negligible (0.22%). In this chapter, besides examining cross-cutting policies for services, the sector specific policies for these five services are examined in detail.

Thus, basically computer software (IT-BPM), travel (tourism) and maritime services (shipping) are the major services in India's export basket that have been taken up first for sector-wise analysis.

Telecommunications and Healthcare are the other two services taken up for sector-wise analysis, taking the total upto 5 services.

Engineering Services is another potential area given the backing of a professional cadre of engineers and proven advantage in many engineering

services, besides export of engineering goods. However, there is a lot of overlapping as portions of engineering services fall under consultancy, construction, architecture, engineering services and project goods including both engineering services and manufactures. So, 'engineering services' has been included under 'other services'.

Table 5.1 : India's Major Services Exports – By Sectors and Sub-Sectors

Exports Items	Value	Share						Growth Rate							
	US \$ Million	Annual						Half Yearly	Annual				Half Yearly		
	2017-18	2013-14	2014-15	2015-16	2016-17	2017-18	2018-19 H1	2014-15	2015-16	2016-17	2017-18	2017-18 H1	2017-18 H2	2018-19 H1	
Total Services	195089	100	100	100	100	100	100	2.6	-0.7	6.4	18.8	16.3	21.2	5.3	
1) Travel	28355	11.8	13.1	13.8	14.2	14.5	13.7	13.5	4.6	9.3	22.0	27.7	17.4	2.1	
2) Transport	17441	11.5	11.2	9.1	9.7	8.9	9.7	0.6	-19.9	13.2	10.0	6.9	13.1	13.6	
3) Insurance	2506	1.4	1.4	1.3	1.3	1.3	1.3	3.8	-9.0	10.2	13.6	15.0	12.3	-0.4	
4) Government Not Included Elsewhere	664	0.3	0.3	0.4	0.4	0.3	0.3	11.3	6.5	1.6	12.9	2.0	22.5	10.0	
5) Telecommunications, computer and information services	79840	47.5	48.5	49.6	46.9	40.9	42.7	4.6	1.6	0.6	3.6	2.6	4.6	7.1	
a) Telecommunication services	2098	1.6	1.3	1.4	1.4	1.1	1.1	-17.1	8.7	9.4	-11.7	-5.8	-17.2	4.1	
b) Software services	77326	45.8	47.0	48.1	45.3	39.6	41.4	5.3	1.4	0.3	4.0	2.7	5.3	7.4	
6) Construction services	2256	0.9	1.0	1.0	1.3	1.2	1.8	20.5	-3.2	37.3	5.2	20.6	-7.9	49.0	
7) Financial services	5164	4.4	3.6	3.2	3.1	2.6	2.5	-14.9	-12.7	3.1	1.3	-13.4	20.4	-2.9	
8) Royalties, copyright and license fees	732	0.4	0.3	0.3	0.3	0.4	0.4	-9.5	-7.5	16.0	29.0	7.1	50.9	28.2	
9) Business services	37346	18.8	18.3	18.8	20.1	19.1	19.2	-0.2	2.0	13.6	13.4	7.6	19.0	7.4	
a) Research & Development	3603	0.8	0.8	1.0	1.3	1.8	2.3	9.7	17.8	39.6	73.6	44.8	99.9	57.4	
b) Professional and management consulting services	19213	10.2	9.3	10.3	9.8	9.8	10.0	-6.9	10.6	0.8	19.4	14.3	24.6	6.5	
i) Legal services	849	0.5	0.5	0.5	0.5	0.4	0.4	12.9	-1.4	7.4	-5.9	-17.2	8.3	4.1	
ii) Accounting, auditing, book keeping services	678	0.5	0.4	0.2	0.3	0.3	0.4	-18.0	-38.3	43.8	23.8	39.3	12.2	20.4	
iii) Business and management consultancy and public relations services	11628	7.1	6.1	6.9	5.8	6.0	5.7	-11.1	11.5	-10.0	21.6	20.7	22.6	-4.8	
iv) Advertising, trade fair service	1820	0.5	0.7	0.7	0.9	0.9	1.0	42.8	12.7	31.7	19.8	20.5	19.1	15.2	
v) Architectural services	255	0.5	0.4	0.3	0.2	0.1	0.1	-15.0	-33.0	-27.0	-13.7	-8.2	-19.4	-16.3	
vi) Engineering Services	3747	1.2	1.1	1.6	1.9	1.9	2.2	0.8	41.1	25.9	19.2	-1.0	39.5	39.9	
c) Technical, trade-related, and other business services	14530	7.8	8.2	7.5	9.0	7.4	6.9	7.5	-9.3	28.0	-1.7	-5.0	1.4	-1.9	
i) Trade related services – commission on exports / imports	2057	1.7	1.4	1.1	1.2	1.1	1.2	-9.9	-22.9	14.0	3.9	13.7	-4.0	19.2	
x) Operational leasing services (other than financial leasing) without operating crew, including charter hire- Shipping companies	289	0.2	0.3	0.3	0.2	0.1	0.1	48.2	-15.6	-23.1	-8.4	-3.5	-13.6	-24.8	
xi) Other Technical Services including scientific/ space services.	4559	0.5	0.5	1.0	2.0	2.3	2.2	7.9	107.5	105.6	37.7	11.2	70.7	7.3	
10) Personal, cultural & Recreational services	1618	0.9	0.8	0.9	0.8	0.8	1.0	-9.9	11.2	5.1	16.2	4.8	29.1	22.0	
11) Educational services (e.g. fees received for correspondence courses offered to non-resident by Indian institutions)	428	0.2	0.2	0.2	0.2	0.2	0.3	9.0	-0.1	12.2	16.6	5.9	32.9	28.0	
12) Maintenance and Repair Services	211	0.1	0.1	0.1	0.1	0.1	0.1	-18.9	-12.1	19.5	16.2	61.3	-10.3	-23.0	
13) Other Services not included elsewhere	18807	1.9	1.2	1.5	1.7	9.6	7.3	-33.7	20.6	25.5	567.5	613.7	533.3	-15.8	

Source: RBI

Table 5.2 : Major World Services Exports – Share and Growth

World Services Exports by Sub Sectors	Value (US Billion)	Share (%)	Growth Rate (%)						
	2017	2017	2011	2012	2013	2014	2015	2016	2017
Total Services	5351		12.5	3.0	6.5	7.4	-5.0	0.5	7.8
Commercial services	5279	100.0	12.6	3.0	6.6	7.6	-5.0	0.6	7.9
Travel	1310	24.8	11.9	3.5	7.8	4.5	-4.6	1.9	7.6
Other business services	1187	22.5	13.8	4.3	7.9	11.3	-5.3	2.7	7.8
Transport	931	17.6	9.3	1.6	2.4	5.4	-9.3	-4.8	8.8
Telecommunications, computer, and information services	527	10.0	16.5	6.6	8.0	9.0	-1.1	2.7	7.3
Financial services	464	8.8	14.4	-2.1	11.6	6.2	-2.2	-0.1	5.5
Professional and management consulting services	430	8.1	13.5	6.4	9.5	10.1	-3.9	5.6	8.0
Computer services	382	7.2	20.2	8.5	9.1	10.7	0.5	3.0	8.9
Charges for the use of intellectual property n.i.e.	381	7.2	15.2	1.6	5.6	16.4	0.5	2.2	9.9
Air transport	370	7.0		4.0	3.3	10.5	-6.5	-1.7	10.4
Sea transport	328	6.2	5.8	2.4	-1.3	2.4	-11.8	-11.0	4.6
Research and development services	161	3.0	13.7	9.6	9.8	12.9	-3.1	7.8	7.1
Insurance and pension services	126	2.4	14.3	13.2	4.9	5.0	-10.3	2.7	0.6
Construction	101	1.9	9.9	2.9	2.0	13.1	-12.3	-7.7	13.6
Information services	30	0.6	2.7	6.2	20.2	16.5	0.4	8.5	11.3
Audiovisual and related services	22	0.4	12.1	0.3	13.2	-3.6	-14.8	3.2	1.1
Telecommunications services			10.7	2.1	3.5	3.1	-6.1		

Source:Based on WTO data accessed on 31 January 2019 [BPM 6 format]

Table 5.3 : Major World Services Exports : India's Share

Services Sub Sectors	Services Export (US\$ Billion)				Share (%)		India's Services Exports Growth (%)						
	World 2015	World 2017	India 2015	India 2017	India's Share in World Services Exports 2015	India's Share in World Services Exports 2017	2011	2012	2013	2014	2015	2016	2017
Total Services	4937.0	5351.2	156.3	184.0	3.17	3.44	18.3	5.1	2.5	5.4	-0.6	3.5	13.7
Commercial services	4863.5	5279.4	155.7	183.4	3.20	3.47	18.3	5.1	2.5	5.3	-0.6	3.5	13.7
Travel	1194.7	1309.5	21.0	27.4	1.76	2.09	22.2	1.5	2.4	7.1	6.7	6.7	22.0
Other business services	1071.2	1186.6	50.1	59.0	4.68	4.97	11.6	22.2	-0.9	3.9	3.4	8.4	8.6
Transport	899.3	931.5	14.3	17.0	1.59	1.82	33.3	-1.1	-3.4	9.9	-23.0	6.0	11.9
Telecommunications, computer, and information services	478.2	527.3	55.0	54.9	11.51	10.40	16.3	3.6	10.3	1.4	0.9	-1.6	1.3
Financial services	440.0	463.7	5.3	4.5	1.21	0.97	7.1	-14.4	19.1	-11.5	-5.3	-5.0	-11.6
Professional and management consulting services	377.0	430.3	37.0	41.3	9.83	9.60	10.6	27.1	2.2	3.4	7.2	4.0	7.2
Sea transport	351.9	327.6	9.7	11.5	2.77	3.51	4.0	57.1	13.5	5.1	-18.7	3.2	14.6
Air transport	341.3	370.3	4.3	5.0	1.26	1.35	40.4	56.9	6.2	20.1	-31.9	11.8	4.3
Computer services	340.1	381.6	52.8	52.3	15.51	13.70	18.0	3.7	9.5	1.3	1.2	-2.4	1.5
Charges for the use of intellectual property n.i.e.	339.0	380.6	0.5	0.7	0.14	0.17	137.6	6.2	38.6	47.8	-29.2	12.5	25.7
Research and development services	139.0	160.6	1.3	3.0	0.96	1.88	-16.3	26.7	6.9	25.2	5.1	52.2	47.6
Insurance and pension services	122.1	126.2	2.0	2.5	1.63	1.95	45.1	-12.6	-5.0	6.4	-13.0	7.5	15.2
Telecommunications services	112.9		2.1	2.2	1.85		8.4	-1.0	34.3	-0.8	-3.5	10.6	-6.3
Construction	96.4	101.1	1.5	2.3	1.54	2.26	59.5	10.0	32.2	32.3	-8.1	40.2	9.9
Information services	25.1	30.4	0.2	0.4	0.78	1.39	-70.5	4.8	-3.6	36.8	-18.8	68.7	27.1
Audiovisual and related services	21.2	22.1	0.3	0.4	1.63	2.00	-39.7	116.6	66.5	-19.6	-14.8	19.7	6.5

Source:Based on WTO data accessed on 31 January 2019 [BPM 6 format]

General or Cross-Cutting Strategies

The cross-cutting strategies include both the important policies for liberalization which can help exports and in our multilateral/bilateral negotiations and general strategies which can help services exports.

1. Services Liberalization Policies to help Exports and International/ Bilateral Negotiations

The analysis of OECD STRI in the previous chapter has useful lessons for liberalization in services. The horizontal or cross-cutting restrictions in India are mainly related to the following.

- **FDI** : While India has liberalized FDI substantially, abolished the FIPB (Foreign Investment Promotion Board), and also allowed 100% foreign equity share in many services sector, there are conditions like 49% foreign equity investment through automatic route and the rest through government route; limits of 51% equity and management control with the Government in all case of disinvestment of public sector enterprises; etc.
- **Restrictions Related to Cross-Border M&As, Subsequent Transfer of Capital and Investments.**
- **Some of the restrictions are just procedural**, like need for prior approval of RBI for cross-border M&As. But there are areas where liberalization is possible like the condition prohibiting loans/guarantee to subsidiaries of Indian companies abroad. These measures can help trade and investment. Other measures are merely procedural issues related to restrictions on movement of people including visa and duration of stay; issues and barriers to competition including procedures of appeal and redress. These can be rectified wherever possible which can have a positive

impact on the general trade and investment environment.

- **There are also many 'Ease of Doing Business' issues** under regulatory transparency like range of visa processing time, cost of business visa, cost and number of working days to register a company, etc., which can be addressed. Even the Government of India wants to move further up in the ranking of Ease of Doing Business and these measures can facilitate trade and investment.
- **There are some restrictions related to licensing and recognition of qualifications**, etc. which are found in some services sectors, but these also need to be seen under the sector-specific issues.

Thus, removing or relaxing horizontal restrictions in the services sector as given in OECD's STRI and also as indicated by service providers can help further trade and investment. These reforms can also give a mileage in India's negotiations, both multilateral and bilateral. However, there is a need to be careful regarding using OECD's STRI for negotiations, as the methodology of OECD has many weaknesses and sometimes skewed.

2. Value Addition in Services Exports

Any strategy for services exports should take into consideration the value addition due to services on India's exports and also whether we are moving up the ladder of value addition.

While data on value addition in services is limited, the OECD's TiVA data has some information on value addition, though it is not really value addition in the true sense of the term. It is actually the services content (domestic and foreign) in exports. As per this data, India's domestic, foreign and total services value-added share of gross exports are 46.4%, 5.7% and 52.1% respectively in 2016. Thus, a major share of value added in India's gross exports is due to

services and the rest due to the other two sectors, agriculture and industry. Bulk of the value addition due to services in exports is due to domestic value added in India.

Table 5.4 shows that domestic services value added is higher in India compared to all other BRICS

countries, though it is higher in countries like UK, USA and Singapore under the Select 9 plus 1 countries. It has also increased in 2016 over 2005. China's services value added and domestic services value added are lower than India as the value added in its exports is mainly due to non-services (manufactures). In the select list, UK, USA and Singapore are the only

Table 5.4: Service Value Added Share in Gross Exports: Select Countries

Sr. No.	Countries	Foreign		Domestic		Total	
		2005	2016	2005	2016	2005	2016
1	Brazil	4.0	5.4	34.8	40.7	38.8	46.1
2	China	10.3	5.7	18.9	27.5	29.2	33.2
3	India	6.2	5.7	41.4	46.4	47.6	52.1
4	Indonesia	7.2	4.5	26.0	31.1	33.2	35.6
5	Russia	4.5	4.7	33.3	40.5	37.8	45.2
6	Singapore	24.0	26.4	37.3	43.5	61.3	69.9
7	South Africa	6.7	8.2	32.0	32.5	38.7	40.7
8	South Korea	12.2	11.6	22.7	24.2	34.9	35.8
9	UK	7.0	8.0	58.3	62.9	65.3	70.9
10	USA	3.9	3.6	54.8	59.6	58.7	63.2

Source: OECD, Trade in Value Added (TiVA) database, December 2018

Table 5.5. Services value added in manufactured exports: Select Countries

Sr. No.	Countries	Foreign		Domestic		Total		Increase in Share in 2016 over 2005 (percentage points)
		2005	2016	2005	2016	2005	2016	
1	Brazil	4.8	6.4	23.7	28.7	28.5	35.1	6.6
2	China	11.0	5.9	13.2	23.8	24.2	29.7	5.6
3	India	7.4	7.2	16.0	17.9	23.3	25.1	1.8
4	Indonesia	9.6	5.9	15.3	17.3	24.9	23.2	-1.7
5	Russia	5.8	5.4	17.4	21.7	23.2	27.1	3.9
6	Singapore	24.9	27.8	17.6	19.6	42.5	47.4	5.0
7	South Africa	7.9	10.2	18.3	19.3	26.3	29.6	3.3
8	South Korea	12.6	12.2	12.3	13.8	24.8	26.0	1.1
9	UK	10.0	11.9	23.1	20.1	33.1	32.0	-1.2
10	USA	5.6	5.5	24.8	25.2	30.5	30.7	0.3

Source: OECD, Trade in Value Added (TiVA) database, December 2018

Note: Manufactures are defined according to ISIC Rev.4 Divisions 10 to 33. Services are defined according to ISIC Rev. 4 Divisions 45 to 98.

