



# RECOMMENDATIONS & AGENDA

**For the New Government of India**

JULY 2019



# Recommendations and Agenda for the New Government of India

U.S.-India Business Council

July 2019

The U.S.-India Business Council (*USIBC*) and the U.S. Chamber of Commerce congratulate Shri Narendra Modi on his election to a second term as Prime Minister of India. Under the Prime Minister's leadership, U.S.-India business relations have strengthened considerably, with U.S. foreign direct investment (*FDI*) into India increasing to USD 44.5 billion in 2017, a 15.1% increase from 2016.<sup>1</sup> At the end of 2018, the United States was India's fourth largest source of FDI, contributing 6% of total FDI inflows.<sup>2</sup>

The United States and India have much in common, including a common set of values, robust democratic systems, and cultures of entrepreneurship. Our countries also enjoy longstanding people-to-people ties that make them natural strategic partners. As leaders around the globe reconsider their approach to global trade and investment, both nations can and should do more to achieve the shared goal of USD 500 billion in two-way trade.

Despite messages to the contrary, the trade trajectory is positive, with bilateral goods and services trade growing 12.6 percent in 2018 to reach USD 142 billion. Still, significant untapped potential remains in the U.S-India commercial relationship. Business-friendly policies can unleash upwards of USD 150 billion in trade over the next 5 years, as resolution of regulatory issues impacting trade and investment by both U.S. and Indian companies opens the door for more expansive growth.

USIBC stands ready to support Prime Minister Modi and the Government of India in efforts to develop the economic policies that will transform India's economy and create millions of high quality jobs. In preparing the following recommendations, USIBC held consultations with both U.S. and Indian members to identify impediments to business and critical areas for regulatory reform. We are confident that action by the new Government of India to address these issues will propel the Indian economy forward in the next five years.

Within our recommendations, we have identified priority reforms that are likely to significantly improve ease of doing business for U.S. and multi-national companies operating in India. These recommendations touch on both broader government policies and more specific sectoral regulations that can help maximize and leverage India's global trade advantages. We are optimistic that the NDA government will recognize these as priority areas of work for the administration's first 100 days, and take action to push the U.S.-India commercial relationship to new heights over Prime Minister Modi's 2019-2024 term.

Sincerely,



Nisha Biswal

President, U.S.-India Business Council

<sup>1</sup> <https://ustr.gov/countries-regions/south-central-asia/india>

<sup>2</sup> [https://dipp.gov.in/sites/default/files/FDI\\_Factsheet\\_12March2019.pdf](https://dipp.gov.in/sites/default/files/FDI_Factsheet_12March2019.pdf)



## Recommendations for the U.S.-India Trade Partnership in 2019-2020

### 1. Foreign Direct Investment

During his first term, Prime Minister Narendra Modi centered his economic policies around the goal of attracting foreign investment into India. In FY 2018-19, the United States was the fourth largest source of investment into India, with FDI reaching INR 223.35 billion [USD 3.139 billion].<sup>3</sup> With a new five-year mandate, USIBC recommends that the Government of India (GOI) focus on attracting greater investment flows into sectors which have already proved attractive to U.S. businesses, as well as maximizing investment into new sectors.

**Objective:** Liberalize the Indian economy in sectors that are currently not attracting investment

The energy, logistics, insurance and e-commerce and social development sectors all attract large-scale investment from the United States. However, a number of additional sectors could see significant investment with a realignment of the regulatory structure and incentives. For instance, high transaction costs and unfavorable fiscal terms create barriers to investment in green field petrochemical projects. As a result, India lags behind other emerging economies competing for investment in the energy sector.

The insurance sector would significantly benefit from further liberalization. While the GOI took an important step in raising the insurance cap from 26% to 49%, further liberalization to 100% is a critical measure to attract the additional investment necessary to allow for greater product innovation and underwriting to benefit the market. Insurance penetration remains low in the Indian markets, and increasing FDI in insurance intermediation to 100% and FDI in insurance as announced in the Union Budget 2019-2020 will help bring a diverse set of insurance products to a broader set of Indian consumers with best-in-class practices for their distribution. These reforms would bring Indian FDI limits for insurance and insurance intermediation in line with global international markets in which Indian citizens would be the primary beneficiaries.

Similarly, extremely low caps on foreign investment in sectors such as telecom, private banking, and single brand retail adversely impact the ability of Indian companies and the Indian economy to attract foreign capital. Investment is also inhibited by restrictions on foreign firms' participation in the insurance and reinsurance sector, as well as inventory-based e-commerce activities.

