



Suggested Steps India Could Take to Address Digital-Related Restrictions

India's Barriers to U.S. Digital Service Suppliers

Over the past several years, India has passed or proposed several key measures that severely threaten the ability of U.S. digital service suppliers to access the Indian market: the **2000 IT Act**, the **2021 Guidelines for Acquiring and Producing Geospatial Data and Geospatial Data Services**, the **2023 Digital Personal Data Protection Act**, the **2023 Telecommunications Act**, and proposals including the **Digital India Act**, **Digital Competition Act**, and **Broadcasting Services Regulation Bill** (all referenced below).

The net effect of these measures is to put U.S. digital firms at a competitive disadvantage in the Indian market: imposing excessive content takedown and data collection requirements that harm consumers and threaten end-to-end encryption, imposing de-factor data localization on U.S. services suppliers, applying traditional telephony regulations to foreign digital services suppliers, and proposing asymmetric platform regulations that would disproportionately target U.S. firms. Even where not directly or immediately restricting access, the burdens and risks associated with these measures will severely diminish market access opportunities now worth [tens of billions of dollars](#) in this rapidly developing market.

As the U.S. engages with India to seek the removal of trade impediments, several targeted changes could materially improve market access for U.S. suppliers by issuing clarifying guidance, adopting reforms through implementing regulation, and committing not to enact further barriers to U.S. digital services suppliers.

Tangible Commitments from India to Ease Digital Trade Barriers

Addressing existing barriers:

- Address concerns with the 2021 **Guidelines for Acquiring and Producing Geospatial Data and Geospatial Data Services**¹ by (1) allowing foreign service providers to create and own geospatial data above the threshold established, (2) allowing foreign entities to reuse and resell geospatial data and services obtained from Indian entities, and (3) removing the requirement that geospatial data be stored on domestic cloud or servers physically located in India.
- Address concerns with the 2023 **Digital Personal Data Protection Act**² through the Ministry of Electronics and Information Technology's proposed implementing rules, including by working with industry to ensure that the rules are reasonable and practical with regards to any restrictions on cross-border data transfers and processing, and ensuring that at minimum the rules (1) establish a consultation period of no less than 60 days for any government restrictions on cross-border data transfers and processing

¹ Guidelines for Acquiring and Producing Geospatial Data and Geospatial Data Services Including Maps, DST (Feb. 15, 2021), <https://dst.gov.in/sites/default/files/Final%20Approved%20Guidelines%20on%20Geospatial%20Data.pdf>.

² <https://www.meity.gov.in/static/uploads/2024/06/2bf1f0e9f04e6fb4f8fef35e82c42aa5.pdf>.

proposed to be adopted under Rule 12(4) of the draft rules, (2) provide clear, internationally-aligned mechanisms for when personal data can be transferred and processed outside India under Rule 14 of the draft rules, and (3) allowing a sufficient period of time (e.g., 24 months) for entry into force of any rules impacting cross-border data transactions, in light of the significant compliance work that may be entailed.

- Address concerns with the 2023 **Telecommunications Act**³ through the forthcoming Digital India Act by clarifying that the services defined as telecommunication services in Clause 2(t) only apply to the narrow subset of traditional telephony services (e.g., circuit-switched voice).
- Issue implementation guidelines for the **Cyber Security Directions of 28.04.2022**,⁴ clarifying that cloud service providers and VPN providers are not obligated to log customer activity and surrender it to the government upon request to avoid being blocked in-market, as 39 providers were in October 2024.
- Allow the 2023 **import authorization requirement** for laptops, tablets, all-in-one personal computers, and ultra-small form factor computers and servers to expire (without affecting the current “Free” classification of such goods in the Indian Trade Classification [Harmonized System] of Exports and Imports), and, pending such expiration: (1) provide written confirmation if servers and server racks are subject to the import authorization requirement, (2) rescind the requirement that applicants disclose manufacturing turnover, trading turnover, import turnover, and export turnover for the previous three years when applying for authorization; (3) recognize existing test reports, based on the International Electrotechnical Commission (IEC) standards, from accredited labs located in other countries, for registration with the Bureau of Indian Standards (BIS) without needing retesting; (4) simplify and streamlining customs procedures across all agencies to ensure speedy customs valuations and uniform treatment, and have a customs single window for importers to have a one-stop-shop to deal with all customs requirements across all agencies; and (5) implement a Supplier’s Declaration of Conformity (SDoC) system, similar to the EU model, to provide a streamlined and efficient pathway for product compliance.
- Address concerns with amendments to the **IT Act**⁵ by (1) reviving the Cyber Regulations Advisory Committee under Section 88 of the IT Act to provide input to the government on intermediary liability and online content regulation; and working with industry on: (a) eliminating excessive and unreasonable rules regarding content monitoring, required grievance redressal mechanisms, and forced sharing of user data with law enforcement, including Rules 3(2), 4(4), and 79(b)(3) of the **IT Rules**⁶ and subsequent

³ <https://egazette.gov.in/WriteReadData/2023/250880.pdf>.

⁴ FAQs on Cybersecurity Directions, CERT IN (April 28, 2022), https://www.certin.org.in/PDF/FAQs_on_CyberSecurityDirections_May2022.pdf.

⁵ The Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021, MEITY.GOV (2021),

<https://www.meity.gov.in/writereaddata/files/Revised-IT-Rules-2021-proposed-amended.pdf>.