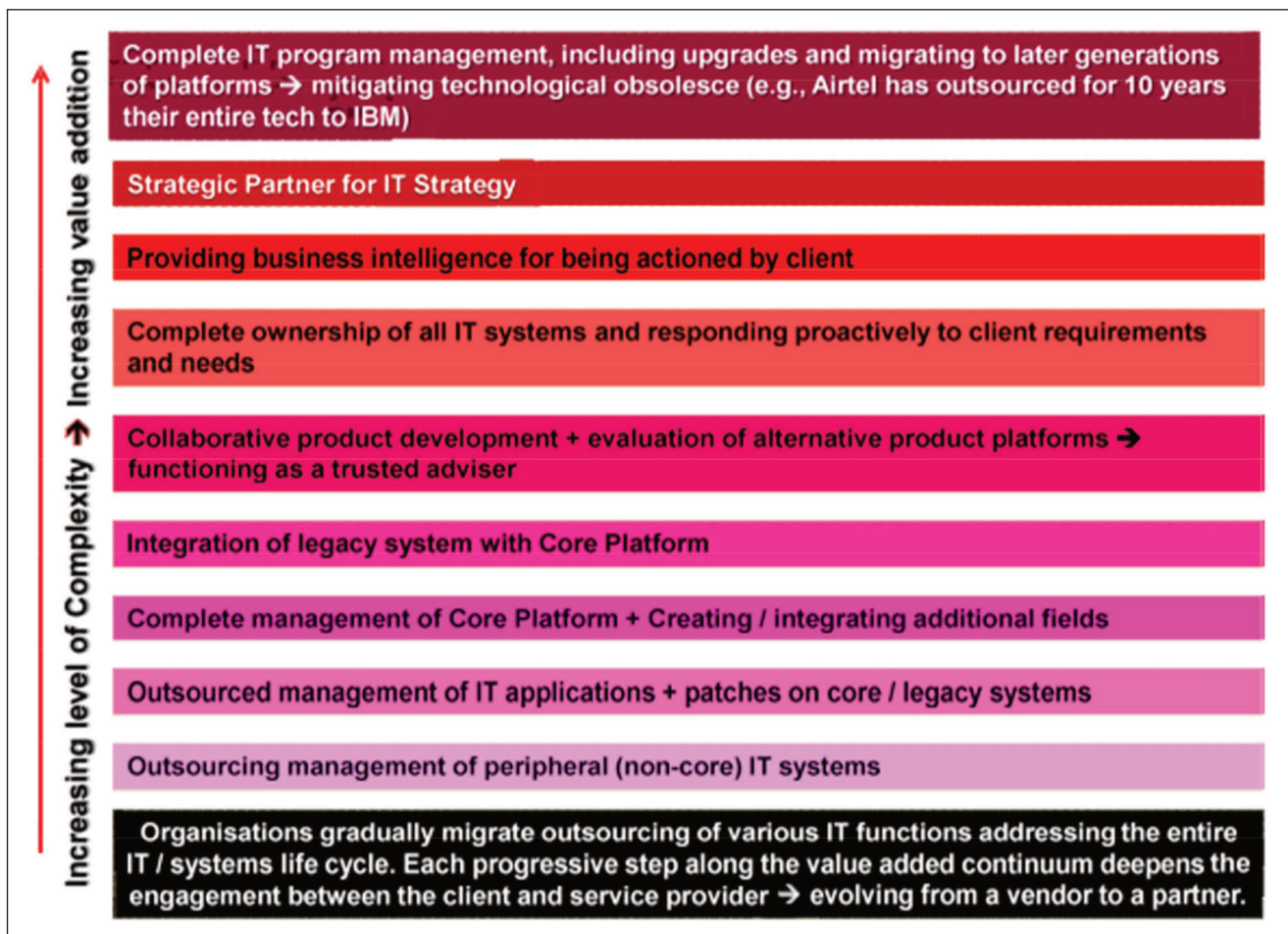
countries which have higher total services value added in gross exports than India. Singapore is the only country in the select list which also has a high foreign services value added in its exports indicating its relatively higher import of services for exports.

In Manufactured exports of India, total service value added component in 2016 is 25.1% out of which 17.9% is domestic services value added and 7.2% is foreign service value added. Among the select countries, Singapore has the highest services value-added content in manufactured exports. Only for Indonesia it is lower than India. [Table 5.5].

Thus, services sector particularly domestic services are adding value in India's gross exports and manufactures exports indicating the services linkage in exports even of manufactures exports.

However, what is more important to us is to see whether we are exporting value added services and are we moving up the value chain in the different services which can enhance the value of our services exports. This can be explained with the illustrative example for IT-BPM services [Figure 5.1].

Figure 5.1: IT Services - Development and Management of IT Services – evolution of value added steps and deepening of client relationships



Source: Compiled by Raju Bhatnagar

India has moved up the value chain in IT-BPM services. New entrants in the IT / BPO space usually start at the bottom of the value chain and gradually work their way up. Also, these new firms often do sub-contracting work for the IT biggies, who are able to do a cost arbitrage within the country since the smaller firms have lower cost bases. Most of the Indian large firms have covered the entire value chain. Some have consciously moved away from the bottom of the chain. For example, there are very few companies in India that are delivering call centre type work. However, given that large numbers of people that they employ (not all of whom are highly skilled) and the reluctance of clients to fragment delivery of work, they continue to deliver low end of the value chain as well. Large Indian firms are beginning to get into the top end of the value chain, where they partner with the clients on many sensitive areas which impact strategy of the clients. Some companies like TCS, Infosys, Wipro, Mindtree, HCL, etc. are beginning to make their presence felt in this area. However, most of the captive units of MNCs have outsourced top ends of the value chain work to their Indian subsidiaries and are quite happy with the output of work that they get. In short, India has nearly vacated the voice-based call center type work, but as a country is present across the entire value chain both in the IT and BPO industry.

There is a need to move up the value chain in the other important services as well. In tourism, for example, we are still in the lower end of the value chain providing general tourism services, though of late we have started moving towards some value-added services like medical tourism. In the case of healthcare, we are catering mainly to high value-added services like super-speciality medical services including tertiary and quaternary healthcare. In telecom, India's presence was felt mainly in the mobile telecom services. We have to move up the value chain to provide internet broadband services. Sometimes a package like project exports can have all levels of the value chain combined together.

In shipping, containerization, transshipment and moving towards new generation ships are value added services. While we have moved towards containerization for transshipment, we have become dependent on foreign country ports. In short, a services strategy has to aim at moving up the value-added chain.

3. Disinvestment

There are many public sector units in services sector where disinvestment needs to be done. While a careful plan of action regarding the PSUs to be disinvested and timing of disinvestment is important, some examples of disinvestment could include disinvestment in the hotel sector. The Government has already taken initiatives in disinvestment in ITDC. Infact, there is no need for the government to be in hotel business. So outright privatization can be thought of in this area. Another example is postal services where disinvestment or outright sale can take place. In shipping, it may not be advisable to disinvest in SCI as there are strategic concerns including the need to counter the monopolistic policies of liners.

4. Focusing on the Software-Hardware-Telecom Trinity

India has a proven advantage in software and has made its presence felt in telecom. But in hardware sector India is lagging behind. Now with the hardware-software combination we should offer a whole package which includes both these components. To this our expertise in the telecom sector has to be added by entering in a big way in internet broadband services. Thus, India should be identified as a major provider of broadband services including the whole range of activities like exporting optical fiber and optical fiber cables, installing them and providing broadband services.

Thus, future growth in services exports can be better achieved if it is combined with high tech manufactures. This way India should herald its entry in a big way to modernize towards Robotics, Internet

of Things and Artificial Intelligence. Necessary skilling for this purpose and use of NRIs/PIO can help in this gigantic task.

5. Services of India on the Lines of Make in India

India has made its presence felt in the services sector, particularly IT-BPM. Now there is the need for creating a brand identity for some services. The software-hardware-telecom trinity should be marketed as a brand. This needs special efforts like strengthening the present schemes like MAI (Market Access Initiative) and also making them services focused; focusing on services related trade fairs (both in India and abroad) by ITPO and networking with the Indian Missions abroad on services issues.

6. Other Issues

Other important issues common to all services are market entry issues like Visa and GST issues. Visa issue which is more relevant for the IT sector is dealt in detail in the concerned sector. While some GST issues are cross-cutting, there are certain issues specific to concerned sectors. So, they are given in the sectoral analysis.

Sector-specific Strategies/Policies for Major Identified Services Sectors

The important and potential services export sectors in India are the 6 sectors given below:

1. IT-BPM services (Computer Services)
2. Maritime Services (Shipping)
3. Tourism
4. Telecommunications with special reference to Internet Broadband
5. Healthcare

Sector-specific strategies /policies for the above 5 sectors and some other sectors are given below:

1. IT-BPM Services (Computer Services)

The Indian Information Technology-Business Process Management (IT-BPM) industry has contributed immensely in positioning the country as a preferred investment destination amongst

global investors and creating huge job opportunities in India. In the world IT-BPM market of US\$ 1.3 trillion (2017), the share of Indian IT-BPM industry at US\$167 billion (2017-18) was 12.85%. The industry has differentiated itself in the global competition on account of consistent service and guaranteed results. More importantly, the industry has led the economic transformation of the country and altered the perception of India in the global economy. As per International Data Corporation (IDC), in 2017, global IT-BPM industry stood at US\$ 1.3 trillion (excl. hardware) showing a growth of 4.3% over 2016 with growth in IT services at 2.4% driven by the continuous need for digital solutions; BPM at 3.4% with greater implementation of RPA; Packaged software with the fastest growth of 7.7% driven by Software as a Service (SaaS) esp. FMS, HCM, Analytics. The hardware segment grew at 1.5% to cross US\$ 1 trillion and Global Engineering Research and Development (ER&D) spend at 3.2% reaching nearly US\$ 1.8 trillion due to the push for autonomous vehicles & equipment, connectivity and smart products.

In the US\$ 185-190 billion global sourcing market, India continued as the world's No.1 sourcing destination with a share of 55 per cent. 271 new global delivery centers were set up worldwide (by US headquartered firms) in 2017 with India accounting for 24% share and Europe 29%. India today is the global leader in the outsourcing industry with half of the world's back office being located here. While India is the world's topmost offshoring destination for IT companies, its on-shore capabilities are also reckoned with. Now, new and innovative technologies are scripting a paradigm shift in its capabilities and offer mind-boggling opportunities for IT firms of all sizes.

The three 'C's, Competition, Clustering and Collaboration coupled with the support from the Government have helped Indian IT industry emerge as the leader in IT. The ability of software firms

to work together in areas of mutual benefit, such as policy advocacy, overseas marketing, market research, and distribution of best practices are helping them to sustain their supremacy.

As per NASSCOM's (National Association of Software and Services Companies) estimates for 2017-18, IT-BPM industry revenue (excluding hardware) is estimated to have reached US\$ 151.50 billion, up from US\$ 140 billion in 2016-17 showing a growth of over 7 per cent. In addition, e-Commerce is over US\$ 39 billion.

IT-BPM exports from India are expected to reach US\$ 126 billion during 2017-18, with over 7.7 per cent growth and an addition of US\$ 9 billion. ER&D and product development continues to be the fastest growing segment at 12.8% driven by the demand for AECS- (autonomous, electrification, connectivity and shared mobility). IT services are growing at around 6% (8% in 2018 as per CARE ratings) driven by growth in software testing and ISO (hosted applications). BPM exports is expected to grow faster at 8% with Analytics, RPA, chat-bots (similar to robots which can chat with humans) emerging as areas of growth. As per the RBI data, software services exports grew by 4.0% in 2017-18 to reach US\$ 77.3 billion. In 2018-H1, the growth was at 7.4%.

Driven by the increased digital adoption and growing Internet Economy, India's domestic IT-BPM market (excluding hardware) is expected to reach US \$ 26.5 billion at 10 per cent growth in 2017-18. India has the 2nd largest Internet user base after China with over 432 million subscribers, with more than 300 million Smartphone users. The IT-BPM industry's contribution to GDP is around 7.9% and it is estimated to employ nearly 3.97 million people in 2017-18, an addition of around 105,000 people over 2016-17. The industry comprises 17,000 plus firms that offer the complete range of services with around 5,000-5,200 start-ups making India the third largest startup country in the world. Many of these

are digital first companies and are working on very niche technologies like – Artificial Intelligence (AI), blockchain, robotics, etc.

As per NASSCOM, 2017-18 saw some key things gain more traction:

- Digital – transformation, both in terms of business and talent. Industry focused on expanding portfolio of digital capabilities and talent pool.
- Automation: Visible trends across industries and value chain, automation is enabling standardizations, reduced dependence on people, improved efficiencies; alternately, it is also giving rise to demand for new skillsets.
- IP-led business: Phantomization enabling growth in IP-led business; firms like IBM and HCL entering into IP partnerships as a new stream of revenue.
- Tech buyers: IT budgets and buy decisions becoming more verticalized; shifting from the purview of the CIO and into specific lines of businesses – CMO, CFO, CDO, etc.
- GTM strategies (Go to Market Strategies) : These are evolving keeping customer centricity and experience at the heart of business; firms using a combination to M&As (capability expansion), ecosystem partnerships (with startups, academia, peers) to co-invest, co-develop and co-sell products and services.

Government's Recent Policies

- Government of India has undertaken a consultative approach with the industry associations and industry members to discuss measures to improve the overall state of the IT industry and key challenges being faced towards realizing the US\$ 1 trillion digital economy by 2022. Efforts have been made to streamline

procedures and improve the overall Ease of Doing Business. Government initiatives such as Start-up India, Digital India and Smart Cities are expected to boost e-Governance and m-Governance related business activities. There is significant push from the Government to go digital and adoption of digital payments. Digital India has been a huge success leading to diffusion in the market place. Government services are being made available to citizens electronically by improved online infrastructure and by increasing Internet connectivity and making the country digitally empowered in the field of technology. Digital Technologies which include Cloud Computing and Mobile Applications have emerged as catalysts for rapid economic growth and citizen empowerment across the globe. Digital India is preparing India for the knowledge-based transformation and delivering good governance to citizens by synchronized and coordinated engagement with both Central Government and State Government.

- Some other measures taken by the government, include increase in SEIS (Service Export from India Scheme) incentives by 2% for notified services; Smart Cities and the expected fillip that it will give to the computer services segment; greater clarity on taxability of software whether it is goods or service; and abolition of Foreign Investment Promotion Board (FIPB), which may not have a significant impact on the computer services industry, yet is a positive step. Post demonetization, there has been a significant positive spin off like greater digitization, increase in electronic payment transaction volumes to move towards cashless economy, improved compliance and traceability of black money, etc. Post GST, there are developments like the GSTN; automation of supply chain and mandatory generation of e-way bills, resulting in significant upsidest for the logistics sector, etc; and significant

strides taken by Government as a part of “Digital India” initiative to upscale the G2G and G2C services. Under Digital Citizens, the mission of the government is to ensure a government-wide transformation by delivering key government services electronically to citizens. There are 44 Mission Mode Projects, most of which pertain to delivery of government services via electronic mode. The government’s aim is to empower at least one person per household with digital literacy skills by 2020.

Increasing Competition

Despite India’s stellar performance in the IT-BPM sector, India is facing increasing competition with its share in total World Computer services exports (as per WTO data) falling by 3.1 percentage points to 13.7% in 2017 from 16.8% in 2012. On the other hand, the share has increased for new entrants like Brazil, South Korea and Ukraine, besides already established players like Israel, Japan, Philippines, Poland, Russia, Romania, Singapore and USA. The growth in India’s computer services exports decelerated from 9.5% in 2013 to 1.5% in 2017, while that of the world was at 8.9% in 2017. The growth in exports of computer services in some major exporting countries was also higher at 8.8% for USA, 12.9% for Israel, 22% for Poland, etc. Only in the case of Singapore, growth rate was negative at -2.0% in 2017, though it was robust in earlier two years. (Table 5.6).

Thus, while India is forging ahead in IT-BPM and new opportunities are emerging, India is facing increasing competition from both developed and established countries in this sector as well as new entrants. India is unlikely to get back to the dream growth rate when it had 32.2 % average growth during 2002-03 to 2007-08. India’s growth has already slowed down, though new areas like SMAC (Social Media, Mobility, Analytics and Cloud and the Internet of Things) will give some propulsion to the industry. SMAC are collectively expected to offer huge opportunities.

Table 5.6 :Computer Services Exports : India And Other Major Exporters

Exports Computer services (Million US dollar)																			
Sr No.	Country	Value (US \$ Million)						Share (%)						Δ 2017 over 2012	Growth (%)				
		2012	2013	2014	2015	2016	2017	2012	2013	2014	2015	2016	2017		2013	2014	2015	2016	2017
0	World	280158	305548	338337	340148	350422	381612	100	100	100	100	100	100		9.1	10.7	0.5	3.0	8.9
1	India	46995	51449	52130	52761	51520	52278	17	17	15	16	15	14	-3.1	9.5	1.3	1.2	-2.4	1.5
2	USA	12554	13178	13991	15828	17283	18797	4	4	4	5	5	5	0.4	5.0	6.2	13.1	9.2	8.8
3	Netherlands			26874	25825	15848	16069	0	0	8	8	5	4				-3.9	-38.6	1.4
4	Israel	7126	6890	8119	8874	9766	11023	3	2	2	3	3	3	0.3	-3.3	17.8	9.3	10.1	12.9
5	Singapore	5123	5797	6238	7600	9825	9631	2	2	2	2	3	3	0.7	13.2	7.6	21.8	29.3	-2.0
6	Poland	2235	2744	3490	3739	4437	5412	1	1	1	1	1	1	0.6	22.8	27.2	7.1	18.7	22.0
7	Philippines	2500	2835	3121	3163	5179	5333	1	1	1	1	1	1	0.5	13.4	10.1	1.3	63.7	3.0
8	UAE			4248	4357	4547	4711	0	0	1	1	1	1				2.6	4.4	3.6
9	Russia	1995	2508	2651	2455	2664	3417	1	1	1	1	1	1	0.2	25.7	5.7	-7.4	8.5	28.3
10	Romania	1447	1689	1967	1980	2394	3094	1	1	1	1	1	1	0.3	16.7	16.5	0.7	20.9	29.2
11	Czech Republic	2045	2148	2331	2235	2552	2929	1	1	1	1	1	1	0.0	5.0	8.5	-4.1	14.2	14.8
12	South Korea	751	1187	1880	2341	2358	2678	0	0	1	1	1	1	0.4	58.1	58.4	24.5	0.7	13.6
13	Japan			1654	2088	2319	2498	0	0	0	1	1	1				26.2	11.1	7.7
14	Ukraine	937	1292	1500	1668	1975	2485	0	0	0	0	1	1	0.3	37.9	16.1	11.2	18.4	25.8
15	Australia	1576	1643	1673	1627	1663	1972	1	1	0	0	0	1	0.0	4.3	1.8	-2.7	2.2	18.6

Source: Computed from WTO data

Major Markets for Computer Software and Services

North America, Europe and Asia-Pacific are the major regions of computer software and services exports of India accounting for more than 85% of total computer software and services exports of India. Country-wise, USA, UK and Singapore are the major markets (Table 5.7).