**Roadmap:** Ease FDI caps and simplify approval processes for key sectors

In its last term, the NDA government took significant steps to liberalize regulations on FDI, which were reflected in India's huge jump in the World Bank's Ease of Doing Business rankings – from 142 in 2014 to 77 in 2018.<sup>4</sup> The government disbanded the Foreign Investment Promotion Board (*FIPB*) and replaced it with a new approval mechanism for inbound investment. It also reduced sectoral caps and introduced liberalizing reforms for some sectors, enabling a greater in flow of foreign investment. While USIBC recognizes these measures as significant, continued efforts are needed to create favorable conditions for investors.

<sup>3</sup> [https://dipp.gov.in/sites/default/files/FDI\\_Factsheet\\_27May2019.pdf](https://dipp.gov.in/sites/default/files/FDI_Factsheet_27May2019.pdf)

<sup>4</sup> <http://pib.nic.in/newsite/PrintRelease.aspx?relid=184513>.



A first step is ensuring fair and equal treatment of domestic and foreign players in the Indian market. Even with a less restrictive FDI cap, the GOI must not undercut potential investment through restrictive regulations that create unequal treatment for foreign stakeholders. For example, in the insurance sector, after the FDI cap on foreign investment increased from 26% to 49%, the Insurance Regulatory and Development Authority of India (*IRDAI*) released Guidelines stipulating the statutory definition of “ownership and control” of a jointly-held company to ensure that control remained with Indian residents or Indian companies. In doing so, the IRDAI effectively diluted the potential benefits that would stem from an increase in FDI caps. The GOI should consider reversing IRDAI’s interpretation to allow foreign investors to freely and fairly negotiate contractual arrangements when entering the Indian market and permit greater foreign ownership of Indian insurance companies. These reforms will be critical as the GOI implements increased FDI in insurance as announced in the Union Budget 2019-2020.

Another area ripe for reform is the legal services sector. While the legal services industry is not traditionally viewed as a significant driver of foreign direct investment flows, law firms and lawyers are often at the forefront of mergers & acquisitions, greenfield investments, and deal making. Ensuring that companies can access their preferred legal counsel is critical in moving investment forward when legal issues arise. As a growing number of companies evaluate if and where to re-route global manufacturing supply chains currently running through China, liberalizing the legal services sector could make it easier for the legal advisors to corporate decision-makers get to “yes” on India.

As a longer-term and more sweeping next step, the Government of India should consider legislation amending the Advocates Act of 1961. Tabling this legislation would create a pathway and regulatory structure for the entry of foreign law firms into India. If Prime Minister Modi and the new Indian government can deliver on this bold reform, it would send a major signal to the global business community that India is serious about attracting global investment.

Bold reforms like lifting FDI caps in currently restricted sectors including insurance, insurance intermediation, telecom, private banking, legal services, and single brand retail would send a strong signal to the international investor community and unleash a new wave of FDI into India. USIBC recommends to attract maximum investment, these sectors should also be brought under the automatic route.

The e-commerce sector, which is expected to become the largest sector of the Indian economy by 2020,<sup>5</sup> stands to benefit greatly from relaxation of restrictions on investment in the sector. We recommend allowing 100% FDI in business-to-consumer and inventory based e-commerce.

## **2. Tax Policies**

Investment is founded on the promise of returns. However, this promise is severely dampened by high rates of corporate taxation. In order to retain investment in India, it is recommended that the Government of India work with industry to reduce corporate tax rates.

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<sup>5</sup> [https://www.unido.org/sites/default/files/2017-10/WP\\_15\\_2017\\_.pdf](https://www.unido.org/sites/default/files/2017-10/WP_15_2017_.pdf)



**Objective:** Reduce the tax burden on corporate investors

The Indian Government introduced a series of tax reforms, including the goods and services tax (*GST*), which have collectively reduced the tax burden on both consumers and businesses. However, obstacles remain to efficient implementation of the Central Goods and Services Tax Act, 2017 (*GST Act*). For example, companies cannot access the GST portal from outside India and the government has yet to notify several requirements under the GST, making GST compliance unnecessarily difficult. In addition, mechanisms for utilizing accumulated tax inputs are insufficient due to treatment of each state as a separate taxable person, which results in accumulations in one state and payouts in another. The National Anti-profiteering Agency (*NAA*) has also consistently rejected standard anti-profiteering measures under the GST Act followed by businesses, and imposed severe penalties for activities it deems a violation of the anti-profiteering provisions.

