



## Balancing the Seesaw of Indian Tech Policies and US Tech Businesses

US technology-based businesses see great market potential in India, which had welcomed them, without many strings attached. The same was explicitly evident in 2014 during Prime Minister Modi's trip to the Silicon Valley, which was followed up with investments flowing into India from US tech businesses. However, various legitimate concerns over lack of data privacy, data breaches, misinformation or fake news, muted growth of domestic industry, etc., have prompted India to enact heavy-handed regulations governing US tech businesses. Select regulations are believed to be protectionist in nature, and may have a chilling effect on US tech businesses. The same have been summarised in the table below.

| Regulatory Objectives   | US Tech Businesses Perspective  | CUTS Perspective   |
|---|---|--|
| <p>The <a href="#">Draft Personal Data Protection Bill 2018</a>, along with other developments such as Reserve <a href="#">Bank of India's (RBI) Notification 2018 on Storage of Payment System Data</a>, <a href="#">Draft National eCommerce Policy 2019</a>, etc., have indicated India's bent towards mandating <b>Data Localisation (DL) or Data Mirroring (DM)</b>.</p>   |   |  |
| <p>The driving factors for a DL mandate include: securing citizen's data, data privacy, data sovereignty, national security, etc.</p> <p>Fixing accountability of service providers who store Indian users' data outside of the country's boundaries, along with ensuring access to data for Law Enforcement Agencies, coupled with the ineffectiveness of Mutual Legal Assistance Treaties in this realm, have further prompted the GoI to implement DL.</p> | <p>US giants such as Facebook, Google, Microsoft, etc., fear that DL requirements will undermine their growth ambitions in the country.</p> <p>The move is set to enhance regulatory compliance burdens, along with raising the costs of doing business in India, due to the need of setting up new Data Centres (DCs) within the country.</p> <p>Sectoral players, such as those in the Fintech industry, are also on the receiving end of harsh DL mandates by RBI.</p> | <p>Although the concerns and objectives of GoI are valid, the path chosen of DL may not be the most optimal for achieving the same. Apart from negatively impacting foreign tech companies, DL requirements might also enhance costs on domestic businesses, especially startups, which may lack the necessary resources for setting-up or renting DC infrastructure, in the absence of affordable foreign cloud services.</p> <p>India's infrastructural preparedness with respect to the data economy is also a concern. CUTS consumer surveys<sup>1</sup> have revealed that Indian consumers have benefitted from data-driven digital tech services provided by foreign tech companies.</p> <p>There is a need to undertake <a href="#">Cost-Benefit Analysis</a> on the proposed regulations pertaining to DL to balance interests of all stakeholders. Details available <a href="#">here</a>.</p> |

| Regulatory Objectives   | US Tech Businesses Perspective   | CUTS Perspective  |
|---|--|---|
| <p><b>Review of Policy on <a href="#">Foreign Direct Investment (FDI) in eCommerce</a></b></p>  |  |   |
| <p>The policy seeks to provide respite to smaller brick-and-mortar traders, by providing them a level playing field against large foreign eCommerce players.</p> <p>The loopholes in the previous</p> | <p>Amazon, and Flipkart (now owned by Walmart) have taken hits following the new FDI Policy in eCommerce.</p> <p>Not only does the policy place restrictions on foreign capital coming into the sector, but it also makes it difficult for foreign eCommerce companies to operate in the</p> | <p>Vital issues remain to be resolved to promote healthy economic democracy, i.e., creating a level-playing field for both domestic and foreign eCommerce platforms.</p> <p>The current norms for the segment are applicable to foreign</p> |

<sup>1</sup> A. [http://www.cuts-ccier.org/cdpp/pdf/survey\\_analysis-dataprivacy.pdf](http://www.cuts-ccier.org/cdpp/pdf/survey_analysis-dataprivacy.pdf) B. [http://www.cuts-ccier.org/pdf/CUTS\\_comments\\_on\\_regulatory\\_framework\\_for\\_OTT\\_communication\\_services.pdf](http://www.cuts-ccier.org/pdf/CUTS_comments_on_regulatory_framework_for_OTT_communication_services.pdf)

| Regulatory Objectives   | US Tech Businesses Perspective   | CUTS Perspective   |
|---|--|--|
| version of the policy were providing opportunities for backdoor entry by foreign players in multi-brand retail trade. | Indian market.<br>It bans them from selling products via vendors in which they have an equity interest, and bars them from striking exclusive deals with sellers and offer discounts. <sup>2</sup> | eCommerce businesses, which might create a discriminatory environment in favour of domestic players. |