As pointed out in the Economic Survey (2016-17), Indian service companies gained scale over the last decade as the disrupters, creating the modern offshoring industry, but they are now the incumbents, challenged by a slew of specialized and niche start-ups bred in this new environment. The niche players are creating highly specialized solutions that address very specific use cases or problems for their clients. The horizontal or enterprise platforms like Salesforce.com create entire ecosystems that handle horizontal problems simply with intuitive cloud-based technology. India is facing increasing competition from new

digital only entrants from Eastern Europe and Latin American countries including newer companies like Globant, EPAM, and Luxoft. While, the Industry is also adapting to changes, and focussing on skilling, including upskilling, further efforts are needed for India to be competitive and retain its pride of place.

While there are new challenges coming up in these traditional markets, new opportunities are also emerging in Latin America, Africa, Middle East and China. So, while trying to expand the outreach into existing markets, there is a need to tap these emerging markets for products, which can be at a fraction of the cost and with comparable functionalities. However, for the new markets, IT-BPM products and services have to be tailor-made. For example, existing software exporters are engaged mainly in outsourcing work not relevant for Africa. These markets require finished IT products and solutions.

Table 5.7 : India's Computer Software Exports – Share of Top Countries

Country	Percentage of Total Computer Software Exports
United States of America	57.22
United Kingdom	18.20
Singapore	4.43
Netherlands	2.49
Germany.	2.23
Australia	2.14
Canada	1.20
China	1.17
Sweden	0.81
Switzerland	0.80
Others	9.31

Source: ESC

Policy Issues and Suggestions

Strategy Issues

Our future strategy and policies for the computer software sector should rest on three planks, namely Software – Hardware Combination, Domestic - Exports Combination and Moving up the Value Chain.

1. Software Hardware combination

India has been a pioneer in the software sector. But in hardware we have been lagging behind with slow start and effect of ITA-1. Now the government has started giving a big push to the electronics hardware sector. In 2017, the global IT-BPM market was at US\$ 1.3 trillion, ER&D at US\$ 1.8 trillion and Hardware at US\$ 1.1 trillion totalling to a whopping US\$ 4.2 trillion market. In this global market while India's share is around 13% in IT-BPM, in hardware it is just 1.4%. India's hardware exports taken as a percentage of global hardware market is a paltry 0.04%. It is a situation of now or never for the Indian hardware sector. The Hardware Sector has to piggyback on

the success of the software sector by a Hardware-Software combination to move up the value chain in latest high-tech products and services to capture a sizable pie of the global Hardware-Software market. As stated earlier this should be combined with our expertise in telecom sector to have a trinity of Hardware-Software-Telecom to give a big push to our exports.

2. Domestic and Exports combination

Usually any sector develops first on the domestic front and then makes forays on the export front. But the Computer Software sector developed first on the export front. Onsite solutions were important. However, future development on the export front will depend on finished IT products and solutions, particularly given the visa and other restrictions. For this, the sector has to first develop well on the domestic front. There are also plenty of opportunities in the domestic front. In this context, the Government's initiative in rapid adoption of technologies as a platform to delivery of government-to-government and government-to-citizen services is a tremendous push factor for the domestic IT-BPM market. The Government of India is also taking a lead in adopting digital technologies and is one of the most proactive users of social media as a means to communicate with the public. There are multiple initiatives taken by the Government to accelerate the digital transformation of India, which would give a massive boost to the domestic computer services industry. These include - Aadhaar based payment of benefits; Common services centres for G2C interface; Digi Locker; Digital Life Certificate for Pensioners; accelerating Digital Literacy in Rural India; Computer Emergency Response Team in Financial Sector (CERT-FIN) focussed on the financial sector; enhancing security in Cyber space; Unified Payment Interface (UPI); Bharat Interface for Money (BHIM), etc.

3. Moving Up the Value Addition Chain

As stated by NASSCOM, India's value proposition for the global technology industry is steadily shifting towards offering end-to-end digital technologies. India is set to be the Digital capabilities hub for the world with 8,100 plus firms offering digital solutions, having a digitally skilled talent pool of 450,000-500,000 IT professionals, accounting for around 75% of global digital talent and Indian IT-BPM firms having 18-20% share of digital in total revenue.

Firms are developing an entire portfolio of digital capabilities through various initiatives. Internally, they include re-skilling/up-skilling employees at speed and scale, organisational re-structuring (vertical-specific and digital BUs), setting up Centre of Excellence (CoEs)/Labs dedicated to niche technologies, business model shifts (as-a-service, platformisation, risk-reward pricing, etc.). Externally they include M&As to scale access to talent, markets, customers; partnerships with startups (niche capabilities), academia (talent development and R&D), peer companies (white space companies, that are in large markets with no identifiable competitors, etc.)

Apart from this, India continues to be the leader in terms of cost arbitrage (5-6 times cheaper than the US), has global presence (80 plus countries), a fast-growing domestic market (US\$ 41 billion) and a potential consumer market (1.3 billion population). All these factors combined are enabling India to maintain its position as the World's No. 1 preferred location for offshoring with a share of 55% in global sourcing.

Thus, India has continually moved up the value chain in IT-BPM services. The very low-end space (voice-based call centres) has been vacated and industry is consistently adding value to its clients. As clients become more comfortable with an outsourced / offshored relationship, more complex work starts getting delivered by the Indian partners. The illustrative example of value addition for IT given

earlier shows that India has started moving up to the top end of the value chain. However, it is not totally concentrated at the top end and is scattered all over the value chain. Consistent effort is needed for a major part of the business to move up to the top end of the value chain. India has to focus on new and future areas like Cloud Computing, Analytics, IoT, Block Chain and further up all the way to Robotics.

Some Other Policy Issues & Suggestions

- **Brand Creation:** Efforts should be made to create a brand for India like "IT-BPM from India" on the lines of 'Make in India'. This should be directed at driving home the connotation that if something is serviced from India to the IT-BPM industry, it automatically delivers to the magic mantra of (i) high quality, (ii) defect-free, (iii) timely delivery and (iv) cost effective provision of services.
- **Greater integration and interaction between Industry requirements and the output from training institutes.** Currently there continues to be a gap that is euphemistically addressed as the "gap in employability". An example in the recent past was that of NIIT which produced thousands of trained people to meet the needs of the industry in the early 2000s. A similar approach needs to be taken now, especially for the emerging areas like Cloud computing, Analytics, IoT, Blockchain, etc. These are areas which are "high value addition" areas and therefore enable India to break the linear revenue growth trend line.
- **Improving connectivity and quality of life parameters in Tier 2 and Tier 3 cities/towns:** This is needed to make it possible for the computer services industry to access the talent pool from these towns in a cost-effective manner. This will also help in easing out the pressure from mega cities where the IT-BPM units are concentrated.
- **Incentives for startups:** Major breakthrough in "Intellectual Property Creation" comes from start-ups. Newer, aggressive and innovative

methodologies for promoting start-ups should be evolved. There are nearly 5000 SME software companies contributing to the software export growth. Some issues related to start-ups are the following.

- The tax benefits were independent of location. Currently, software & IT Services companies have to locate themselves into SEZs to avail tax benefits. Many SMEs and start-ups find it difficult and expensive to operate from SEZs. Therefore, there is a need to consider tax holidays for IT SMEs irrespective of their location.
- Angel tax has been a matter of grave concern for startups these days. If India has to be in the reckoning as a global player and the desired country to do business with ease, there is a need to quash the Angel Tax provision in Section 56(2) (vii b) and focus on measures to incentivise the start-ups.
- Carry forward provisions although amended in Budget 2017 still have complexities and could render requirements linked to same shareholders, etc., being counterproductive.
- There is a need to consider MAT exemption for start-ups or introducing a threshold for small companies to reduce the burden.
- There are disparities in the Long-Term Capital Gains (LTCG) tax rates for domestic and overseas investors and LTCG and Short-Term Capital Gains (STCG) rates applicable on angel investor and listed securities which needs harmonization.
- **Changes in the FDI policy on e-commerce:** The DIPP issued Press Note 2 (2018) which introduced significant changes to the current FDI policy on e-commerce. Some of these changes include prohibition on control or ownership over the inventory by market entity, regulation of cash

backs to buyers and submission of statutory audit reports to RBI annually. This Press Note creates a regulatory distinction between domestic and FDI-based entities, and the policy objectives behind the new FDI policy are not clear. We need to encourage technology-based investment in e-commerce and lay down a clear policy framework so that the need for issuing major clarifications which disrupt the market are minimised.

- **Other Service Providers (OSPs) Issues faced by the IT industry in India:** The requirement of OSP registration was first introduced under the New Telecom Policy 1999. The policy recognized telecom as an important element for the rapid economic growth and social development of the country and outlined various key strategies, measures, etc. to improve the country's telecom infrastructure. However, there are few long pending issues which industry is facing with regard to the "Revised OSP licensing terms and condition" issued by Department of Telecommunications on August 5th 2008.

One of the most critical issue is the definition of 'Application Services'. While the concept of OSP was introduced to support contact centre/application service operations in India, over time the interpretation of the term 'IT Enabled Services' have led to lot of operational challenges for the companies. There have been several instances of varied interpretations followed by different Telecom Enforcement Resource and Monitoring (TERM) cells on the applicability of definition and associated compliance requirements, leading to lot of uncertainties and operational challenges for the industry. Similarly, there are other issues with regard to work from home provisions, hefty bank guarantee, OSP registration, etc. which are affecting the growth of the industry.

- **SEZ legislative and operational issues:**

- **Concerns related to implementation of Business Continuity Planning and Disaster Recovery (BCP/DR) centre guidelines:**

Movement of data back-up is a key element of being able to ensure data recovery in case of disaster. Companies face issues in movement of backup data from SEZ Units to STPIs as STPI Units are not considered to be under the EoU category as per the recently notified BCP/DR guidelines.

- **Services in DTA billed in Foreign Exchange:**

There is conflict between the definition in the SEZ Act and what is permissible by the rules. SEZ Act and rules use terms such as “foreign exchange” (section 2), while SEZ rules use “convertible foreign exchange” (rule 46) and “freely convertible currency” (rule 53), which have not been defined anywhere in the SEZ Act. This gives rise to practical difficulties in denominating currency in raising export invoices and inspite of meeting NFE targets, companies have to conclude DTA sales in FE. This results in an unnecessary demand of foreign exchange inside the country.

- **General Taxation issues :**

- **Significant Economic Presence (SEP) provision :**

Digitization has resulted in the evolution of business processes and structures, lending them a physical presence agnostic characteristic. However, taxation polices and rules have based reliance on the physical presence nexus, to establish economic affiliation with non-residents. The evolved business models on the other hand, which operate remotely through the use of technology, are able to establish an economic allegiance in a country with negligible or no physical presence at all. Through the Finance Act 2018, India has introduced the concept

of ‘Significant Economic Presence’ under ‘business connection’. These provisions shall come into effect from 1 April 2019.

- **Place of Effective Management (POEM) guidelines:**

The much-awaited final notification on POEM was released in June 2018. Several ambiguities in the draft notification were highlighted by the industry of which some have been partially addressed and clarification on other aspects are awaited.

- **A key concern is that secondment of employees is a primary criterion for qualification of a foreign entity as service permanent establishment in India.**

The IT sector is a talent driven sector, and need for niche skills is increasing as Indian entities move up the value chain. However, due to aforementioned PE risk, foreign companies are wary of their personnel travelling to India which consequently impacts business activity in India.

- **TDS Issues:**

There is a need to reduce the TDS rate on all software payments aligned with the reduction on payment to call centre (from 10% to 2%) as it blocks the working capital. This is particularly important for the software product companies. There is also a need to evaluate the multi-level implication of TDS on cloud services in specific transactions.

- **GST Related issues :**

- **Continued ambiguities and concerns**

pertaining to determination of place of supply, blockage in working capital due to self-supplies, treatment of Head Office-Branch office transactions, SEZ procurements, etc which requires an urgent resolution.

- **Upfront exemption on procurement of capital goods by STPIs/ EoUs :**

Need for extension of upfront exemption in case of import of capital goods beyond March 31, 2019.

- **Non-availability of functionality in the GST portal for utilizing the transitional credit available against domestic GST liability:** In the GST portal, against the monthly GST liability, the monthly GST credits availed are first utilized towards output liability. GSTN portal needs to be updated to allow utilisation of transition credit first towards discharge of output liability.
- **Goods and Services Tax payable (GST/CGST/SGST) on import or domestic procurement of services by STPIs:** GST laws treat any service provided to a SEZ unit as 'Zero Rated Supply'. Accordingly, a SEZ unit can import services or procure domestically those services required for authorized operations without payment of GST. However, STPI units, which are also into the activity of export of IT/ITES are required to pay GST both on import and domestic procurement of services required for authorized operations and subsequently claim refund of the same. Payment of GST on procurement of services by an STPI unit would increase the working capital requirement. While relief has been provided till March 2018, upfront exemption from payment of GST on import and domestic procurement of services by STPIs could be considered in the GST regime on par with SEZ units.

International Challenges

Some important international challenges are the following.

- **Immigration curbs in major markets:** The major non-tariff barrier in services sector is the rising protectionist tendencies in the form of visa restrictions in the major markets.
 - **In the US,** immigration and visa issues, which have long plagued the information technology sector seem to have hurt Indian IT services companies recently with the US

Government's stance on the H-1B visa issue. Challenges in the US are twin-fold – via both Administrative action, as well as Legislative changes. On the Administrative side, the "Buy American, Hire American" Presidential executive order (dated 18th April 2017) called for the collection of data, increased oversight and enforcement actions, and the development of administration plans to reform and curtail the high skill visa programs. The Executive Order has been followed by a number of administration policy changes and proposed changes that target the visas most commonly used by India's IT sector. Departments of Justice, Homeland Security, State, and Labor all have issued memos, policy guidance aimed at imposing new restrictions on the visa programs, enhancing enforcement, increasing scrutiny of sponsors, and enhancing penalties for violations. The US administration has been quietly beefing up the "extreme vetting" procedures for people seeking visas to enter the US.

- The recent bill to curb the issuance of H1-B visas will adversely impact India. As per the proposed bill, there is no change in 65,000 limit per year for the visa in a year. But the minimum salary requirement for H1-B visa has been increased to US\$ 130,000 per annum from the present US\$ 60,000. There is also the elimination of those who do not have master's degree resulting in a simple computer programmer no longer qualifying since it will become a non-specialist profession. Besides, the US has made the conditions tighter for renewal of H1-B visas recently.
- To further compound the challenge in the US, there is a strong misperception and negative media narrative that large Indian IT-service providers misuse the system to take a disproportionate share of H1-B

visas. Examples include emotive stories built around higher paid American workers being replaced by cheaper H1-B staff, and the displaced American workers having to train their “cheap” H1-B replacements.

- **In UK**, under the immigration charge, employers seeking skilled people would have to pay double skills charge and migrant workers would be asked to pay more into the National Health Service. The £120,000 salary threshold for workers to stay in the UK for more than 5 years and a maximum of 9 years is quite high as most of the middle management employees of Indian companies critical for business, fall in the salary range of £60,000-£80,000.
- **In Singapore** multifold hike in minimum salary levels for work permit holders and clampdown on Indian tech workers has shrunk their base to under 10,000.
- **Australia** has scrapped its popular 457 visa on April 18, 2017 which is a temporary working visa that allowed employers to hire foreign workers to fill the skill gap in the domestic labor market.
- **New Zealand** has announced tougher requirements for skilled overseas workers.

Thus, in India's major markets for IT-BPM, services entry barriers have increased in recent years. While there is need for negotiations with these countries, FTA agreements with some of these countries could help and these issues should be taken into consideration during negotiations. In the case of the Indo-Singapore FTA, India needs to take up the visa issue in the next review.

- **Totalization Agreement with USA** : This issue is being negotiated almost over a decade with no real actions or results. Both sides are negotiating

the Bilateral Totalization Agreement (BTA), which once signed, would benefit thousands of Indians who are working in the US and paying social security & Medicare Tax but are unable to get any benefit out of it. The signing of Totalization Agreement will exempt Indian professionals working on short term visas in the US from paying social security and medicare taxes. Currently, residents of the US pay 6.2% social security taxes on wages upto US\$ 106,800 and 1.45% medicare taxes. Since a lot of professionals return to India before the stipulated period of work in the US to enjoy the benefits, they never get the pay-outs of these contributions. Not having a Totalization Agreement is a pressing issue for all the NRIs in the US. The US has also signed similar agreements with most of these countries. Since India and the US are having Totalization treaties with the same block of countries, there is a need to strongly pursue this issue during bilateral meetings to bring it to a logical conclusion.

- **EU – Data Protection**: India has long sought to gain data adequacy status with the EU in order to facilitate data transfers and boost its IT-BPM industry, which currently has to rely on binding corporate rules (BCRs) and standard contractual clauses (SCCs) for transfers of personal data from the EU to India. The subject of data adequacy has featured in negotiations of the EU-India FTA since talks began in 2007, although, there has not been much headway. In its January 2017 Communication on Exchanging and Protecting Personal Data in a Globalised World, the European Commission identified India as one of the next countries with which the Commission will engage on the topic of data adequacy depending on progress towards the modernisation of India's data protection laws. The development of data protection framework in India is underway. The Personal Data Protection Bill released by the Justice Srikrishna committee had suggested a much-needed framework for data protection

and privacy in the country. The Bill builds on the Supreme Court Judgement that advocated privacy as a fundamental right for the country and creates a framework for all stakeholders to be more responsible and build trust while dealing with personal data.