USIBC recommends a number of additional reforms to minimize taxation in other sectors of the economy. For instance, different fuel sources are taxed at different rates, creating market distortions and lowering incentives for companies to invest in fuel resources in higher tax brackets. Alcoholic beverages continue to be subject to inter-state duties, which hinders the growth of small-scale manufacturers who cannot afford to run operations in multiple states. Taxes, tariffs and duties on a number of information communication technology (*ICT*)-related products and services have increased over the past several years, which raises the cost of R&D, manufacturing, and the export of ICT products and services from India. ICT tariffs also distort the market – reducing the quality and sophistication of available ICT products and creating negative impacts on consumer choice and India’s overall competitiveness across tech-enabled sectors. Moreover, India is a signatory to the Information Technology Agreement (*ITA*), which does not allow tariffs of this type, increasing the risk of international retaliation and trade disputes. Indian regulators need to reevaluate prevailing norms for corporate governance to incorporate industry best practices and global regulatory trends. The Securities Exchange Board of India (*SEBI*), for instance, prescribed a 2% royalty rate limit for related party transactions (*RPTs*), contrary to the industry-recommended 5% limit. SEBI should adopt the recommendation and bring the rate in line with global norms of 5%-8% for RPT royalties.

Further, the Government of India has committed to provide certainty in tax treatment to foreign investors. So far, the Government’s fall out legislative measures from the Organization of Economic Co-operation and Development’s (*OECD*) Base Erosion and Profit Shifting Initiative have been prospective in nature and conflict with the Indian Government’s tax treaty obligations. Any policy stance that creates uncertainty for taxpayers – including India’s retroactive move to reject the OECD approach to permanent establishment (*PE*) attribution – could be inconsistent with India’s international legal commitments and internationally agreed tax standards. These policies are likely to adversely impact foreign investors’ confidence in the Indian taxation system.

While the Government of India has taken steps to simplify Foreign Portfolio Investment (*FPI*) norms, foreign capital invested in India is mostly managed by fund managers based outside India. In many cases, these fund managers have relocated outside India to avoid adverse taxation impacts on the offshore funds they manage. Changing the regulatory structure to make asset management location-neutral will pave the way for India to become a regional investment management hub.



Further, the advance ruling process that could provide certainty to companies on their tax burden is fraught with delays. While foreign investors can submit documents in advance, the process often takes as much as three to four years, making it impractical and unpredictable to international investors.

In addition, financing costs for key industry sectors including textiles, chemicals, engineering, and IT have been artificially elevated by the de-recognition of exports as Priority Sector Lending (*PSL*) eligible. We recommend that the Government of India reconsider this decision.

**Roadmap:** Streamline tax objectives with international investment concerns

GST compliance can be improved by allowing companies to access the GST portal outside of India, and developing clear guidelines surrounding profiteering practices and the calculation of anti-profiteering thresholds. In conducting a company assessment, we recommend that the NAA examine whether and how a company passes benefits to the recipients, and to accept standard industry practices of passing the benefit.

In order to remove market distortions, tax parity for fuel sources is critical. Reforms to make energy access cost effective and equitable by reduction or increase in the applicable indirect tax levies. Import tariffs can be lowered in order to attract further investment in India. In addition, duties on movement of alcoholic beverages should be abolished and replaced with reciprocal tax arrangements beneficial to producers of indigenous beverages across states. Another area that could benefit from tax reform would be lowering tariffs in the ICT sector. Eliminating these high-tax measures not only sends positive signals to the international investment community but is also likely to attract ICT manufacturing away from countries like China and into India.

The draft report on attribution of profits to *PE* released by the Central Board of Direct Taxes should be reconsidered. Any retroactive rejection of OECD's authorized approach to PE attribution could seriously hamper certainty in Indian tax laws and adversely impact ease of doing business in India and its tax competitiveness. Moreover, any unilateral measures to shut out OECD's authorized approach to PE attribution from Indian tax treaties would be inconsistent with India's tax treaty obligations. On the other hand, the draft report on attribution of profits to PE advocates the fractional apportionment approach which can lead to double taxation for foreign enterprises.

