



CompTIA



June 23<sup>rd</sup>, 2017

The Honorable Wilbur Ross  
Secretary of Commerce  
United States Department of Commerce  
Washington, DC 20230

The Honorable Robert Lighthizer  
United States Trade Representative  
Office of the U.S. Trade Representative  
Washington, DC 20006

Dear Secretary Ross and Ambassador Lighthizer,

Our associations, which represent the breadth of the U.S. technology sector, support a deep, lasting, and mutually beneficial relationship between the United States and India. In light of the importance of a healthy bilateral economic relationship to the overall relationship, we are concerned by the increase in the barriers to trade that many U.S. technology companies face in India. We believe it is important for the U.S. government to address these issues, in particular: (1) to cooperate with India to promote interoperable, internationally oriented cybersecurity, and privacy regimes that allow the free flow of data across borders; (2) to ask India to refrain from applying overly burdensome product testing and certification regimes for U.S. technology products; (3) to hold India accountable to its ICT product tariff commitments; and (4) to urge the government of India to review its current approach to patentability of computer-related inventions (CRI) to ensure patent protection for CRIs in India, consistent with best global practices.

The U.S. economy is increasingly reliant on technology products and services and cross-border data flows. Technology companies [employ](#) over 6.9 million Americans — 5 percent of private sector employment — and account for 7.5 percent of U.S. GDP. Technology products and services drive growth and job creation in virtually every sector of the economy, allowing our manufacturers, automakers, energy firms, construction firms, financial firms, healthcare providers, and other U.S. industries to be more competitive, at home and abroad.

For our companies, India is one of the most promising markets in the world because of its fast-growing middle class, accelerating technological diffusion, and large population. Despite these attributes, many of our companies have encountered overly burdensome and discriminatory measures that have stalled their ability to grow in, and export to, the India market. We believe that positive engagement with the Indian government could do much to improve the situation for U.S. companies in India, to the benefit of U.S. innovation, job creation, and economic growth.

President Trump's meeting with Prime Minister Modi on June 26<sup>th</sup> is a significant opportunity to strengthen the economic pillar of the U.S.-India relationship. To that end, we ask that you prioritize four significant trade issues in your conversations.

First, the Government of India is considering privacy and cybersecurity policies that would create restrictions on cross-border data flows and impose data localization requirements, including draft regulations and consultation papers on cloud computing, the internet of things, and encryption. As the Government of India contemplates updates to its digital policies, the U.S. government should work with the Indian government to promote the free flow of data across borders and to adopt globally interoperable and risk-based privacy and cybersecurity regimes.



CompTIA



In addition, U.S. companies are facing a growing number of market access barriers related to the testing and certification of ICT products in India. The Compulsory Registration Order (CRO) for product safety (in effect since 2012 and continuing to expand) has been particularly onerous, resulting in extraordinary costs for U.S. technology companies, without advancing its regulatory objectives. Our industry is concerned that there will be a similar result from the implementation of telecom security requirements, which, though delayed until April 2018, contain provisions that could potentially force technology transfer and threaten proprietary source code of U.S. products. Lastly, India's Department of Telecommunications recently released a draft certification framework for telecom equipment with only minimal industry consultation and without notification to the World Trade Organization, as they are obligated to do as India is a signatory to the Technical Barriers to Trade Agreement. In all of these cases, there has been a lack of regulatory transparency and certainty that threatens the ability of U.S. companies to compete in India's market. Our industry has put forward concrete recommendations that the government of India can take to reform its discriminatory testing and certification regimes and we ask the U.S. government to support these recommendations to ensure a level playing field.

Furthermore, though India – like the United States – has agreed under WTO rules to impose zero import duties on technology products, the Indian government has raised them on multiple occasions as part of its yearly budget review process in 2014 and 2016 and, it is reported, is considering doing so again as part of its Goods and Services Tax (GST) implementation on July 1<sup>st</sup>, 2017. This uncertainty raises costs and weakens the ability of U.S. technology companies to export to India. We ask that the U.S. government press India to abide by WTO rules regarding bound tariff rates, thereby promoting fair and free trade between the two countries.

Lastly, the Government of India's approach to patentability of Computer Related Inventions (CRI) must be modified. The most recent version of the Office of the Controller General of Patents, Designs, and Trade Marks (CGPDT) Revised Guidelines for Examination of Computer Related Inventions Guidelines (2016 CRI Guidelines), released in February 2016 without any public stakeholder consultation, appears to require an application for a CRI to include novel hardware in order to be eligible for patent protection. This is out of step with international practice and Indian patent law, and will prevent most software-enabled inventions from receiving patent protection in India – a vital concern for U.S. software companies that wish to do business there. As the Government of India continues to consider further revisions to the examination guidelines, we urge the U.S. Government to continue engaging the Government of India to ensure that the patent protection available for CRIs is consistent with global practices.

By addressing these issues, you can help to provide greater certainty that U.S. companies can export more technology goods and services to India, which will help improve the U.S. trade balance and bolster technology sector jobs in the United States.

Sincerely,

BSA | The Software Alliance (BSA)  
Computing Technology Industry Association (CompTIA)  
Information Technology Industry Council (ITI)  
Semiconductor Industry Association (SIA)  
Telecommunications Industry Association (TIA)