NASSCOM-DSCI (Data Security Council of India) has been advocating for a healthy balance between privacy and innovation, given that India is today emerging as a preferred hub for innovation and Science, Technology, Engineering, and Mathematics (STEM) talent globally. Policies that govern data protection, storage and classification need to be carefully crafted given the global footprint of the IT-BPM sector. Service providers in India process financial, healthcare and other data of citizens globally. India is also the destination for R&D, Product Development and Analytics, Shared Services. Mandating localization of all personal data as proposed in the bill is likely to become a trade barrier in the key markets. As per the Data Protection Bill 'Every Data fiduciary (any entity processing personal data) shall ensure the storage on a server or data centre located in India, of atleast one serving, copy of personal data to which this Act applies. Companies would need to spend huge amounts on setting up local servers, among other things. Start-ups from India that are going global may not be able to leverage global cloud platforms and will face similar barriers as they expand in new markets.

- **Issue of Language:** Around 80% of India's export is to English speaking countries. The language barriers in other major markets like Japan, LAC, Germany, France, etc. needs to be overcome by Indian IT professionals by taking special language training courses.

2. Maritime Transport (Shipping)

Shipping is an important indicator of both commodity and services trade of any country. The number of

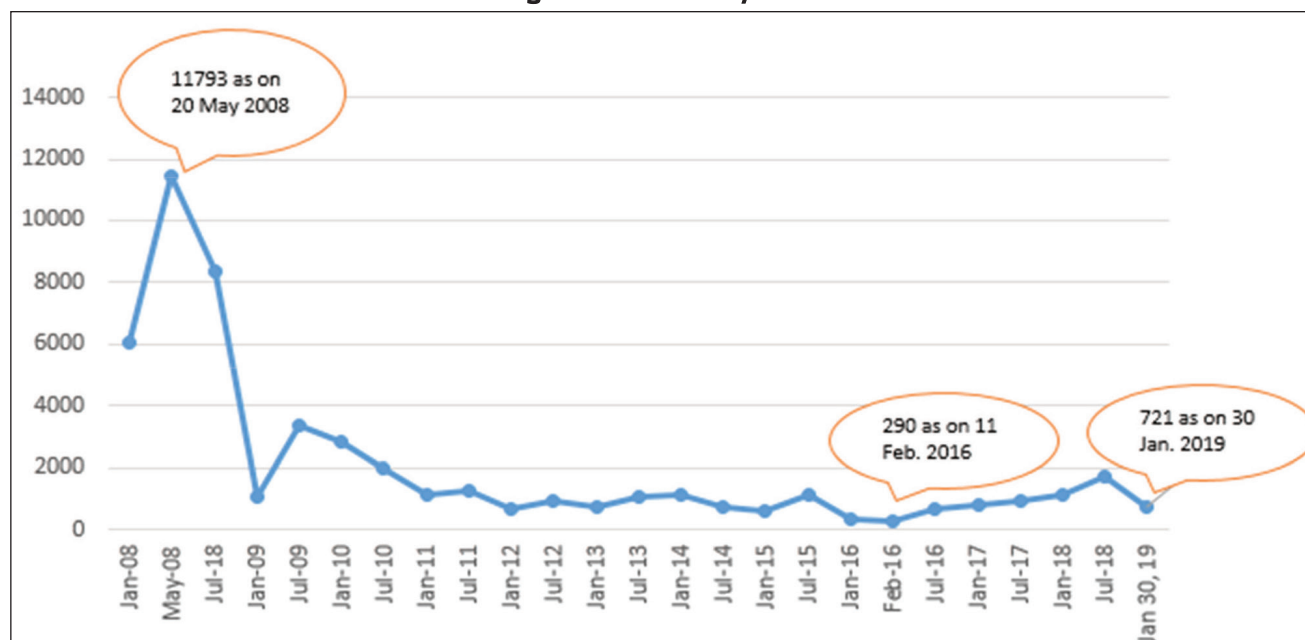
ships under Indian Flag increased from 1372 (12.35 million tonnes) in December end 2017 to 1401 (12.68 million tonnes) on December end 2018. The number of seafarers increased from 1,54,349 in December 2017 to 1,79,599 in December 2018. While the annual freight payable by Indian trade has remained steady at about US\$ 50 billion per year, the share of Indian ships in the carriage of India's foreign trade has been declining and was at only 6.4% in 2016-17.

The pickup in global growth in the first half of 2017 brought some signs of recovery to the World shipping industry which has been facing stormy weather since 2008. The Baltic Dry Index, a freight index for bulk ships which is considered a good proxy for the robustness of trade and shipping services was at 721 on 30 January 2019. (Figure 5.2). The index has been volatile falling from a peak of 11,793 on 20 May 2008 to a low of 663 on 8 December 2008 and then being in the red at 290 on 11 February 2016. Currently, the index is gradually improving.

Export Potential

The export potential of this sector needs to be seen from two angles – 1) foreign exchange earnings potential and 2) foreign exchange savings potential. India pays annual freight on EXIM cargo to the tune of US\$ 50 billion and the share of Indian ships in this freight is just 4% with more than 96% of the freight being earned by foreign ships. Therefore, even if we were to leave aside the potential of Indian shipping in terms of share in world shipping services and we were to consider freight retention by India for carriage of its EXIM trade, the potential is very high. This will also address the often-competing goals of optimum usage of scarce capital, need for employment generation, upgradation of skill sets, need to reduce current account deficit and most importantly growth of the national shipping industry. Currently, Indian EXIM cargo is being efficiently handled at Indian terminals by Indian companies, landside transportation is being handled by Indian Road and Rail operator companies and in the same vein Indian EXIM cargo needs to be increasingly handled

Figure 5.2: Baltic Dry Index



Source: <https://in.investing.com/indices/baltic-dry-historical-data>

on Indian owned ships. This will unleash a multiplier effect in the Indian economy as national needs are optimized and balanced with national assets. Therefore, freight services are a ready business that the Indian shipping sector can tap into by import substitution. But for this, commensurate capacity building and level playing field with suitable policies that would ensure competitiveness of the Indian flag shipping fleet are needed. Once India enhances its capacity, it can easily make greater presence in international shipping including cross trades.

Strategies and Policy Issues

Two major strategies to promote maritime services of India are –

- (i) Providing Level Playing Field for Indian Flag Vessels
- (ii) Funding to Strengthen the Capacity of Indian Shipping.

(i) Level Playing Field for Indian Flag Vessels

Indian shipping is not able to compete effectively with foreign ships due to higher Input costs and taxes. The tax incidence on Indian flag vessels is higher than that on foreign flag vessels for the following reasons.

- The crux of the problem faced by Indian Shipping is that while there is the policy of 'Right of First Refusal' (ROFR) which states that the Indian ships have the first right to carry Indian cargo, provided they match the freight offered by foreign flag vessels. However, Indian flag vessels are not able to compete as the high input costs and taxes results in their cost of operations being atleast 35% higher than the foreign flag ships. Meanwhile the cargo reservation policy and public procurement policies in India are only on paper.
- **Tax related issues** : The tax related issues of immediate concern for Indian shipping are the following.

Direct taxes:

- **Exempting Salary income received by Indian Seafarers working on board Indian coastal vessels from income tax.** This benefit is currently enjoyed by Indian seafarers working on foreign flag vessels operating on the coastal trade of India. The costs of foreign flag vessels do not include tax on seafarers' income and hence they are able to offer lower

freight. As Indian shipping companies need to match this offered freight and have to be on a level playing field, a similar benefit to Indian seafarers would make Indian shipping competitive. This will result in foreign exchange savings (which is akin to exports) as the Indian flag ships would carry this cargo and the entire freight will be retained in India rather than the same being transferred out of India to foreign flag shipping companies resulting in actual imports of shipping services (foreign exchange outgo). This can also make Indian flags competitive and also lead to higher investments in the sector and result in a larger Indian fleet and employment as each Indian vessel added would provide employment to at least 45 more seafarers. Industry sources estimate that the Indian flag vessels engaged in transportation of cargo on the Indian coast pay tax on seafarers' wages to the extent of Rs.75 crore annually. This loss of revenue could however be offset by the increase in Indian flag tonnage and retention of freight revenue in India which is anyway taxed.

- **Income earned from charter hire by foreign subsidiaries of Indian shipping companies to be treated as business income and not as a 'passive income' or royalty under the Place of Effective Management (POEM) in the Income Tax Act, 1962 which is taxed higher.** Despite being covered by the Tonnage Tax Scheme, Indian shipping companies have to pay higher rate of tax than their foreign competitors on shipping income earned by subsidiaries abroad, rendering Indian shipping companies uncompetitive owing to differentiated tax costs. Charter hire of ships under a time charter arrangement is actually a provision of service, wherein the ship owner actively performs all activities including managing the ship's operations, maintenance, deployment

of crew, insuring the ship and bearing all risks related to the ship /cargo. Hence, the ship owner continues to devote substantial time, effort and resources in operating, supervising and managing the ship. The responsibility for safe transportation of cargo under the Bill of Lading and the responsibility of complying with all safety norms as per the International Maritime Conventions lies with the ship owner. Moreover, the current tonnage tax provisions consider time charter as core income/ income from operation of ships. Therefore, it should be considered as an active shipping income. As per Klaus Vogel commentary on Double Taxation conventions, time charter is recognized as shipping business income and cannot therefore be treated as Royalty income. To provide Indian shipping companies a level playing field and make them globally competitive on tax related issues, income of a foreign subsidiary of an Indian shipping company earned by providing vessels on time charter needs to be treated as a "business income" and not "royalty".

Indirect taxes

- **Parity in GST treatment regarding import freight service rendered to foreign consignor by Indian shipping company vis-a-vis, foreign shipping company.** If an Indian company provides shipping services to a foreign consignor to transport cargo from outside India into India (import freight service), the Indian company has to levy 5% IGST on freight and the landed cost of imported goods goes up for the Indian importer due to the levy of 5% IGST. However, when the goods are imported through a foreign shipping company, the Indian importer has to pay a 5% IGST. But since the Indian importer can avail of input tax credit, the 5% IGST paid becomes a pass-through tax and the cost of goods

imported does not go up due to the levy of IGST unlike in the case of freight service being provided by the Indian company. This needs to be resolved.

➤ **Rectifying anomaly in GST provision regarding export freight service rendered to an Indian consignor.**

If an Indian company provides transportation services from India to a place out of India (export freight service), it may not qualify as Export of Service as the Service recipient is in India and the payment too may not be in foreign currency. Hence, Indian shipping company cannot avail input tax credit. Also, as it does not comply with the conditions of export of services, this service may get taxed as an Inter-State supply. The same service if performed by a foreign shipping company will be eligible for input tax credit. The Government has already made export freight service as an exempt supply up to 30 September 2019. There is a need to consider removing this period restriction and the exemption should be made a permanent exemption.

➤ **GST applicability on sale of ships located outside India.**

As per the IGST Act, where the supplier is located in India and the place of supply is outside India, such supply qualifies as an interstate supply of goods. However, export of goods outside India is zero rated for GST where 'Export' is defined to mean 'taking goods outside India to a place outside India'. In the case of sale of ships located abroad, sale of ships may not qualify as export of goods as the ships are located outside India prior to their sale. This is a slightly tricky situation, as the ships are located outside India at the time of their sale, and such sale should be outside the purview of the Indian GST Acts and hence should not attract GST. However, the seller is

located in India and the buyer is a foreigner, so it is an export. Had the same ship been in India at the time of sale to the foreigner, it would have automatically qualified as exports, as exports would be zero rated for GST. If GST is levied on sale of ships located outside India, the customer being an overseas entity, would not be eligible for input tax credit of GST and hence such GST would be an additional cost for the Indian shipping company. So, a clarification needs to be issued in this regard. Recently, CGST Act has been amended and in that it is specified that the Supply of goods from a place in the non-taxable territory to another place in the non-taxable territory, without such goods entering into India, shall be treated as neither a supply of goods nor a supply of service. Sale of ships outside India (non-taxable territory) is a similar transaction and hence a suitable clarification is required.

➤ **Need for IGST exemption on import of vessels.**

Vessels entering Indian waters for the first time (imported into India) under the Indian flag are liable to pay 5% IGST on the value of the vessel. However, such foreign flag vessels are not liable to pay such 5% IGST on the value of the vessel. This affects the Indian company which has to raise additional equity to the extent of the IGST. Since, no loan is available for payment of IGST, this increases the equity contribution and the cash outflow of the Indian company. Ships being capital intensive, it takes a very long time to set off the IGST tax credit and hence affects the cash flows of the Indian shipping companies. Incidentally, in all international maritime jurisdictions, no VAT/GST is payable on import of foreign going vessel and exemption of CVD on import of ships was given since 2012. So, there is a need to consider exempting vessels entering Indian waters for the first time (imported into India)

under the Indian flag from payment of IGST in order to maintain a level playing field with the foreign shipping companies.

- **Need for input tax credit on procurement of inputs like furnace oil, paints, spares, lubes etc. both in voyage and time charters.** The Rate Schedule for Voyage charters as well as for Time charters has a condition that no input tax credits can be availed on inputs. As the Rate schedule restricts the use of ITC on inputs for shipping sector, the taxes paid on inputs become costs to the company and increases the cost of transportation. This problem is not faced by others in the transportation sector because their main fuel viz. Diesel and Air Turbine Fuel (ATF) are not under the GST regime whereas the main fuel for ships viz International Fuel Oil (IFO) is within the GST regime. So, there is a need to consider removing the restriction in the Rate Schedule, so that ITC on fuel can be availed by ships.
- **Need to address the issue of blockage of ITC in various states of India due to the discrepancy in the Place of Supply (POS) Provisions.** Shipping companies procure fuel, paints, spares in various ports. While this is the place of delivery, the place of consumption is the place in which the Principal Place of business of the Shipping company is situated. As per the present Place of supply provisions, the place of supply for inputs procured by shipping companies is the state in which the inputs are delivered. As a result, the shipping industry is not able to avail ITC on procurements purchased in other states (other than the home state). The Place of Supply provisions must specify that all procurements by Indian shipping industry have to be changed to the State in which the principal place of business of the shipping company is situated. This will

enable the shipping industry to avail input tax credits. Then suppliers to shipping companies in other states would charge IGST on supplies made to an Indian shipping company instead of CGST and SGST so that Indian shipping companies can avail of ITC.

- **Issue of Refund of unutilized input tax credits on input services.** Presently, the law permits refund of tax credits accumulated on account of rate of tax on inputs (input goods) being higher than the rate of tax on output supplies. But this is only for input goods. A similar refund of accumulated tax credits on input services needs to be provided.
- **Issue of TDS on charter hire.** As per the recent amendments under GST Laws, PSUs have started deducting TDS @ 2% from time charter hire payment. TDS on charter hire reduces the ability of Indian ships to avail of input tax credit. Shipping companies are charging 5% as GST on time charter/voyage charter as well as on freight. If TDS is deducted at 2%, shipping companies are left with very little scope to utilise the input tax credit. This needs to be addressed and the TDS rate for time charter/voyage charter as well as on freight could be lowered to a flat rate of, say, 0.5%.
- **Recent policy related to cabotage (Coastal Shipping):** In May 2018, the government relaxed cabotage for the benefit of the foreign flag ships which include relaxation under Section 407 of the Merchant Shipping Act, 1958, for coastal movement of EXIM Transshipment Containers and Empty Containers; coastal movement of agriculture, horticulture, fisheries and animal husbandry commodities; coastal movement of fertilizers. Relaxing cabotage means that foreign flags are permitted to carry cargo in coastal trade of India without paying any direct or/and indirect taxes in India. The intention was that the freight

costs charged on Indian trade by foreign flags will be lower. However, this has not actually happened as can be seen below. Instead it has affected Indian shipping.

➤ **Regarding transshipment of Indian cargo over Colombo**, the permission to Foreign Flag Ships to carry EXIM and empty containers on the Indian coast has not decreased transshipment volumes over Colombo as can be seen in Table 5.8. From May 2018 to August 2018, Indian transshipment over Colombo has increased by 9%. Furthermore, Colombo has increased port charges in November 2018.

Table 5.8 : Transshipment of Indian Cargo in Colombo (2018)

Month	From India (Export TEUs)	To India (Import TEUs)	Grand Total
Jan	70250	59278	129528
Feb	69699	54255	123954
March	76377	64552	140929
April	71058	62058	133116
May	74266	63266	137532
June	74468	62968	137436
July	78115	67365	145480
August	80020	70010	150030
Grand Total	594253	503752	1098005

Source: Colombo Port

➤ **Regarding freight reduction for Indian trade by allowing the foreign flag companies to move empties**, the expected positive impact of freight reduction has not been there. On the contrary, mainline container shipping companies increased Peak Season surcharge on 8 occasions from May to August 2018.

➤ **Regarding impact on movement of containers, fertilizer and agricultural cargoes by sea** as can be seen in Table 5.9, laden, empty, fertilizer and agriculture cargoes hitherto carried

by Indian flag vessels have been shifted to foreign flag ships.