With respect to FPI, remuneration paid to the fund manager should be deemed to be at an arm's length price as long as the fees to be paid by the fund are detailed in the publicly disclosed prospectus. The condition of maximum 20% of profits to be paid to FPI fund managers should be amended to enable fund managers to charge a fee in case of loss to the fund. The Income Tax Act should enable back office or support functions of the fund manager (such as fund administration, fund accounting etc.), to be outsourced to entities based in India.

Currently, when a primary adjustment to the transfer price occurs, either voluntarily or made by the tax officer and accepted by the taxpayer, the primary adjustment is considered an advance made by the taxpayer to the associated enterprise (AE) if not repatriated to India within 90 days. Interest on these advances are added to the taxable income of the corporate taxpayer for perpetuity. As a result, AEs situated in jurisdictions outside India are required to make cash remittance to tax payers in India. We recommend a revision that would allow companies operating in India to add the primary adjustment to their taxable income to avoid losing revenue to GOI tax collection.



The GOI also needs to ensure that the advance ruling mechanism is fair, transparent and adequately equipped with resources to ensure that this an effective recourse available to foreign investors looking for an advance determination of their tax liabilities.

Permitting exports credit as PSL for all entitles having exports turnover of less than INR 1 billion [USD 14.37 million] will help identify and provide incentives to export oriented entities that are in the process of achieving scale in their export business. Access to concessional credit will encourage adoption of advanced technologies and increase productivity, which in turn will also generate employment opportunities.

### 3. Employment

The NDA Government in its first term introduced a skill development initiative called the Pradhan Mantri Kaushal Vikas Yojana (*PMKVY, Prime Minister's Skill Development Plan*). This program not only provides employable skills to a large number of youth across the country, but is also developing its own placement portal and mobile application to facilitate youth employment.<sup>6</sup> In its second term, the GOI should seek to expand programs that contribute to skilling and employment. There are several areas where upskilling after formal education, and skilling and employment of women in particular, will greatly contribute to the Indian economy. According to a 2018 International Monetary Fund (*IMF*) estimate, equal participation of women in the workforce will increase India's GDP by 27% to an estimated USD 700 billion by 2025.<sup>7</sup>

**Objective:** Create more skilled, inclusive employment to buoy India's GDP growth

India's youth population, if gainfully inducted into the workforce, will be its biggest advantage in growing the economy to USD 10 trillion.<sup>8</sup> A diverse Indian workforce will increase the competitive advantage that India already enjoys due to its youthful demographics, in comparison to many other U.S. trading partners in Asia.

**Roadmap:** Create jobs for a diverse and skilled labor force

An important cause of unemployment worldwide is the mismatch between the skills possessed by the labor force and the skillset sought by employers in the workforce.<sup>9</sup> In order to close the gap, the GOI will need to align the skills taught in the Skills Training Centers established under the PMKVY to in-demand jobs. For example, familiarity with cloud based technology and artificial intelligence is more likely to secure gainful employment than basic knowledge of coding.<sup>10</sup> We recommend the GOI increase the number of skills development opportunities focused on artificial intelligence (*AI*) and machine learning and evaluate how existing courses can be facilitated by AI solutions.

In addition, the private sector should support skills development by establishing centers of excellence and training which offer internships, scholarships, and employment opportunities. While the GOI has

<sup>6</sup> <https://skillindia.nsdcindia.org/>

<sup>7</sup> <http://in.one.un.org/unibf/gender-equality/>

<sup>8</sup> <https://www.pwc.in/assets/pdfs/future-of-india/future-of-india-the-winning-leap.pdf>

<sup>9</sup> <http://www.iariw.org/India/sengupta.pdf>

<sup>10</sup> <https://economictimes.indiatimes.com/wealth/earn/the-career-skills-you-will-need-to-get-ahead-in-2019/articleshow/67204450.cms?from=mdr>



traditionally emphasized the *creation* of start-ups, there should also be a heavy emphasis on innovation within start-ups to ensure market diversity and profitability.

Providing incentives such as tax benefits to corporates and investors who contribute to skilling and training efforts benefits Indians across the country and makes them more likely to be employed in industry-ready professions and produce globally competitive work.

#### 4. Digital Policy and Data Governance

Trade, services, and supply chains are fast moving online. India's tremendous growth in the digital payments, ecommerce, and app economy highlight the tremendous potential for these sectors to augment India's global leadership in IT and BPO outsourcing and product development, sectors which are currently valued at USD 88.9 billion<sup>11</sup> and are growing rapidly. While India and China currently lead in these fields, competition from Vietnam, the Philippines, Ukraine, and others is dramatically increasing and could upend this advantage.