⁶ The Information Technology (Intermediary Guidelines and Digital Media Ethics Code)

implementation advisories,⁷ t by adopting rules establishing procedural safeguards for content takedown orders (including, but not limited to, ensuring that takedown orders are more precise and targeted, provide clear accompanying reasons, and are more transparent with regard to service providers being able to notify their users of such orders); and (c) eliminating or committing to non-enforcement of rule 4(2) to ensure that end-to-end security encryption is not compromised.

- Withdraw **local content requirements for the public procurement of software and services** issued by the Ministry of Commerce and Industry in 2020,⁸ and eliminate **data and server localization requirements** in government procurement rules issued by the Ministry of Electronics and Information Technology (MeitY).⁹
- Exclude cloud-based software from the scope of IT and telecom products subject to the **Mandatory Testing and Certification Framework**. For products currently subject to the Framework, recognize results from accredited conformity assessment bodies utilizing International Laboratory Accreditation Cooperation (ILAC) and International Accreditation Forum (IAF) mutual recognition arrangements (MRAs).
- Clarifying, through amendments to the **India's income tax laws**,¹⁰ that the provision of data center services by an Indian entity to a foreign entity does not, in itself, create any taxable presence (e.g., permanent establishment or business connection) for the foreign entity for purposes of Indian income tax; and that any compensation on a cost-plus basis by the foreign entity to the Indian data center services entity is deemed to be an arms-length compensation/transaction.
- Commit to refrain from unduly and discriminatorily targeting U.S. firms through the use of **overly aggressive and excessive enforcement procedures and practices**, including criminalization of conduct of employees.

Addressing proposed barriers:

- Commit to addressing concerns raised regarding governance measures for digital service providers including: (1) maintaining the safe harbor provision afforded to online platform intermediaries under Section 79 of the IT Act of 2000; (2) promoting coherence with related regulations including the Digital Personal Data Protection Act and its pending implementing rules, and the National Data Governance Policy; and (3)

Rules, 2021 (as amended in 2023), available at <https://www.meity.gov.in/static/uploads/2024/02/Information-Technology-Intermediary-Guidelines-and-Digital-Media-Ethics-Code-Rules-2021-updated-06.04.2023-.pdf>.

⁷ Union Government issues advisory to social media intermediaries to identify misinformation and deepfakes, PIB.GOV (Nov. 7, 2023, 6:04 PM), <https://pib.gov.in/PressReleasePage.aspx?PRID=1975445>.

⁸ Public Procurement (Preference to Make in India), Order 2017 - Revision, No. P-45021/2017-PP (Sept. 16, 2020), available at <https://dpiit.gov.in/sites/default/files/PPP%20MII%20Order%20dated%2016%2009%202020.pdf>.

⁹ MeitY Cloud Guidelines & Best Practices, available at <https://www.ambud.meity.gov.in/#GUIDELINES>; including in the “Guidelines on Master Service Agreement for procuring Cloud Services”.

¹⁰ Including the Income Tax Act, 1961 and Income Tax Rules, 1962.

ensuring that any AI governance measures uphold commitments to cross-border data flows, protection for source code, and other best practices.

- Commit to avoiding *ex-ante* digital regulatory approaches similar to the EU's *Digital Markets Act*, such as the proposed **Digital Competition Act**,¹¹ considering the potential negative investment, innovation, and competition impacts that such a regime might have on India's burgeoning digital markets. Additionally, conduct a thorough assessment with stakeholder input to identify concrete market distortions that would justify intervention, and further examine whether foreign investment in India might be impacted as a result of such a regulatory regime.
- Prior to moving ahead with any regulations informed by the 2023 consultation on **regulatory mechanisms for OTT communications services and select banning of OTT services**,¹² (1) evaluate opportunities to address concerns through existing legislation and (2) commit to refrain from extending traditional telephony-style regulations to OTT services or selectively blocking access to OTT services.
- Commit to not adopting the proposed **Broadcasting Services Regulation Bill**¹³ or the proposed **annual quotas on imports** of laptops, tablets, all-in-one personal computers, and ultra-small form factor computers and servers.
- Commit to a **permanent moratorium on customs duties for electronic transmissions**.

Additional References

See CCIA comments on India in its [submission for USTR's 2025 National Trade Estimate](#) report. Several of the laws discussed above were cited as barriers to U.S. exports in USTR's 2025 edition of the [report](#). Further materials are available below:

CCIA "[Comments on the Draft Digital Competition Bill](#)."

CCIA "[Comments on TRAI OTT Regulation Consultation](#)."

CCIA "[Comments on India's Proposal Digital Personal Data Protection Rule](#)."

¹¹ Draft Digital Competition Bill 2024, available at <https://www.medianama.com/wpcontent/uploads/2024/03/DRAFT-DIGITAL-COMPETITION-BILL-2024.pdf>.

¹² Trai releases Consultation Paper on Regulatory Mechanism for Over-The-Top (OTT) Communication Services, and Selective Banning of OTT Services, TRAI.GOV (July 7, 2023), https://www.trai.gov.in/sites/default/files/PR_No.59of2023.pdf. See also Consultation Paper on Regulatory Mechanism for Over-The-Top (OTT) Communication Services, and Selective Banning of OTT Services, TRAI.GOV (July 7, 2023), https://www.trai.gov.in/sites/default/files/CP_07072023_0.pdf (full text of the consultation paper).

¹³ Public Notice on Website of Ministry of Information & Broadcasting, PRS (Nov. 10, 2023), [https://prsindia.org/files/parliamentary-announcement/2023-12-09/Draft_Broadcasting_Services_\(Regulation\)_Bill,_2023.pdf](https://prsindia.org/files/parliamentary-announcement/2023-12-09/Draft_Broadcasting_Services_(Regulation)_Bill,_2023.pdf).