Table 5.9 : Impact of Cabotage Policy Changes on Cargo Movement

Item	Cargo volumes moved from 27th May to 30th September 2018
Empty containers	55,420 container TEUs* *This cargo was being carried by Indian shipping companies, and now has been handed over to foreign flag companies.
Laden	16,035 container TEUs* *This cargo was being carried by Indian shipping companies, and now has been handed over to foreign flag companies.
Fertilizer	ZERO
Agri product	ZERO

Source: RTI reply from Directorate General of Shipping (DGS)

➤ **There is also the additional impact on government owned ports.** Mediterranean Shipping Company (MSC) has stopped two services from calling into Nhava Sheva Port and the consequent losses of port charges is estimated at around Rs.5.7 crore per month. The dilution has also impacted the revenues of Indian container companies as their ready business has been handed over to the foreigners.

Thus, while the OECD has given a high STRI to India for practicing cabotage, actually the government policy has relaxed it helping foreign flags. But this inturn has affected domestic sector as the cargo hitherto carried by them have been shifted to foreign flags. This also goes against the government's avowed policy of 'Make in India' or in this context 'Services from India'. This needs to be addressed urgently.

- **Need to strengthen FOB imports and CIF exports** and to work on our relationships so that all national EXIM cargo is handled by Indian companies, on land and on sea. Import of goods on FOB basis ensures control over transportation remains with the buyer and also leads to more transparent discovery of freight rate. Despite having the freedom to import on CIF basis, India's private sector oil refineries import over 90% of crude oil on FOB basis. This is therefore a sensible business policy.
- **Safe manning** for Indian flag ships prescribes the number of seamen to be mandatorily employed on a vessel. This should be on par with Safe manning rules for White List MOU flag vessels. This will reduce the cost of operating an Indian flag ship.
- **Cost of Bunker fuel** available to Indian vessels (Coastal or Foreign going) should be on par with international rates with Zero rating under GST.

(ii) Strengthening the Capacity of Indian Shipping

The maritime sector has immense potential to spur global trade and transform logistics and shipbuilding sectors in India, especially driven by the opportunities in inland waterways, coastal shipping and naval shipbuilding sector. For instance, development of Inland Waterways will create a demand for customized vessels, repair yards, trained manpower, inland jetties and related offtake infrastructure, etc. The Government of India (GoI), in recognition of the sectoral potential of the maritime sector and the advantages that can accrue to the Indian Economy, has drawn up ambitious comprehensive development plans for the Maritime Sector under the Sagarmala Programme. It intends to develop the entire maritime ecosystem along the coast of India, inter alia, including development of virtually non-existent inland waterways and integrating them with coastal shipping routes while developing world class ports, shipbuilding facilities and shipping services. These initiations, if pursued

in a coordinated manner, could propel the Indian Maritime sector into a virtuous cycle of growth and have a multiplier impact through growth of ancillaries and other support industries. As the Indian maritime sector is still in a developing stage, in addition to direct infrastructure development, it will also require development of the entire related ecosystem. Under the Sagarmala program, the required investment is estimated to be over Rs. 7,00,000 crore. Such large investments cannot be supported by way of budgetary allocation alone and need the right mix of Public-Private partnership, backed by adequate finance. The Indian maritime sector requires long-term funds at competitive rates as available to global players. Internationally, considering the long gestation period characterizing the sector, ship acquisition is often funded by way of foreign currency denominated bonds, whereas in India the sector has primarily been supported by the banking system which faces a challenge of raising low-cost-long-term funds due to constraints of sovereign rating. Moreover, domestic maritime players in such a strategically important sector do not enjoy any major benefits from the state and are directly exposed to international competition in a free market regime. Despite relaxations in eligibility criteria, many Indian maritime companies are not able to access ECBs at competitive rates, given the financial position of the Indian players. No domestic funds are also available at globally competitive rates. The current extended downturn in the global shipping and shipbuilding industry has created financial stress in the maritime sector, exacerbated by the existing higher financing costs of the sector in India. Maritime enterprises have been reporting significant stress in their balance sheets which is having a cascading effect and is being transmitted to banks' balance sheets because of which they have become cautious in further lending to these sectors. Further, banks are also constrained to limit the loan tenor in order to avoid asset-liability mismatch. This puts additional pressure on the

Indian borrower, especially in times of distress as is being experienced for the past few years, which ultimately has led to defaults. There is thus, a need to recognize the growth potential of the maritime sector and enhance credit availability for the sector. In the past, dedicated sectoral funds/Institutions in India have effectively addressed the issues particular to a sector like the India Railway Finance Corporation (IRFC) for Railways; Central Road Fund for Highways; Steel Development Fund for Steel; Sugar Development Fund for Sugar and Technology Upgradation Fund Scheme for Textiles. The Shipping Industry requires funds for modernization, improvement and growth of the fleet. Therefore, there is a need for a specialized institution which will enhance credit availability, lower cost of borrowings and provide longer tenure funds. The Committee of Secretaries (COS) has approved formation of Maritime Development Fund (MDF) for funding all maritime related activities in India with a proposed corpus of Rs. 2,500 crores. The fund needs traction.

3. Tourism

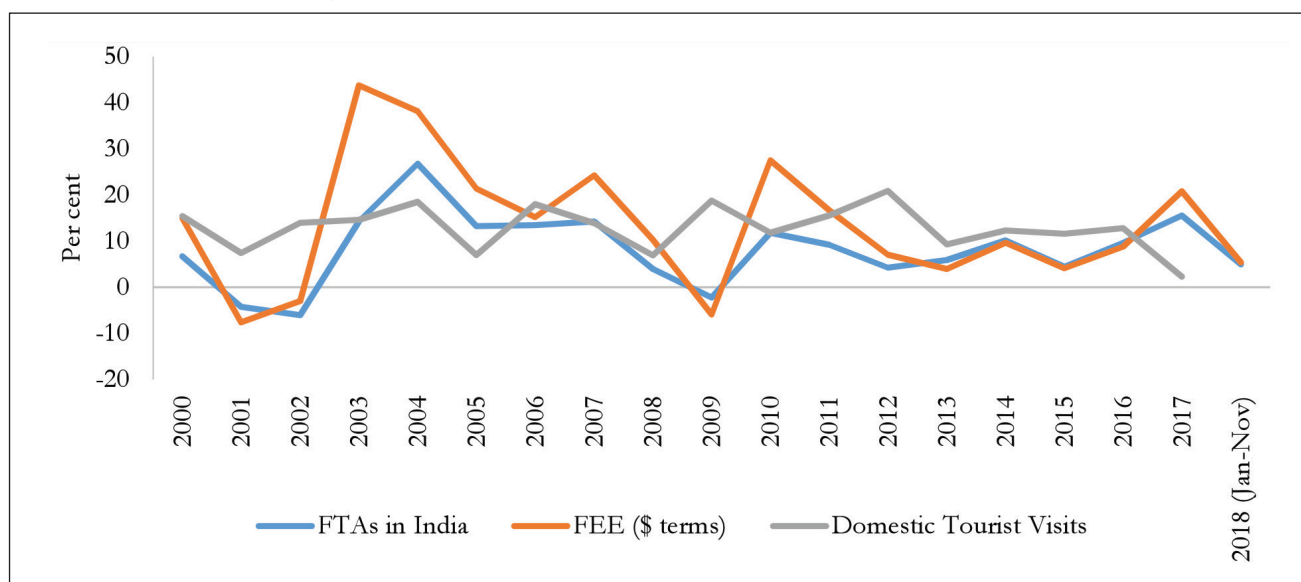
As per the latest World Tourism Barometer of the United Nation's World Tourism Organization (UNWTO) January 2019, international tourist arrivals reached a total of 1.4 billion in 2018, (two years ahead of UNWTO's long term forecast of 2010), with a growth rate of 6 per cent. This strong momentum is expected to continue in 2018 though at a rate of 3-4 per cent in line with historical growth trends. In the first nine months of 2018 (upto September 2018), international tourist arrivals grew by 5 per cent over the same period of previous year reflecting a continued strong economic situation globally.

In India, the Tourism sector has been performing well with Foreign Tourist Arrivals (FTAs) growing at 15.6 per cent to 10.1 million and Foreign Exchange Earnings (FEEs) at 20.8 per cent to US\$ 275 billion in 2017. As per the provisional data of Ministry of Tourism, FTAs during January-November, 2018 were 9.3 million with a subdued growth of 5.0 per cent,

while, the FEEs from tourism in US \$ terms were US\$ 25.8 billion also with a subdued growth of 5.5 per cent (Figure 5.3). The major source countries in terms of foreign tourists arrivals to India are Bangladesh, USA, UK, Canada and Australia. A comparison with other countries shows that India's share in international tourist arrivals (ITA) is a paltry 1.2 per cent with a rank of 26 compared to the 6.6 per cent of France which ranks 1st in 2017. China ranks 4th with a share of 4.2 per cent. In terms of International tourism receipts (ITR), India has a slightly higher share at 2.0 per cent and a better ranking of 13. But it is nowhere near the 15.7 per cent share of USA which ranks 1st and around half the share of Thailand at 4.3 per cent with 4th rank. (Table 5.10) Thus there is a huge potential waiting to be tapped.

During January-November 2018, 20.6 lakhs tourists arrived on e-Tourist Visa as compared to 14.6 lakhs during January- November 2017, registering a growth of 41.5 per cent over the same period. The FEEs during the period January- October 2018 were Rs. 1,58,846 crore as compared to Rs. 1,41,965 crore in January- October 2017 registering a growth of 11.9 per cent over the same period.

In the Travel and Tourism Competitiveness Index 2017 (WEF, 2017), India has improved its ranking 12 places to reach the 40th position globally among 136 countries. India continues to charm international tourists with its vast cultural and natural resources (9th and 24th position respectively), and its price competitiveness advantage (10th) and its international openness (55th) which is up by 14 places reflecting the implementation of both visas on arrival and e-visa. But it is way behind others in health and hygiene (104th), ICT readiness (112th), security concerns (114th), human resources (87th), tourist service infrastructure (110th) and in prioritization of travel and tourism (104th). The report has stated that between 2016 and 2026, India is expected to be in the top 10 fastest growing destinations for leisure travel spending.

Figure 5.3: Growth of FTAs, FEEs and Domestic Tourist Visits


Source: Based on Ministry of Tourism data.

Table 5.10: Tourism Performance: International Comparison 2016 and 2017

	International Tourist Arrivals (ITAs)					International Tourism Receipts (ITRs)				
	Rank 2017	Value (US\$ Million)	Share (%)	Growth Rate (%)		Rank 2017	Value (US\$ Million)	Share (%)	Growth Rate (%)	
		2017	2017	2016	2017		2017	2017	2016	2017
World		1326	100.0	3.7	6.9	0	1340	100	2.7	4.9
France	1	86.9	6.6	-2.1	5.1	3	60.7	4.5	-6.3	9
Spain	2	81.9	6.2	10.5	8.7	2	68.1	5.1	7.2	10.3
USA	3	76.9	5.8	-1.8	0.7	1	210.7	15.7	0	1.9
China	4	60.7	4.6	4.2	2.5	12	32.6	2.4	5.3	-25.4
Turkey	8	37.6	2.8	-23.3	24.1	14	22.5	1.7	-29.6	19.9
Thailand	10	35.4	2.7	8.7	8.8	4	57.5	4.3	12.2	13.1
Malaysia	15	25.9	2.0	4.0	-3.0	20	18.3	1.4	9.2	5.1
Russia	16	24.4	1.8	-8.5	-0.7	34	8.9	0.7	-7.5	14.9
India	26	15.5	1.2	9.7	6.7	13	27.4	2.0	14	15.6
Singapore	28	13.9	1.0	7.2	7.7	19	19.7	1.5	14.6	4
Vietnam	31	12.9	1.0	26.0	29.1	35	8.9	0.7	12.2	7.4

Source: Based on UN World Tourism Organization (UNWTO) World Tourism Barometer, November 2018 edition

The Indian government has realized the country's potential in the tourism industry and has taken several steps to make India a global tourism hub. Some of the major initiatives taken by the Government of India to give a boost to the tourism and hospitality sector of India are as follows:

- Statue of Sardar Vallabhbhai Patel, also known as 'Statue of Unity', was inaugurated in October 2018. It is the highest standing statue in the world at a height of 182 meters. It is expected to boost the tourism sector in the country and put India on the world tourism map. Over 128,000 tourists visited it in 11 days since it was opened to the public on 1 November 2018.
- The Government of India is working to achieve 1 per cent share in world's international tourist arrivals by 2020 and 2 per cent share by 2025.
- Under Budget 2018-19, the government has allotted Rs 1,250 crore (US\$ 183.89 million) for Integrated development of tourist circuits under Swadesh Darshan and Pilgrimage Rejuvenation and Spiritual Augmentation Drive (PRASAD).
- As part of National Tourism Policy, following are the focus areas :
 1. Community participation.
 2. Sustainable and responsible development of tourism sector.
 3. Stress on "Must Experience" and "Must Revisit".
 4. Focus on niche products such as Medical, MICE (Meetings, incentives, conferences and exhibitions), Adventure and Wildlife Tourism.
 5. Emphasis on technology-enabled development.

Strategies and Policy Issues

General issues like tourist safety, tourism friendliness, cleanliness, hygiene and ambience

of acceptable standards are necessary and are prerequisites for tourism to develop in any country. Besides these there are many tourism trade enablers which can help in putting Indian tourism sector on the right track and give India a pride of place in the world tourism market. These are the following.

Visa norms:

India already has a progressive e-visa policy for tourists for more than 166 countries and these are not conditional upon those of other countries. This serves India's interests positively. In the recent past many visa related reforms have been made in India. E-Visa has 5 sub-categories i.e. e-Tourist visa, e-Business visa, e-Medical visa, e-Medical Attendant visa and e-Conference visa. e-Visa is valid for entry through 26 designated Airports (i.e. Ahmedabad, Amritsar, Bagdogra, Bengaluru, Calicut, Chennai, Chandigarh, Cochin, Coimbatore, Delhi, Gaya, Goa, Guwahati, Hyderabad, Jaipur, Kolkata, Lucknow, Madurai, Mangalore, Mumbai, Nagpur, Pune, Tiruchirapalli, Trivandrum, Varanasi & Vishakhapatnam) and 5 designated seaports (i.e. Cochin, Goa, Mangalore, Mumbai, Chennai). At present the e-Visa Scheme is available to nationals of 166 countries. Tourism Ministry has also formulated Guidelines for approval of Online Travel Aggregators.

Visa system can be made still more attractive by the following policy measures:

- **Multi-year and multi-entry E- visas:** This can be a major enabler and help in follow-up visits by the foreign tourists. Multi entry E-visas can also help tourists clubbing visits to neighboring countries.
- **Competitive visa and E-visa pricing:** While visa prices vary based on markets and time period, this should be kept at the minimum as our purpose should be to attract tourists to spend in India and not to check them at the entry point itself. There is no need to follow even the policy of reciprocity regarding visas as our objective

is to attract tourists, no matter what policy the partner country follows. Restrictions can only be there for strategic reasons.

- **Guided tours for transit tourists:** As a marketing strategy, there is a need to consider having short duration guided tours for transit foreign tourists without visa and free/nominal charges for the tour. This should be just to showcase India's tourist attractions to potential transit tourists. The short duration tour to some important tourist attractions can make these transit passengers, future tourists of India. Singapore and Dubai have similar systems.

Tourism Infrastructure:

This is a totally different concept from the usual infrastructure. Besides the general infrastructure facilities like Airways, Roadways, Railways, Cruise facilities, numerous other infrastructure facilities are needed for different types of tourism. For example, adventure tourism needs infrastructure specific to it. Water Ambulance is needed in places like Kerala, due to the geographical conditions. In places like Munnar, the helicopter evacuation facility in case of emergency is not at all available. Thus, besides basic tourism infrastructure, specific infrastructure for different segments of tourism needs to be developed on a fast track basis. Similarly, for medical and geriatric tourism, the infrastructure needed is totally different. Special hospitals or special sections in a hospital are needed for medical tourists along with a host of services from the beginning to end of their visit. For geriatric tourism, modern old age homes with hospital facilities in a serene atmosphere is needed along with trained doctors, nurses and people who can be engaged in friendly talk with old people. Language and culture will also be important factors in this context.

One possible solution for infrastructure development, besides active government support, is privatization of some areas of infrastructure or Public Private Partnership. Maintenance of ancient

monuments particularly heritage sites and tourist attractions are a related infrastructure issue. Some forms of PPP have been tried in this area. But a complete facelift of these monuments is needed, possibly by the PPP model. Fast tracking the 5 mega tourism zones should be a top priority. Creation of 'Special Tourism Zones' anchored on Special Purpose Vehicles (SPVs) in partnership with the States was announced in the Budget for 2017-18. Ministry of Tourism has formulated the guidelines for implementation of the new scheme in consultation with the State Governments and Private Sector and is in the process of completing other formalities before launching the scheme. Creation of Special Tourism Zones would lead to overall development of the areas and offer diverse tourism experiences which would help in creating livelihood and improve standards of local communities living in those areas.

Focus on both high spending as well as backpackers:

Indian foreign tourists are a mix of both long haul with a flying time upward of 7 hours and short distance tourists. Of late, short haul tourists from China are coming to India. Some of the foreign tourists are high spenders particularly the long-haul tourists from USA, Europe, Japan and some ASEAN countries. But most of the tourists from neighboring Asia are backpackers. There are also many young backpackers from the West. The tour packages and the facilities have to be different for these different segments.

Value added tourism products and niche areas:

There is a need to design special value-added tourism products around adventure, heritage, rural, cruise and convention tourism and fast tracking them through single window approvals. To promote value added tourism products like adventure tourism, adventure tour operators need to be recognized by the Government through certification and it is to be ensured that trained and qualified guides are used for rendering services. There is a need to develop some new niche areas like village/rural tourism besides medical tourism.