By 2020, India is projected to become the second largest market in the world for e-commerce,<sup>12</sup> a newer aspect of digital economy. India's internet economy is expected to double from USD 125 billion in April 2017 to USD 250 billion in that time, with e-commerce driving that expansion.<sup>13</sup> Given these trends, it should not be surprising that a significant proportion of U.S.-India trade is already channeled through the sale of goods on online platforms and app-based services. The GOI also provides services to its citizens through app-based solutions in sectors such as education – apps like e-Pathshala (e-School) and CBSE Saransh, the Central Board of Secondary Education study app – and agriculture – Kisan Suvidha (farmer benefits), Pusa Krishi (Indian Agricultural Research Institute app for farmers), M-Kisan, and Kisan Yojana (Farmer's Plan). The impact of this growth can be vastly expanded if policy objectives are developed to emphasize and support expansion of the digital economy sector.

The media and entertainment (*M&E*) industry is also a key component of growth in India's digital economy. The sector grew at a compound annual growth rate (*CAGR*) of 10.9% from FY2017-18 and is expected to grow 13.1% to touch INR 2,660.2 billion by FY2022-23.<sup>14</sup> The Ministry of Information and Broadcasting (MIB) is presently deliberating a National Broadcasting Policy (*NBP*) with the intention to regulate media services such as video on demand. However, in developing the *NBP*, the MIB must acknowledge that technological disruptions in the broadcasting sector are creating new growth opportunities for the sector and important consumer benefits as sector incumbents innovate to retain market share.

**Objective:** Maximize growth in the digital economy by leveraging global data assets and technology

Global businesses prefer to participate in markets where their specialized technologies can perform optimally. Customizing technologies to individual markets and regulatory frameworks is both time and cost intensive, and often involves dismantling existing operational and technology infrastructure, creating a significant deterrent to technology-based businesses. In China and Indonesia, for instance,

<sup>11</sup> <https://www.statista.com/topics/2257/business-process-outsourcing-industry-worldwide/>

<sup>12</sup> <https://www.ibef.org/download/E-Commerce-Report-Oct-2018.pdf>

<sup>13</sup> <https://www.ibef.org/download/E-Commerce-Report-Oct-2018.pdf>

<sup>14</sup> <https://assets.kpmg/content/dam/kpmg/in/pdf/2018/09/Media-ecosystems-The-walls-fall-down.pdf>



some U.S. app-based businesses have divested from the market in response to overregulation.<sup>15</sup> This serves as a reminder of the impact that restrictive policy approaches to data governance and technology implementation can have on growing economies. India can be an equal participant in and beneficiary of global innovations in finance, healthcare, agriculture, and education if the GOI allows for uniform implementation of technologies in India. The GOI should also create frameworks that allow companies producing digital products, services, and artificial intelligence in India to access a diverse, global data set.

Protectionist measures ultimately prevent India from achieving its full potential as a leader in the digital economy sector, holding back its business potential. For instance, treating data as ‘national asset,’ as suggested by the Department of Promotion of Industry and Internal Trade (*DPIIT*) in its draft e-commerce policy (*Draft E-Commerce Policy*), appears designed to subvert individual ownership over data and to justify mandatory data localization. In addition, the Draft E-Commerce Policy-proposed restrictions on sharing data with foreign companies may limit international companies’ ability to conduct technology outsourcing operations in India. A prohibition could also reduce the room available for such companies to harness data analytics from international service providers. A 2018 Deloitte study estimated that adoption of a localization requirement could cause India to could up to 0.8% of its gross domestic product (*GDP*).<sup>16</sup> The study also estimated a loss of 1.4% of domestic investments due to localization.<sup>17</sup> We recommend that the GOI reevaluate the mandatory data localization provisions and restrictions on cross-border data flows proposed in the draft data protection bill.