| Regulatory Objectives   | US Tech Businesses Perspective   | CUTS Perspective   |
|---|--|--|
| <b><u>Proposed Information Technology [Intermediaries Guidelines (Amendment) Rules] 2018</u></b>  |  |  |
| The amendments are aimed at curbing the 'Misuse of Social Media platforms, by criminals and anti-national elements, for recruitment of terrorists, circulation of obscene content, spread of disharmony, incitement of violence, disrupting public order, spreading fake News', etc.<br>They also envisaged to strengthen the legal framework to make social media platforms accountable under the law. | The issue of traceability, as mandated by the revised guidelines, has become a thorn in the throat of WhatsApp, which has seen India as its biggest market.<br>The move will reportedly force the company to break end to end encryption, which is not only a business model, but also a privacy enhancing tool for its users.<br>Regulatory compliance burden of policing content would also add to the pressure on social media service providers like Facebook, Twitter, etc. | Once again, though these policy goals are justifiable, a deeper analysis is required to determine the possible adverse spill-over effects on relevant stakeholders in case a faulty roadmap is adopted to achieve them.<br>CUTS consumer surveys have revealed that consumers place their trust and confidence in service providers, expecting them to use the data only for the stated purpose, while ensuring privacy and anonymisation. Proactive monitoring of content and traceability measures entail huge potential to destabilise the existing user trust and confidence. Details available <a href="#">here</a> . |

Together, these moves are arguably making the Indian market less lucrative and difficult to operate in for US tech businesses, who have already invested billions of dollars in the country. Seeing from the lens of bilateral trade, the US Government has also been irked with the evolving regulatory landscape in the country. The same was evident in the recent meeting between US Commerce Secretary Wilbur Ross and India's Commerce and Industry Minister Suresh Prabhu, which witnessed US expressing its dissent on India's position on DL and eCommerce.

Notably, as a reactionary measure to India's regulatory heavy handedness towards US tech companies (in addition to other issues as well), US President Trump had also withdrawn India's eligibility

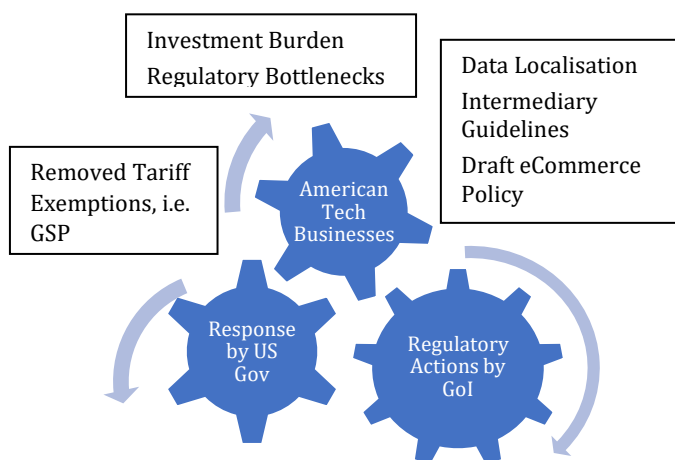
as a beneficiary of its Generalised System of Preferences (GSP) in March this year, under which Indian companies have enjoyed zero tariffs for about 2,000 of their goods being exported to US.

### The Way Forward

As is visible, Indo-US trade ties have been rather strained in recent times, particularly when it comes to the tech sphere. Issues discussed above act as speed breakers on Indo-US economic relations, and could also create barriers in achieving the USD 500 billion bilateral trade target set by the two countries<sup>1</sup>. Accordingly, there is need to ease the regulatory pain points for US tech businesses by adopting optimal regulations to achieve the legitimate regulatory objectives.

A good start in this regard may be of ensuring transparency, inclusive consultations, and institutionalising tools such as Regulatory Impact Assessments in regulatory decision-making which can help in balancing the interests of all stakeholders (domestic and foreign) and ensure that benefits emanating from regulations outweigh the costs levied by them. Avoiding kneejerk reactions by adopting a regulatory sandbox approach may also be useful, while ensuring regulatory coherence across policies.

*This Policy Note has been researched and written by Sidharth Narayan, Assistant Policy Analyst, CUTS International.*



<sup>2</sup> <https://gadgets.ndtv.com/internet/news/data-localisation-e-commerce-not-discussed-at-us-india-summit-us-envoy-1994286>