- **Village/ rural tourism**

- This is a potential niche area. Future growth in tourism will not come from traditional tourist destinations but from India's 600,00 villages. Agri Tourism is the latest concept in the Indian Tourism industry. It gives an opportunity to experience the real enchanting and authentic contact with real life. Promotion of Agri tourism needs conceptual convergence with rural tourism, health tourism and adventure tourism. World Economic Forum (WEF) notes that "India's Villages represent an ocean of heritage, culture and experiences waiting to be explored. Yet to unlock the hidden potential of India's villages, India needs to approach the issue through the lens of impact tourism. The village-based impact tourism model can boost tourism by \$25 billion by bringing 15 million extra tourists to villages alone, creating 100,000 village-level entrepreneurs in the process."

- **Special theme-based tours like 'Tour to India's cultural heartland' or "India's Villages"** should be designed. In places like Malaysia, there are tours to villages to see rubber tapping. In India, there are many such activities in villages which will be of interest to the tourists. Special packages including basic facilities in the targeted villages can yield rich dividends.

- **Medical Tourism**

- This is another niche area with great opportunity. India has already made much headway in this area. Some recent measures taken by the Government include the following. The Ministry of Home Affairs has eased visa procedures for travellers to India who need medical treatment to reduce the inconvenience involved. Foreigners with long-term visas of six months and more need not convert these to medical visas for treatment of

minor conditions that only require outpatient consultation. For sudden illnesses that require hospitalisation of less than 180 days, foreign nationals or their representatives have to approach the Foreigner Regional Registrar Registration Office (FRRO) and submit a medical certificate from a recognised hospital with information about the recommended treatment and its duration. The FRRO can grant a medical permit of less than 180 days against a fee. In such cases, the primary visa will not be cancelled. The above measures could give India's medical tourism a boost. Dependents of the principal visa holder will also not need to obtain a medical attendant visa in such cases. The revisions will also be applicable to those holding short-term visas of less than six months with the following differences: In cases of conversion of a short-duration visa into a medical visa, the primary visa will be cancelled. On acquisition of a fitness certificate, the foreign national will be granted exit from the country. Foreigners holding X1 visas (person of Indian origin, children of an Indian citizen/OCI cardholder) and X2 visas (spouse of an Indian citizen/OCI cardholder) will be allowed to avail of treatment without converting their existing visas into medical visas and without seeking permission from the concerned FRROs. The ministries of tourism, health and family welfare as well as state and union territory administrations have been asked to disseminate the information widely.

- **Emulating policies of some ASEAN countries:** The value of medical tourism in the world and India are estimated to be at US\$ 20 billion and US\$ 4 billion respectively as per industry sources. Here policies of countries like Singapore, Thailand, Malaysia, etc. in promoting Medical Tourism could be emulated. For example, the Tourism Authority

of Thailand (TAT) has a comprehensive medical tourism website that acts as a guide for potential visitors and also highlight popular treatment options and reputed hospitals for medical tourists. The Ministry of Health, Singapore has established "Singapore Medicine", which works closely with private healthcare providers to expand their reach and referral networks in key target markets. The Malaysian Government's Healthcare Travel Council (MHTC) was established in 2009 to develop the healthcare travel industry and promote Malaysia as a preferred destination for healthcare tourism in the region.

- **Facilitating imports for hospitals providing medical tourism:** The hospitals which provide medical tourism and have to import capital goods like treadmill, face difficulties under EPCG scheme, as there are stringent conditions like the Rs 50 lakh foreign exchange earnings in previous year's rule which deters the smaller services startups.
- **Medical Tourists Package :** There is a need to provide a package of services for medical tourists including state-of-the-art medical facilities, ambulance services at airports, airlifting of medical tourists to hospitals by helicopters and fast track clearance of medical visas, immigration and other formalities.

Privatisation of government run tourism business:

Time has come when government need not be in hotel business. The ITDC hotels is the best example. Here not only disinvestment but even full privatization can be thought of.

Marketing Strategy : There is a need for a proper and well-planned marketing strategy which targets important markets and market segments. Continuous display of Indian cultural activities in all major tourist attractions in the form of shows will help in marketing Indian tourism besides providing

employment for Indian artists. While India's culture and tradition can be one of the themes to be marketed, a diametrically opposite theme of India as a modern hi-tech country should also be marketed.

Tax (GST) related issues:

The OECD study (2014) on the impact of taxes on competitiveness of tourism, has stated that in outlining the rationale for implementing a reduced rate of consumption tax for specific tourism-related activities, many countries highlighted a primary aim of supporting overall development, job creation and growth in the tourism industry (e.g. Austria, France, Germany, Iceland, Ireland, Latvia, Portugal, and Sweden. Thus labour & capital-intensive sectors such as tourism (hotels, restaurants, Airlines sites, tour operations, entertainment activities) were taxed at a rate which is lower than 50% of the standard rate (SR) on other sectors in many OECD countries. However, the same is not the case in India as there are no specific tax policies in place to boost the tourism sector as can be seen in Table 5.11 which gives the tax rates for tourism related activities for India and some other countries.

- **Bringing in all state cesses under GST** such as commercial taxes on tourism and levies such as ATF (Aviation Turbine Fuel).
- **Need to address the high taxes in tourism sector including GST:** The Indian tourism sector has one of the highest indirect tax incidences globally in contrast to the low tourist inflows and forex receipts. This has been adversely impacting tourism in the country. Further, the competitive advantage of our Asian counterparts due to lower indirect tax rates in their respective countries gives their tourism an edge. Therefore, there is a need for lower GST rate on the activities relating to organizing tours, hotel booking, air ticket booking, local travel arrangement and miscellaneous services, etc. Table 5.12 gives comparative tax rates in India and other countries which shows that India

Table 5.11: Tourism related tax rates : India and some countries

	Standard Rates	Reduced Rates
China	16%	10% - Retail; entertainment; hotel; restaurants; catering services; transport and logistics.
France	20%	10% - Some foodstuffs; certain non-alcoholic beverages; domestic passenger transport; intracommunity and international road (some exceptions) and inland waterways transport; admission to some cultural services ;admission to amusement parks (with cultural aspect); pay/cable TV; hotel accommodation; restaurants (excluding alcoholic beverages); bars, cafes and nightclubs (except supply of alcoholic beverages); 5.5% - Some foodstuffs; some non-alcoholic beverages; admission to certain cultural events; 2.1% - Admission to certain cultural events; 0% - International transport (excluding road and inland waterways).
Germany	19%	7% - Some foodstuffs; water supplies (excluding bottled water); some domestic passenger transport; International passenger transport for certain road, rail and inland waterway transportation; admission to cultural events; 0% - International transport (excluding road and rail and some inland waterways transport).
India	28% -Accommodation above Rs 7,500 18% - Accommodation between Rs 2,500 and Rs 7,499 per night, Restaurants with alcohol license, Entrance to Cultural and Entertainment events 12% - Restaurants (non-air conditioned), Business Class air travel, Accommodation between 1,000 and Rs 2,499 per night.	5% - Privately-provided Transport including Car Sharing, Advertising. 0% - Accomodiation below Rs 999 per night.
Japan	8% - Consumption tax (since 1 April 2014). Rate set to increase to 10% from October 1, 2019.	0% - Exports and some services provided to non-residents.
United Kingdom	20%	0% - Domestic passenger transport; and international passenger transport;

Source: Based on the information accessed on 7 February 2019 from internet website <https://www.avalara.com/vatlive/en/vat-rates/international-vat-and-gst-rates.html>

and Egypt have the highest tax rates under the 'Increased' category. In India, this tax rate applies for accommodation above Rs 7,500. However, after the introduction of GST in 2017, India's tax rates have become comparable except under the 'increased' category.

- **GST rate for Inbound Tours should be Zero-rated:** Under the earlier Service Tax regime, no specific benefit with respect to rate of tax or exemption was provided in case of services of tour operators for inbound tours. However, benefits under the Foreign Trade Policy were being provided. Since, inbound tours are a major source of earning foreign currency, rate of tax under the GST Law should be incentivized. It is of significant importance to extend the said benefits under the GST regime to promote tourism in India. Inbound tours by a tour operator against receipt of foreign exchange from foreign tourists could be treated

at par with exports and thus be zero rated under GST.

- **Exemption of GST on foreign exchange billing in the tourism sector:** At present, services exported and fulfilling the criteria of export laid-down in the statute are exempted from GST. The criteria prescribed in section 2 (6) of IGST Act, 2017 is listed below :
 - The supplier of service is located in India.
 - The recipient of service is located outside India.
 - The place of supply of service is outside India.
 - The payment for such service has been received by the supplier of service in convertible foreign exchange.
 - The supplier of service and the recipient of service are not merely establishments of a distinct person in accordance with Explanation-1 in section 8 of IGST Act.

Table 5.12 : Comparison of Tax Rates of Countries and Territories operating a VAT¹

Sr. No.	Countries	Implementation Year	Rates 2018 (%)		
			Standard ²	Reduced ³	Increased
1	China	1994	16	6, 10	--
2	Egypt	1991	14	0, 5	15, 30
3	France	1968	20	2.1, 5.5, 10	--
4	Germany	1968	19	7	--
5	India	2017	12, 18	0, 5	28
6	Japan	1989	8	--	--
7	Russia	1991	18	10	--
8	South Korea	1977	10	--	--
9	United Kingdom	1973	20	0, 5	--

Source: Based on OECD Report on "CONSUMPTION TAX TRENDS 2018", quoting "F. Annacondia, International - Overview of General Turnover Taxes and Tax Rates, International VAT Monitor (2018), Journals IBFD,

Note:¹The acronym "VAT" refers to any national tax that embodies the basic features of a value added tax by whatever name or acronym it is known e.g. "Goods and Services Tax" ["GST"]

²The standard rate is the rate that generally applies, unless the legislation explicitly provides that specific goods and services are subject to different [reduced or increased] rates.

³Reduced rates include zero-rates applicable to domestic supplies (i.e. an exemption with right to deduct input tax). This does not include zero-rated exports or other supplies subject to similar treatment such as international transport or supplies to embassies, international organisations and diplomatic missions.

All the conditions are met by the tourism service providers except condition (iii) wherein the place of supply of services is technically not outside India but within India. Since the services are actually performed in India, POS takes place in India which means that despite fulfilling all other criteria and earning foreign exchange, tourism services are not exempted from GST. Considering the importance of tourism in employment generation, national economic growth and foreign exchange earnings, the Government exempted all the tour operators from service tax w.e.f. from 18th July 1998 till 31st March 2000. Similarly, service tax on the foreign exchange earnings was exempted (including for tour operators) from 9th April 1999. However, on 1st March 2003, the Government rescinded this notification and re-imposed service tax even on foreign exchange earnings by the assesses including tour operators. Since all other export activities are given exemption, this service should also be eligible for exemption as we should not export taxes. The POS condition should not act as a hinderance as by its very nature, tourism services are provided mainly by the consumption abroad mode.

- **Removal of cascading effect of GST on tourism industry:** A target of 20 million tourists by 2020 had been set by the government which is a challenging task. There is a need to remove the cascading effect of GST for tourism products including tour operator services. Tour Operator service is primarily a combination of activities such as arranging air/ rail travel, providing hotel accommodation, meals, surface transportation, arranging guide, local sightseeing, etc. Such activities are commercialized as a package tour at a single price to the customer. A tour operator provides such basket of services across the country and overseas. Cascading of taxes under GST has been hurting the industry's margin and consequently, business to the extent that

survival of small players is under threat. Under the GST regime, tour operator services are taxed under 5% tax slab with denial of Input Tax Credit (ITC). 5% tax on entire package value results in taxing all the input service procurements made by the tour operator once again. This has resulted in cascading effect of taxes in the entire supply chain. This defeats the very purpose of GST, which is to avoid cascading effect of taxes. The margin that a Tour Operator makes in providing such services is much less than the gross revenue received by the Tour Operator from the client. A tour operator typically earns a mark-up of approximately 10% of gross billing. Thus, income of a tour operator is primarily the margin earned in such services and thus, taxing margin is in real sense tax on value addition. After the implementation of GST with effect from 1st July 2017, tourism has been heavily taxed and the average tax on tourism industry works out in the range of 23% to 28%. This has resulted in loss of business for the tour operators and thus loss of employment opportunities as Indian tour operators are not able to compete with the neighboring countries. Many foreign tour operators (FTOs) have started avoiding selling India as a tourist destination and instead they are promoting our neighboring countries like Sri Lanka, Singapore, Malaysia, Thailand, Indonesia, UAE and Maldives, etc. where taxes are comparatively very low than India and their tourism policy is tourist - friendly. This causes not only loss of business for the Indian tour operators but loss for the country as a whole, in terms of both foreign exchange receipts and direct/ indirect employment. So, the cascading effect of GST on tour operators needs to be addressed.

- **Refund of GST on purchases of goods by International Tourists:** As per the section 15 of IGST Act, the International Tourists can claim GST refund on the goods purchased in India while leaving the country. This is on the lines

of countries like Singapore and many western countries where there is a simple mechanism for refund. However, the mechanism for claiming GST refund is yet to be determined in India.

Thus, there are many issues to be addressed and policies to be followed in tourism sector for India to have a fair share of the global tourism market.

4. Telecommunications with special reference to Internet Broadband

India is currently the world's second-largest telecommunications market with a subscriber base of 1.17 billion and has registered strong growth in the past decade and half. The Indian mobile economy is growing rapidly and will contribute substantially to India's GDP, according to a report prepared by the GSM Association (GSMA) in collaboration with the Boston Consulting Group (BCG). App downloads in the country grew approximately 215 per cent between 2015 and 2017.

The liberal and reformist policies of the Government of India have been instrumental along with strong consumer demand in the rapid growth in the Indian telecom sector. The government has enabled easy market access to telecom equipment and a fair and proactive regulatory framework that has ensured availability of telecom services to consumers at affordable prices. The deregulation of FDI norms has made the sector one of the fastest growing and a top five employment opportunity generator in the country. With 512.26 million internet subscribers, as of June 2018, India ranks as the world's second largest market in terms of total internet users. Further, India is also the world's second largest telecommunications market with 1,191.40 million subscribers, as of September 2018. In 2017, India surpassed USA to become the second largest market in terms of number of app downloads. Over the next five years, rise in mobile-phone penetration and decline in data costs will add 500 million new internet users in India, creating opportunities for new businesses. India has made forays into the

export sector with a share of 2% in world exports in 2017 [Table 5.13].

However, the telecommunication export market is stagnating and new players are also giving competition to India. Domestic players are also emerging in the hitherto developing countries which were dependent on India. With the world telecom export pie not expanding, future growth can mainly be through export of internet broadband services.

The government has fast-tracked reforms in the telecom sector. The Department of Information Technology intends to set up over 1 million internet-enabled common service centers across India as per the National e-Governance Plan. FDI cap in the telecom services has been increased to 100 per cent from 74 per cent; out of 100 per cent, 49 per cent will be through automatic route and beyond that by government route. FDI of up to 100 per cent is also permitted for telecom infrastructure providers offering dark fiber, right of way, duct space and tower. The Government of India has also introduced the Digital India programme under which all the sectors such as healthcare, retail, etc. will be connected through internet.

The Government of India's National Digital Communications Policy (NDCP) 2018 envisions supporting India's transition to a digitally empowered economy and society by fulfilling the information and communications needs of citizens and enterprises by establishment of a ubiquitous, resilient and affordable digital communications infrastructure and services. The 'customer focused' and 'application driven' NDGP-2018 is likely to lead to new ideas and innovations, after the launch of advanced technology such as 5G, IOT, M2M, etc. which shall govern the telecom sector of India. The key aims of the policy include providing universal broadband connectivity at 50 Mbps to every citizen and 1 Gbps connectivity to all Gram Panchayats by 2020 and 10 Gbps by 2022; ensuring connectivity to all uncovered areas; attracting investments of

Table 5.13: Export of Telecommunication Services

Exports of Telecommunications services (Million US dollar)																				
Sr. No.	Country	Value (US \$ Million)						Share (%)						Δ		Growth (%)				
		2012	2013	2014	2015	2016	2017	2012	2013	2014	2015	2016	2017	2017 over 2012	2013	2014	2015	2016	2017	
0	World	112662	116646	120290	112914	113559	115368	100	100	100	100	100	100		3.5	3.1	-6.1	0.6	1.6	
1	USA	13749	14471	13539	12587	12225	12061	12	12	11	11	11	10	-1.7	5.3	-6.4	-7.0	-2.9	-1.3	
2	Netherlands			4637	4371	4257	4494	0	0	4	4	4	4				-5.7	-2.6	5.6	
3	Kuwait	3446	3351	3064	2708	2554	2210	3	3	3	2	2	2	-1.1	-2.8	-8.6	-11.6	-5.7	-13.5	
4	India	1623	2180	2163	2088	2310	2164	1	2	2	2	2	2	0.4	34.3	-0.8	-3.5	10.6	-6.3	
5	Japan	968	916	1384	1001	1275	1952	1	1	1	1	1	2	0.8	-5.4	51.1	-27.7	27.4	53.1	
6	UAE			1280	1307	1498	1688	0	0	1	1	1	1				2.1	14.6	12.7	
7	Singapore	1288	1528	1493	1356	1435	1300	1	1	1	1	1	1	0.0	18.6	-2.3	-9.2	5.8	-9.4	
8	Russia	1406	1553	1732	1418	1179	1247	1	1	1	1	1	1	-0.2	10.5	11.5	-18.1	-16.9	5.8	
9	Romania	532	554	649	620	770	876	0	0	1	1	1	1	0.3	4.1	17.1	-4.5	24.2	13.8	
10	Morocco	670	665	1085	932	847	852	1	1	1	1	1	1	0.1	-0.7	63.2	-14.1	-9.1	0.6	
11	Czech Republic	454	487	557	459	631	786	0	0	0	0	1	1	0.3	7.3	14.4	-17.6	37.5	24.6	
12	Norway	800	967	962	852	875	775	1	1	1	1	1	1	0.0	20.9	-0.5	-11.4	2.7	-11.4	
13	Indonesia	1091	837	876	664	745	717	1	1	1	1	1	1	-0.3	-23.3	4.7	-24.2	12.2	-3.8	
14	Australia	545	584	636	575	601	622	0	1	1	1	1	1	0.1	7.2	8.9	-9.6	4.5	3.5	
15	South Korea	600	647	554	657	605	552	1	1	0	1	1	0	-0.1	7.8	-14.4	18.6	-7.9	-8.8	

Source: Based on WTO data

US\$ 100 billion in the Digital Communications Sector; training one million manpower for building New Age Skill; expanding IoT ecosystem to 5 billion connected devices; establishing a comprehensive data protection regime for digital communications that safeguards the privacy, autonomy and choice of individuals; enforcing accountability through appropriate institutional mechanisms and securing digital communications infrastructure and services.