International investors recognize the need for data security measures that protect national interests and assist in the police-functions of the state. The GOI will need to strike a balance on data governance issues between ensuring data security for its citizens and supporting open markets and the desire by multi-national companies to house their data in the most efficient and cost-effective locations. According to the World Bank, open data flows have increased global GDP by 10% over the past decade.<sup>18</sup> Despite this positive trend, the passage of protectionist privacy laws in a number of countries enhanced compliance costs for business and prompted an outflow of foreign investment. The Philippines, for instance, repealed data governance legislation after the new regulatory framework increased in cost of doing business and caused foreign companies to suspend their investment plans.<sup>19</sup>

In India, overlapping data policy regulations have made the GOI’s approach to data governance internally inconsistent. For instance, the proposed data protection bill and the Draft E-Commerce Policy provide conflicting provisions on data localization. Similarly, proposed amendments to the Information Technology (*Intermediaries Guidelines*) Rules, 2011 and the Consumer Protection Act impose onerous compliance requirements on intermediaries and are inconsistent with the exemption provided to intermediaries from third party content. To avoid policy mis-alignment, which creates

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<sup>15</sup> <https://hbr.org/2016/08/the-real-reason-uber-is-giving-up-in-china>, <https://techcrunch.com/2019/04/11/uber-global-exits-billions/>.

<sup>16</sup> <https://www2.deloitte.com/insights/us/en/industry/public-sector/future-of-regulation/regulating-emerging-technology.html>.

<sup>17</sup> <https://www2.deloitte.com/insights/us/en/industry/public-sector/future-of-regulation/regulating-emerging-technology.html>.

<sup>18</sup> <http://documents.worldbank.org/curated/en/751621525705087132/pdf/WPS8431.pdf>

<sup>19</sup> <http://documents.worldbank.org/curated/en/751621525705087132/pdf/WPS8431.pdf>



resulting regulatory uncertainty for business, the GOI should articulate its overall objective in major policy areas and emphasize the need for sectoral efforts to be guided by those objectives.

**Roadmap:** Promote policy formulation founded on active stakeholder engagement

Given the growing importance of data in the day-to-day activities of both individuals and businesses, the GOI must prioritize transparency, objectivity, predictability and involvement of all stakeholders when developing new regulations.

We propose that any move to change existing law require a rigorous and transparent regulatory impact analysis to critically analyze the effects of proposed legislation.<sup>20</sup> This requirement will also help the GOI to avoid any mismatches between stated policy objectives and proposed regulations. Cross-ministerial working groups on trans-sectoral policy initiatives like the Draft E-Commerce Policy can ensure alignment with relevant existing law. We believe procedures like these will move the discussion on data governance towards more open cross-border data flows and alternatives to data localization.

Extensive integration between the digital economy sectors and data-based businesses in the United States and India make resolution of these issues particularly pressing. As the United States develops its own domestic privacy laws and promotes ecommerce and digital trade, alignment between the two countries is imperative to facilitate the expansion of India's digital economy to USD 1 trillion by 2025.

## 5. Other Regulatory Issues

In addition to the larger regulatory frameworks we have outlined above, bilateral trade between India and the United States is significantly shaped by tax, investment and regulatory hurdles across a variety of sectors. Major multi-national companies are less likely to invest in sectors that are over-regulated or require compliance with onerous or opaque processes. In the following annexure, we lay out a few illustrative examples. This is not an exhaustive list of the areas highlighted by U.S. and Indian industry, but serves as an example of the types of regulation that inhibit increased trade and investment and the areas where reforms could yield positive dividends.

## CONCLUSION

The U.S.-India Business Council is confident that under Prime Minister Modi's leadership, the GOI will enact the reforms needed to attract FDI and capital, create jobs, and improve the standard of living for citizens across India. Given a strong track record over the past five years, we trust that the Prime Minister will support productive engagement between the United States and India to advance bilateral trade in a mutually beneficial manner. We look forward to working with the Government of India to develop and implement the recommendations suggested in this document, and catalyze growth in the U.S.-India commercial partnership to reach the shared goal of \$500 billion in bilateral trade.

<sup>20</sup> <https://www.oecd.org/regreform/regulatory-policy/ria.htm>.



## ANNEXURE

### **Streamlining Regulations to Promote Trade and Commercial Growth**

#### 1. Healthcare

Healthcare is among India's largest economic sectors in terms of employment and revenue. The industry has grown 10% in the last few years and is expected to reach USD 145 billion by 2019 and exceed USD 280 billion by 2025. The industry also employs – directly or indirectly – over 2.7 million people, and generated one million jobs between 2010 and 2015 in high-skill areas like research, development and manufacturing. Despite the sector's importance, government healthcare spending remains low. We recommend that the Ministry of Health develop a roadmap to increase public spending on health to the targeted 2.5% of GDP.