The policy advocates establishment of a National Digital Grid by creating a National Fiber Authority; establishing Common Service Ducts and utility corridors in all new city and highway road projects; creating a collaborative institutional mechanism between Centre, States and Local Bodies for Common Rights of Way, standardization of costs and timelines; removal of barriers to approvals; and facilitating development of Open Access Next Generation Networks. This will help in expanding not only the availability of telecom services but also telecom-based services.

Strategies and Policy Issues

While our focus is on exports and our strategy will focus on it, a strong telecom sector domestically can

also help in better performance on the export front. So, the policy issues related to the domestic sector are examined first as follows.

Exclusively Domestic Policy Issues

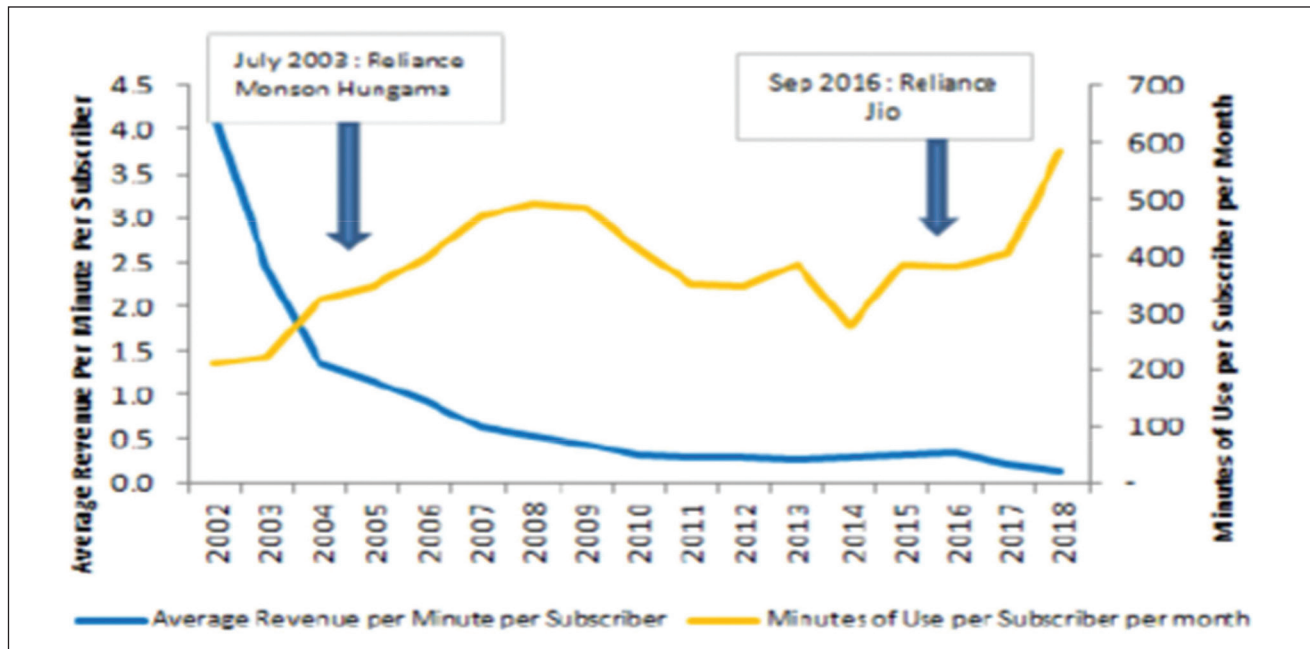
- **In the domestic front telecommunications sector has been beset with disruptive competition** since 2016 that has effectively lowered the Average revenue per user (ARPU) and hence revenues to the Government by approximately 37% in the last two years. While revenues have dipped sharply, debt, largely on account of spectrum liabilities, has remained extraordinarily high; and with Earnings Before Interest, Taxes, Depreciation, and amortization (EBITDA) having declined 28% year-on-year, interest costs, now outstrip EBITDA.
- **High debt and low revenues** : The sector's current debt has risen steadily in recent years. The operators owe over Rs 3 lakh crores in spectrum costs alone. High reserve prices for the impending auctions of 4G and 5G spectrum could raise these costs substantially. Between operators who have recently exited the sector, and those that remain, the sector's debt stands

at over ₹ 7 trillion. Meanwhile, the sector's revenues have fallen over 29% in the last 10 reported quarters. Revenues accruing to the government have fallen by around 37% in just the last two years. Average Revenue per User (ARPU) is now down to Rs73.30, a fall of over 42% in two years [Rs127 in March 2016]. In expenses, the share of investment in network related expenses is low, while the rise in regulatory costs – non-network related expenses of LF, SUC, RoW, Duties, etc., continues unabated. The continuing investment in networks and technology despite falling revenues, is unsustainable if the overall financial health of operators continues to deteriorate. Market pressures have led to exit of several players including Aircel, RCom, Telenor, MTS, and Tata Teleservices.

Tax related issues

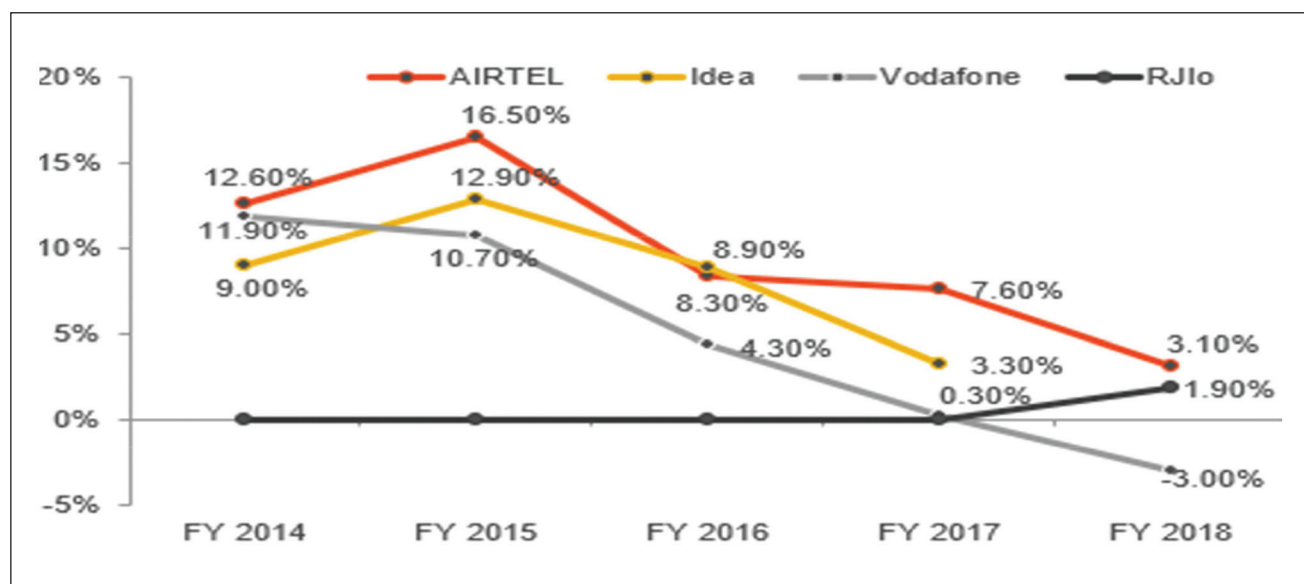
- **Addressing the issue of high taxes on Telecom:** Applicable levies/taxes on mobile services is still among the highest as can be seen in Table 5.14. The levies need to be streamlined and brought to the levels of at least China and Malaysia.
- **Additional Burden of New Duties on 4G Equipment:** Recently, in October 2018, the Government in its stated plan to encourage local manufacturing raised customs duty on certain equipment needed for 4G implementation from 10% to 20%, while imposing a fresh levy of 10% on PCBA (Printed Circuit Board Assemblies) that were earlier exempt, by classifying 4G equipment imports under "non-essential items". Given that the Government is focused on developing

Figure 5.4: Increasing Traffic, Falling ARPUS



Source: TRAI

Figure 5.5 : Return on Capital Employed (RoCE)



Source : COAI

Table 5.14: Taxes/Levies on Mobile Services : A Comparative Statement

Regulatory Charges	Pakistan	Sri Lanka	China	Malaysia	Bangladesh	India
Service Tax, GST	18.0%-19.5% (Sales Tax)	25.51% Telecom Levy (VAT + MSL + NBT + ECL)	11.0% (VAT)	6.0% (GST)	19.45% (Supplementary duty + VAT + Surcharge)	18% (GST)
License Fee	0.5% LF + 0.5% R&D	2.04%	-	0.5% ⁸	5.5% Adjusted Gross Revenue + BDT 50 mn (per 2G & 3G license)	8%
SUC	Cost Recovery	-	-	-	-	3% to 6%
USO Fund	1.5% of Gross Revenue	-	-	6.0% of Weighted Net Revenue	1.0% of Adjusted Gross Revenue	5% included in License Fees
Other taxes	Sales Tax of PKR 250 on new or replacement SIM	LKR 3 per min IDD Levy ⁹	-	-	SIM Tax of BDT 100 on new or replacement SIM	-
Total levy	20.5% to 22.0% + Cost Recovery + SIM Tax	27.55% + IDD Levy	11%	12.5%	25.95% + BDT 50 mn per license + SIM Tax	29% to 32%
Telecom specific levy	2.5% + Cost Recovery + SIM Tax	-12.04% ⁷ + IDD Levy	-	6.5%	6.5% + BDT 50 mn per license + SIM Tax	11% to 14%

Source : COAI

a Digital India Plan, and 4G equipment is a specialized technology available only through a few global suppliers, 4G equipment can hardly be classified as a “non-essential item”. Further, there are 4G suppliers from different countries e.g. Nokia (Finland), Ericsson (Sweden), ZTE (China) and Samsung (Korea). Since Korea and India have a bilateral treaty, the duty changes do not apply to equipment imports from Korea.

- **Need to Allow deductions of lease line/bandwidth charges and the charges paid by one Telecom service provider (TSP) to the other TSP as pass through charges, as presently allowed to mobile virtual network operators (MVNOs)**: Currently, all big and small operators including National Long Distance Service providers (NLDs), International Long Distance service providers (ILDs) and Internet service providers (ISPs) [Class B and Class C], lease bandwidth from each other for providing various services to their consumers. Not allowing deductions on bandwidth/lease line charges had been leading to “double taxation” for these service providers. Recent decision by the DoT to allow the provision of pass-through charges to virtual network operator (VNOs) on leasing of line/bandwidth from TSP/NSO (Network Service Operator) has addressed this anomaly partly. The regime of pass-through charges for admissibility of deductions from Gross Revenue for the levy of [License Fee (LF) and Spectrum Usage Charges (SUC)] needs to be reviewed and all payments made for any telecom input resource by one TSP to another TSP should be allowed as a deduction.

GST Related Issues:

- **Need for Uniformity in rate of tax across States/UTs for telecom services** as tax rate has direct impact on talk-time/ pricing of services. For instance, in multi-state circles, if the GST rate varies across States, it will become impossible to provide same talk-time due to different tax rates. Without uniformity in rates of taxes

across States, it would disrupt business and will materially distort supply chains. Further, telecom operators have to spend hundreds of crores to overhaul complex IT system used for effecting recharges. So, there is a need to have uniform rate of tax for telecom services across States/UT.

- **Ease of doing business affected due to Registration in States and Scrutiny:** GST regime necessitates registration, compliances, audits and assessments in all 36 States/UTs instead of Centralized registration under Service tax. The effect of this is higher on Pan India services like telecommunications. The telecom service providers have to register in all States and UTs and are filing 800 returns vis-a-vis 2 returns per year. Thus, the compliance has gone up multi-fold. The above could not only result in multiplicity of scrutiny of returns across India but would also result in different States/UTs taking different stand. This could lead to very high level of litigation in the new tax regime which is avoidable as it completely defeats the policy of ease of doing business. So, there is a need to permit centralized registration and centralized audit procedure for ‘PAN India’ service providers.
- **Principle of Input Line credit needs to be adopted:** Concept of setting off the license fee paid on input services against license fee payable on output services has been formally approved in the NDCP 2018 by the Union Cabinet. This needs to be adopted.
- **Levy of GST on Govt Payments:** At present, GST is payable on Govt. levies such as LF & SUC. Applicability of GST on regulatory levies is leading to cascading tax impact. Internationally, VAT/ GST are not applicable to government services since they are considered as ‘out of scope’ or regarded as a non-economic activity. So, there is a need to exempt payment of regulatory levies (LF, SUC, spectrum payments) made by telecom operators from GST.

- **Accumulation of input tax credit in Telecom sector:** With declining revenues, output GST on operator revenues is much lower than input GST credits. This has meant that roughly Rs. 30,000 crores of telecom operators' funds are blocked in GST credit. This is severely impacting the cash flows of the industry which is already starved of funds. Refund of unutilised input tax credit is available internationally as is evident from Sixth VAT Directive in the European Union. There is a need to consider refunding the accumulated unutilized input tax credit to the industry.

Exports and Domestic Related Strategies and Policies

From the export angle and also the domestic angle, Internet based services (Broadband) has huge potential. The potential form of increasing exports in this area for India could be Project Exports. India can take up project exports for setting up broadband services in developing countries. Globally, 151 countries (Source: ITU) have National Broadband plans to roll out data intensive networks over the next 2-5 years. India is at a very unique position in this scenario as it can become both a broadband service provider and also the hardware capital in certain electronic products given our software leadership. This will be a combination of Goods and Services Exports. Some strategies and policies in this regard are the following:

- **The first step is to make India the major source of Optical Fiber (OF) and optical fiber cables (OFC):** This is critical to the futuristic networks. In a scenario when India's electronics import has been on a rise, OFC is one component where the exports has been higher than the imports in the last 3 years. India's demand is estimated at 32 mn F-km in 2019 and India's capacity at 83 mn F-Km. India currently has 2.5 times more Fiber Capacity than local Demand. India Can become a major broadband service provider and also the Fiber Capital of the World with the right Policy Impetus. The global demand for OF and OFC is increasing

to build data intensive networks. Demand has increased at a CAGR of 15% from 2012 to 2017. In 2017, global OFC consumption increased 15% to reach 493 mn F-km. China, US, Western Europe including France, Germany, Italy, Spain and UK are the major markets for OFC globally. Supply shortage present across these countries places India at a position to cover 70% of the world demand if right policy impetus is given. As per the Broadband India Forum (BIF), India's fiber is sold in 100 plus countries with over 190 patents. The industry has a real opportunity to place India in the world map as a hub of Optical Fiber.

India faces Serious competition from China, Japan, Korea and US amongst others. Tax benefits can give a fillip and sustain the industry to capture the markets globally and in India in both broadband services and optical fiber. It will also help in making 'Make in India' a success, which will attract more manufacturing opportunities in India and help India become an integral part of global supply chain and networks across the world. With advent of new technologies like 5G, IoT, M2M, etc., the opportunity is there for the taking. Globally, network expansion is getting deployed at a rapid pace on a daily basis given that Broadband infrastructure is a strategic and essential utility. This presents India with a unique opportunity to tap the unmet demand within India and internationally which will create a sustained strong manufacturing ecosystem in India.

Thus, a combination of manufacturing of optical fiber along with services in the form of providing broadband services through project exports could be the key to future export growth. In this context, there is a need to consider increasing temporarily basic customs duty (BCD) on Fiber & Cable to, say, 15% from the present 10% to help this nascent industry. Import benefits for fiber has been given under CEPA and these benefits are leading to increased imports from Japan & Korea.

Due to CEPA/FTA, import duties for preform from Japan has dropped significantly from 10% in 2016-17 to 3.5% in 2017-18. This leads to flooding of the market of imported fiber despite India having high production capacities. This can shake the foundation of the self-sustenance of India in quality optical fiber. While this needs to be addressed, in the future we need to enter into FTAs primarily with consumption economies like EU, African and Latin American countries. This will help broadband related manufacturing in India and broadband services exports in some African and Latin American countries.