By tackling a number of outstanding issues in the healthcare sector, the GOI can achieve its objectives of providing high-quality drugs and medical technology to its citizens, encourage innovation in the sector, and promote the Make In India initiative. These include decreasing the GST rate for all drugs to 5%, reducing customs duties for nutritional products, and reducing the frequency of policy revisions around drug prices. USIBC also recommends a move away from price controls, which can deter FDI and adversely impact the quality of both imported and domestically manufactured drugs and medical products, as well as hinder the formation of public-private-partnerships in the sector through the Ayushman Bharat initiative. In addition, given India's strength in the pharmaceutical manufacturing sector – exporting more than 50% of domestically produced pharmaceuticals – price controls and granting preference to local suppliers in public procurement risks prompting the United States or Europe to adopt similar measures, which could adversely impact Indian exports. We recommend the GOI institute time-bound exemptions or relaxations in the public procurement process based on market share and product differentiation, and adopt Trade Margin Rationalization (*TMR*) for medical devices. Pricing and other regulatory mechanisms should support innovation and the introduction of new technology, and ensure a level playing field in the public procurement process.

Ensuring regulatory certainty and uniformity is particularly critical in the healthcare sector. The sector is currently regulated by both central and state authorities, creating disparities between licencing authorities in different states. For medical devices, we support a regulatory roadmap to bring all medical devices into the regulatory system in a phased manner, and recommend making the Central Drugs Standard Control Organisation (CDSCO) the sole regulator. Before mandating QR codes for medical products, the GOI should make supplementary regulatory changes to export mechanisms. Amending the Drugs and Cosmetics Rules, 1945 legislation to update regulations on e-pharmacies, provide guidance on manufacturing practices, and introduce guidelines on over-the-counter drugs will help clarify legal ambiguities and harmonize Indian law with international best practices. We also recommend the GOI create a Pharmaceutical Ministry to promote greater efficiency and smoother functioning of the sector.

#### 2. Data Privacy

Developing a privacy regime requires a judicious and thoughtful approach that accounts for existing legal structures and draws on global best principles and practices to balance privacy, innovation and global interoperability. The U.S. Chamber of Commerce has developed a set of [privacy principles](#) for



a privacy framework that is balanced, flexible, globally interoperable, and protects the free movement of data while protecting consumers. Developing a privacy regime that fulfills these principles is central to India's digital transformation, the promotion of India's global competitiveness, and the *Digital India* vision of the Prime Minister.

We recommend that the GOI's reconsider elements of the draft Personal Data Protection Bill (PDPB) introduced in July 2018. The PDPB takes an excessively onerous approach to privacy and data protection regulation that will impede the free flow of digital commerce without providing meaningful privacy protections to consumers. This approach would burden all participants in India's digital economy, but it would have disproportionate economic impacts on small- and medium-sized enterprises (SMEs) and entrepreneurs.

The final version should assess the recent Supreme Court ruling on Aadhaar, which limited access to Aadhaar data by law enforcement even under the aegis of national security. We urge the government to incorporate this new legal standard as it considers law enforcement access to other types of user data. In addition, USIBC recommends the following amendments to the draft PDPB to ensure a privacy regime that recognizes the economic benefits of a flexible approach to data usage and cross-border data flows:

*Remove the data localization requirement and moderate onward transfer restrictions.* At present, the draft PDPB includes an extremely broad data localization provision that will impose significant burdens on all global businesses operating in India.

*Expand grounds for data processing.* The current draft PDPB requires data fiduciaries to wait for regulatory approval before they can rely on the "reasonable purpose" ground for processing, which raises significant practical issues, in particular in terms of predictability. In keeping with the approach adopted by the European Union's General Data Protection Regulation (GDPR) and longstanding data protection laws around the world, India should recognize that processing to fulfill contractual obligations is lawful processing.

*Clarify that the law would not apply to foreign national data processing.* The draft PDPB should exempt all companies that process data only of foreign nationals. Restricting this exception would undermine the global digital marketplace and India's business process outsourcing industry.

*Clarify the definitions of personal data and anonymized data.* Under the draft PDPB approach, if there is any possibility that data could be used to identify a person—no matter how remote that risk is—that data qualifies as personal data. Current definitions around personal data are too broad and ambiguous. Instead, India should recognize international best practices and approaches to anonymization that permit data fiduciaries to engage in "reasonable efforts" to de-identify data.

*Eliminate residency requirement for data protection officer (DPO).* This requirement imposes substantial and unnecessary costs on foreign companies, who must hire an India-based DPO even if they already employ a DPO in another country; the burden is greatest for SMEs and entrepreneurs.



*Reform restrictions on processing data of under-18s.* The draft PDPB defines “child” as anyone under the age of 18, without recognizing the significant distinctions between those aged 17 and those aged 12. We suggest a more reasonable threshold.

*Reform excessive penalties.* The draft PDPB’s civil penalties, and its provisions holding any executive criminally liable for involvement in any processing of data found to violate its terms, are excessive and will encourage companies to avoid doing business in India. We believe that more emphasis should be put on accountability measures – already acknowledged by the draft PDPB – as a powerful factor to mitigate and minimize privacy risks.

*Provide sufficient time for implementation.* The draft PDPB does not provide for sufficient time for implementation of the requirements. The data protection authority (DPA) may issue codes of practice on several important matters up to 12 months from the notified date, which leaves only 6 months for data fiduciaries and data processors to implement changes required by these codes of practice.

### 3. Food and Agriculture

In the food sector, we recommend exempting healthy oils such as olive oil from increased import duties on edible oils. Further, the difference in custom duties between crude palm oil and refined palm oil has resulted in a move towards importing the finished product rather than crude oil, thus disadvantaging the palm oil refining industry. This trend needs to be reversed in order to engage with domestic palm oil refineries.

In the agriculture sector, the GOI should develop supporting infrastructure for agritech. For instance, to create an e-NAM platform that can perform at its full potential, assaying, sorting and grading infrastructure need to be created in agriculture markets. Currently, a lack of infrastructure has led to variations in the quality of produce between different markets and acts as a deterrent for retailers and processors to procure through e-NAM.

### 4. Heavy Industries

We recommend the department of heavy industries withdraw its opposition to the Directorate General of Foreign Trade (DGFT) notification permitting import of CBU motorbikes and bring its position in line with the stance taken by both the DGFT and the ministry of road, transport and highways by allowing the import of a limited number of products without local certification. A more open market in India will test latent demand for these products and help determine whether sufficient demand exists to launch manufacturing operations in-country.

### 5. Energy

Over the past 5 years, India has put into motion a number of major initiatives to accelerate India’s energy development while emerging as a champion to reduce the impact of climate change by supporting a move towards use of renewable energy. The GOI can magnify the impact of its initiatives by working with the private sector to encourage the development and adoption of electric vehicles, battery storage, tri-generation and smart grid solutions, as well as expanding long-term finance options for renewable energy producers.



As GST is expanded to include the energy sector, we recommend the GOI include natural gas.. The GOI should also consider amending the Model Revenue Sharing Contract (*MRSC*) under the Hydrocarbon Exploration & Licensing Policy (*HELP*) to provide a structure and terms of contract that are equitable for both Government and investing companies.

#### 6. Supply Chain Logistics

We recommend streamlining the clearance process for express delivery, standardizing supply chains, and implementing the Air Freight Station Policy. These regulatory and policy shifts will make it easier and cheaper for businesses to conduct trade between the United States and India, lowering the barrier to entry and attracting new investment.

#### 7. Insurance and Pension Services

We recommend including industry feedback in the structuring of a national credit registry. Private credit bureaus have invested significantly in technology and analytical resources to strengthen the credit infrastructure in India, and their participation will help the GOI reduce delinquencies, increase financial inclusion, enhance efficiencies, and increase access to credit. As the RBI moves forward with developing a public credit, allowing private credit bureaus to continue to function will deepen the credit infrastructure in India.

Similarly, public-private partnerships to reform the country's pension schemes can help the GOI harness the expertise and experience of the global asset management industry, providing expanded pension coverage and supporting a domestic, pension-backed capital market. We also recommend moving to a perpetual licensing regime and removing the prohibitions on foreign investment in employees' provident funds and national pension scheme programmes to encourage reform in the pension sector.

#### 8. Defense and Aerospace

The GOI seems poised to lift the FDI cap for the defense and aerospace sector to 74% for the automatic route. A policy change to this affect and successful investment by U.S. or international firms would send strong positive signals to corporate boardrooms. We recommend the GOI focus on adherence to acquisition timelines recommend by the Defense Procurement Procedure, adopt global standards on limited liability for contracts, consistently enforce intellectual property rights to increase predictability and boost investor confidence. The government should also offer resolution and completion of offset credits for U.S. companies, which would remove a significant impediment to investment. Clearing these liabilities from corporate accounts will give U.S. companies the financial resources to pursue more intensive collaboration with Indian companies.

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