- **Another important step is to become self-reliant in the manufacturing of Preform** as the quality of raw materials play an important role in high quality networks. India needs to become a major producer of Semiconductor grade 'Preform' - strategic to the making of quality Optical Fiber. This critical and complex manufacturing can ensure India's self-sustenance in manufacturing. Local manufacturing of 'preform' has to be encouraged for India to move up the value chain of quality manufacturing. Optical Fiber can be well positioned to lead India in becoming the global manufacturing hub by controlling the complete value chain and its quality with preform manufacturing as one of the key focus. For this purpose, import duty for Glass Preform may have to be increased to 10% from the present 5%. Indigenous Preform manufacturing (in India) needs to be protected and incentivised as it is the lifeline of Optic Fiber manufacturing. However, raw materials for the manufacturing of Glass preform must be exempted from BCD against end use.
- **Customs Duties on certain network products should also be removed:** While broadband manufacturing related items should have higher customs duties, for certain network products duty should be nil/low. Recently duty on various 4G/5G related network products has been doubled to 20%. These are Multiple Input Multiple Output (MIMO) / Long term evolution (LTE) products, Soft switches and Voice over Internet Protocol (VoIP) equipment, DWDM, Optical Transport Network (OTN), Multiprotocol Label Switching-Transport Profile (MPLS-TP) products etc. Further, the customs notification classified telecom equipment as "non-essential imports" goes against the Government's Digital India agenda. So, customs duties for the 4G/5G related network products along with MIMO/ LTE products, Soft switches and Voice over Internet Protocol (VoIP) equipment, DWDM, Optical Transport Network (OTN), Multiprotocol Label Switching-Transport Profile (MPLS-TP) products etc. should be reduced/removed as these imports are essential in nature in order to meet the Vision of a Digital India.
- **GST on Telecom Services:** This needs to be reduced to 12% from 18% and rationalized with the same tax bracket as the Mobile Handset segment. Since Broadband services is the need of the hour, the GST slab on services and networks needs to be at par with that of the smartphones/ handsets i.e. 12 %.
- **Soft Funding for the Telecom Sector:** The Indian telecom is overburdened with levies as compared to other regimes and the sector has a crushing debt burden of over Rs. 7 trillion. To open the flood-gate for letting in the innumerable innovative new services and applications that 4G and 5G can provide, the sector requires huge investments. Thus, there is a need to ensure easy funding to the sector. For this purpose, there is a need to consider setting up of a Telecom Infrastructure Fund and allowing telecom sector to issue tax-free bonds and access long-term low-cost debt from Infrastructure Debt Funds.
- **Other measures:** Some other measures include incentivizing Value Addition in Manufacturing

through GST; export incentives under All Industry Rate (AIR) Duty Drawback for glass preform and Optical Fiber (OF) & Optical Fiber Cable (OFC); increasing export incentives under MEIS for the electronics & telecom industry; simplification of MSIPS through onetime approval and reimbursement process; and incentivizing R&D related to India-specific fiber and cables.

5. Healthcare

Healthcare is an important sector in the country generating employment and revenue. India is spending 5% of GDP on healthcare both through Public & Private Sector. The supporting sector, the Indian Pharmaceutical industry is currently the largest producer of generics in the world and 3rd largest in volume. India has the potential to become one of the next big medical tourism destinations provided it continues to provide medical services of global standards continuing to remain cost competitive.

The government has initiated many economic reforms including GST to rationalise the cost structure in India including the health sector.

Export Potential

As per industry sources, Indian Healthcare sector is estimated to grow up to US\$ 372 billion by 2022 and the Hospital Industry is valued at US\$ 61.79 billion in 2017 and estimated to grow up to US\$ 132.84 billion in 2022. Medical Tourism valued at US\$ 3 billion grew by 22-25% in April 2017 and doubled to US\$ 6 billion in 2018. It is estimated to reach a value of US\$ 7-8 billion by 2020. India is the 4th largest medical devices market in Asia after Japan, China and South Korea and 80% of the medical equipment and devices are imported. The size of medical device market is expected to grow to US\$ 4.8 billion by 2020.

Medical Tourism has immense potential for growth with tertiary and quaternary care in Indian hospitals comparable with those of Europe or USA and at significantly lower prices. While India tops the list

of countries with foreign remittances of around US\$ 69 billion, Philippines earns US\$ 29 billion (much of that coming from 1,50,000 nurses and 18,000 doctors working abroad as per industry sources). India can train doctors and nurses in line with the requirements of developed nations and increase its foreign exchange earnings from healthcare exports.

While the present destinations of exports by way of Medical Tourism are predominantly South Asia, Africa and Middle Eastern countries, potential destinations could even include USA, Europe and Japan which are facing a large aging population. India with a price advantage and the backing of a skilled health workforce – doctors, nurses, paramedics and administrators, can become the world's healthcare delivery manager. This can be through the consumption abroad mode with foreign patients coming to India; cross-border supply mode through telemedicine; and even by the commercial presence mode by joint ventures with foreign hospitals or with the help of NRIs.

Value Addition

India is already providing value added services with exports mainly in the super speciality healthcare segment. India is providing tertiary and quaternary care that is comparable to any healthcare facility in the western world. This is provided at a significantly lower price. The level of care is also comparable with that of other countries given the presence of trained work force. Given its huge pool of skills, India can also create value addition (other than medical tourism) in areas like second opinions, tele-reporting, health data analytics, etc. Strategies and policies aimed at increasing availability of medical equipment and devices, infrastructure status for hospitals, etc., can further add value to India's healthcare services.

Strategies and Policy Issues

- **Recent policies taken by Government related to healthcare sector:** Some recent policies taken by Government related to health sector have helped, while some others have adversely

affected the sector. For example, the Government funded public health system (Ayushman Bharath) which stands out among all the policy decisions in health sector helping to reach out to hitherto deprived sections. But some other recent policies have affected the sector like capping prices for medical devices; import duty which discourage import of medical equipments and devices with 80% of medical equipment and devices currently being imported increasing the cost of procurement, while proportionate provisions to encourage indigenous manufacture under 'Make in India' has not come forth.

- **Need to strengthen the medical work force:** Affordable medical, nursing and paramedical education is needed to fill the skill gap. The norms for establishment of medical and paramedical schools could be relaxed and undergraduate and postgraduate seats in medical education could be equalized.
- **Easing visa norms for medical tourists:** As already seen earlier under medical tourism section, substantial visa relaxation has taken place to encourage medical tourism. At present Emergency/Urgent Visas are issued within 24 working hours. Further facilitation in immigration clearance and fast tracking visas for medical tourists in emergency situations needs to be examined.
- **Tax (GST) related:**
 - **Anomaly due to GST exemption:** The purpose of GST is to avoid cascading effect on the total cost by availing input tax credit. With the aim to make health services more affordable to its consumers, the Government has kept the healthcare services under the bracket of exempt supply. However, notwithstanding the novelty of the concept, it has adversely impacted the healthcare costs and resulted in many difficulties for both health providers as well as its clientele. Since healthcare

services are covered under the bracket of exempt supply as per law, if the output supply is exempt, then, input tax credit shall not be available. This leads to making the final output service inclusive of taxes costly.

The GST council has fixed the tax rate in the range in 5% to 28% on certain healthcare services and products, and due to exemption of Healthcare services from GST, seamless flow of input credit from one supplier to other is disturbed with the ultimate increase in the cost of delivery to the patients. Although the healthcare is exempt under the Goods and Services Tax [GST] regime, increased rates of taxes on inputs such as medical equipment, diagnostics, re-agents, labour and maintenance of medical equipment have resulted in higher operating cost of healthcare sector. The increased tax on hospital procurement services will inevitably trickle down to patients in the form of higher hospitalization costs and heftier medical bills. Since the hospital sector cannot compromise on quality of services, this affects the competitiveness of this sector.

- **GST on Life Saving Drugs:** In pre-GST era, life saving drugs to treat diseases like HIV-Aids, Tuberculosis, and Diabetes had been exempted from excise and custom duties and only a few states charged tax at 5%, but GST has now slotted them mandatorily under 5% slab.
- **The impact of GST on some areas of healthcare affecting competitiveness** of the services are given in Table 5.15.
- **GST on Related Products:** In addition, the related products like surgical gloves, wheel chair and other products also cost more now. For example, there is increase in GST for Surgical items from 5.5% to 12%; Wing scale

Table 5.15: Impact of GST on some Healthcare services.

Area	Description of service/item	Pre GST Rate	Post GST Rate	Items/Services becoming expensive	Comments
Nephrology	Dialysis	5%	12%	Homo dialysis, Machine Tubings, Needles, Catheter, Plasma filter, Dialysis fluid.	Under heavy tax. Each dialysis patient incurs additional cost of Rs 40,000 per annum
Heart Treatment	Pacemaker	5.5%	12% to 18%	Lead valve of pacemaker, device (heart failure machine CRT-ICD).	Pacemaker cost each Rs 15,000 to Rs 20,000 more. ICD costs Rs 40,000/- more
Orthopedics	Support devices getting costlier	5%	12% to 18%	Disposable items, Bone cement, Operation equipment like drill machines and its batteries.	Supported items in operations are now under 7% to 28% tax rate and getting costlier. Implants like Finger coat, Knee cap, Brep belt attracts tax at 12% and GST effect neutral.
Cancer	Cancer treatment	5%	5% to 12%	Imported medicines have become expensive.	Except for blood cancer treatments, every other treatments of cancer patients costlier.
Ophthalmology	Eye treatment	9%	12% to 18%	Lens cost and surgery cost	Lenses rate have been increased to 12% from 9%, while many of the machines are attracting GST rate of 28%. Along with lenses, the operation cost has also increased to 15% to 20%

Source: Industry sources

Table 5.16: Exemptions for Healthcare and Education Services – A Comparison

S.No.	List of services	Exemptions available	
		Educational services	Health care services
1.	Provision of Transportation services to faculty and staff	√	-
2.	Receipt of Outsourced catering services	√	-
3.	Receipt of Housekeeping services	√	-
4.	On receipt of Admission Fees	√	√
5.	Subscription of journals	√	-
6.	Provision of renting of vehicles by a person to another who further renders transportation services	√	-
7.	Supply of food by college mess or canteen	Concessional tax rate of 5%	No such concessional rate
8.	Residential dwelling during the course of provision of services, treated as bundled services	√	√

Source: NHI

from 5% to 28%; Hot water bag from 5.5% to 28% and Wheel chair from 5% to 18%. GST on formulations (tablets, capsules, and liquids) has been bracketed at 12% making an increase of 2.30% (over earlier VAT and excise duty). High end medical equipment which attracted 12% tax is now taxed at 18%. Tax on Healthcare devices and accessories such as catheters which were charged at 10% are now doubled. Life savings drugs and diagnostic kits attract tax at 18%, a steep jump from the 5% tax. Leasing of equipment which were charged under VAT @ 5% earlier, are taxed at a higher rate of 12%

➤ **Input services to Hospital services** like Housekeeping, Maintenance of equipment under Annual Maintenance Contract and Comprehensive Maintenance Contract, Manpower supply, Laundry Services, Rent, Technical services and Civil and Electrical contracts are taxable which were taxed at 15% under pre-GST, are now charged under 18% under GST. Advertisement under print media is taxable at 5% under GST, while it was exempt under Service Tax. GST rate on Health Insurance has also increased to 18% as against 15% service tax in the pre-GST era increasing the cost of premium for the patients. GST on Diagnostic Services has also increased with the prices of blood test, strip based diagnostic and X-rays put under 12% to 18% slab which is higher than the pre-GST tax rate on these services.

To address the above issues, one suggestion is to zero rate healthcare services and healthcare insurance premiums, which will ensure that the credit chain is intact and that the input taxes are not loaded into the cost of healthcare services. Input tax credit will be available as a refund for the healthcare service providers. Alternatively, the rates of

tax for the goods and services consumed by the health care service provider and rate of GST on health insurance premium at 5% could be streamlined.

Drawing a parallel with the education sector, Government has not only exempted the services provided by educational institutions but has also exempted the predominant services provided to educational institutions. A comparison of the exemptions available to services received by healthcare sector and education sector is provided in Table 5.16. Services on which exemption or benefits are made available to Educational Institutions, and have not been extended to the healthcare sector are highlighted here.

Table 5.16 reveals that exemption for services received by education sector has not been extended to healthcare service providers. In addition to the list given above, IT services could be included in the list, as uptick in technology adoption will be imperative in bringing down the cost and also enhance overall quality of services delivered to patients. So, the benefits available to education sector could be considered for extension to healthcare service providers keeping in view the over-riding objective of ensuring that healthcare costs to consumers are affordable and the new GST regime ensures competitive neutrality.

Export sector benefit to medical tourism: At present due to the POS condition, medical tourism/healthcare services availed in India by foreigners are not eligible for tax benefits, even though they earn foreign exchange. This needs to be addressed and income from the services provided by Healthcare service provider to foreign nationals in India who come for Medical Treatment (in India) should be treated as export of services and deduction should be given not only under chapter VI A but also to make foreign currency income fully exempt from

taxes. This will boost Medical tourism in India thereby increasing foreign currency reserves. In addition, the current rate of SEIS scrip of 5% could be increased to 10%, as was the case for SFIS scrips in pre-2015 scenario.

Suggestions to strengthen domestic healthcare sector:

These include the following:

- **Government of India's Ayushman Bharat-NHPS Initiative can be a potential game-changer for India's healthcare.** One of the key imperatives is to solve supply side challenges. At an aggregate level there is a significant shortage of infrastructure and the investment of around US\$ 40 – 50 billion is required to meet WHO standard of 1.8 – 2.0 beds per 1000 by 2025. Further, there is a significant mismatch (geo footprint) in supply of existing contractible health infrastructure for secondary and tertiary facilities and demand from NHPS beneficiaries.
- **Incentivizing Capacity Building:** Healthcare was included in the harmonized master list of Infrastructure sub sectors by the RBI in 2012. This includes hospitals, diagnostics and paramedical facilities. Also, IRDA has included healthcare facilities under the social infrastructure in the expanded definition of 'infrastructure facility'. Despite this, long term financing options at concessional rates are still not available for healthcare providers. This needs to be addressed.
- **Infrastructure:** The hospitals are charged electricity at commercial rates as in the case of cinema halls. Hospitals consume large amount of electrical power and commercial rates of tariffs affects provision of affordable healthcare. So, supply of electricity at industry rates to hospitals could be considered.
- **Other suggestions:** These include increasing Public spending on healthcare (currently at 1.4% as per World Bank); liberalizing bank

lending norms for capital investment by Private healthcare; giving infrastructure status to hospital and healthcare sector; encouraging incubation centres in premier institutions for research in technology for healthcare; and running Secondary and Tertiary Healthcare Centres through PPPs to ensure efficient running along with government monitoring.

6. Other Services

The liberalization policies based on our analysis of OECD's STRIs along with some other measures which can help exports or help in trade negotiations for some of the Other Sectors are given here.

In the case of **Accountancy**, there is good potential for export of services manpower, especially in the developing countries. Besides African Countries and Middle East countries, there is potential for export of services even to USA, UK and Other Commonwealth countries, since India has adopted International Standards in Accounting and Auditing Sector.

Actuarial services are in good demand in developed countries. This is a hybrid service involving both Accountancy and Financial expertise. Our Actuarial service providers should be well versed with the rules and laws of these countries.

In accountancy, while the major restriction in this sector is the condition that only locally licensed individuals i.e., CAs can practice in India, relaxing the conditions that commercial association is possible only with locally licensed CAs and the condition that corporation is prohibited can even help in exports. Reforms in this sector are needed if India wants to make accounting and auditing a major area for exports and provide hybrid services like Actuarial services.

In **Air transport**, disinvestment in Air India can be a major reform, while rationalization of slot allocation can help in foreign investment inflows and exports.

In **Distribution services**, liberalising the conditions attached to FDI in single brand retail like local

sourcing particularly in the 'state of art' and 'cutting-edge' technology can help in flow of foreign investment and technology. Similarly, some conditions related to multi-brand retailing particularly to allow it even in Tier 2 and Tier 3 cities can help flow of foreign investment and technology and also give India a mileage in multilateral/bilateral negotiations as this is one of the sticking points related to India in negotiations.

In **Legal Services**, opening up atleast in foreign and international law and relaxing the condition prohibiting hiring of locally licensed lawyers by foreign firms can even help in exports of these services and also help in multilateral/bilateral negotiations.

In the case of **Engineering Services**, exports are less of a standalone nature and more in the form of project exports in the form of civil engineering and construction projects, Turnkey Project and Technical and Consultancy Services contracts. Some policy issues related to engineering services including the following.

While construction and architecture services have some restrictions, engineering services have few restrictions in India. There is even no need to have a license to provide these services. So, there is nothing much that can be done in the case of domestic regulations in this service, except remove some hiccups like resolving the GST issue. One difficulty

faced by the Engineering service providers is that they have to pay GST within 30 days of raising of invoice while they generally receive payment after a considerably long time of 3-4 months or even 6 months. This leads to considerable cash flow problem. While export of engineering services is exempted from GST, the present system envisages giving a letter of undertaking and getting the required exemption or paying GST and getting it refunded. This needs to be addressed.

Another suggestion is regarding reimbursing cost of bidding of successful bidders which was done earlier by the EXIM Bank of India to promote export of consultancy services. This was with the intent that they should continue to market the services and secure more and more works externally. This scheme does not exist now. There is a need to see if such schemes can be reintroduced so as to boost exports of engineering consultancy as well as to generate more employment.

There are also a few PSUs, such as Engineers India Ltd (EIL), RITES, WAPCOS, MECON, etc., providing engineering services. However, carefully thought out disinvestment strategy is needed in this regard as some of them are performing well.

The above bunch of strategies/policy measures for the different services which are varied in nature can help in tapping the myriad opportunities in these sectors.

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