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# Explained | Why are U.S. tech firms sceptical about digital trade with India?

U.S. industry body CCIA backed by the likes of Google and Meta has flagged India's "protectionist" approach to US digital services providers while also describing a set of other policies as trade barriers

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**The story so far:** During Prime Minister **Narendra Modi's U.S. state visit**, cooperation on technology emerged as a prominent talking point and yielded some of the most substantive outcomes, **according to Foreign Secretary Vinay Kwatra**. However, digital trade is also the area where some of the biggest U.S. tech companies have recently flagged multiple policy hurdles, including "India's patently protectionist posture". Earlier this year, the Washington D.C.-headquartered Computer & Communications Industry Association (CCIA), with members like Amazon, Google, Meta, Intel, and Yahoo, flagged 20 policy barriers to trading with India in a note titled "**Key threats to digital trade 2023**".

## What is the current status of India-U.S. technology trade?

Notably, in FY2023, the U.S. emerged as India's biggest overall trading partner with a 7.65% increase in bilateral trade to \$128.55 billion in 2022-23. However, digital or technology services did not emerge as one of the sectors at the forefront of bilateral trade. The CCIA points out in its report that "despite the strength of the U.S. digital services export sector and enormous growth potential of the online services market in India, the U.S. ran a \$27 billion deficit in trade in digital services with India in 2020".

In the recent past, however, the two countries have been ramping up their tech partnership through moves like the **Initiative on Critical and Emerging Technology (iCET)** announced by President Joe Biden and Prime Minister Narendra Modi last year. Under the iCET, India and the U.S. agreed to cooperate on critical and emerging technologies in areas including artificial intelligence, quantum computing, semiconductors and wireless telecommunication. Additionally, under the iCET, India and the U.S. also established a Strategic Trade Dialogue with a focus on addressing regulatory barriers and aligning export controls for smoother trade and "deeper cooperation" in critical areas.

The joint statement released on the first day of Mr. Modi's visit, also mentions the ambitious MoU signed between the two states on the **Semiconductor Supply Chain and Innovation Partnership**, which includes a combined investment valued at \$2.75 billion. On the telecommunications front, the two leaders launched two **Joint Task Forces to focus on the Open RAN network and research and development in 5G/6G technologies**. Besides, the two countries are bullish on future tech such as AI and Quantum Computing having put



## What are the concerns of U.S. tech firms?

The CCIA, while appreciating the reinvigorated efforts to ramp up trade through bilateral initiatives, has flagged in its note, the “significant imbalance” and “misalignment” in the U.S.-India economic relationship. “The U.S.’s extension of market access, trade and openness to Indian companies to operate and succeed in the U.S. has not been reciprocated by the Indian side,” it reads, adding that the Indian government has deployed a range of “tools to champion their protectionist industrial policy”, tilting the playing field away from U.S. digital service providers in favour of domestic players.



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To describe these “discriminatory regulation and policies”, it cites the example of India’s guidelines on the sharing of geospatial data, which it accuses of providing preferential treatment to Indian companies. It has also expressed discontent over India’s veering away from “longstanding democratic norms and values, and seeking greater government censorship and control over political speech”, which it argues has made it “extremely challenging for U.S. companies to operate in India”. Notably, concerns about India’s democratic values in comparison with those shared by the U.S. and cited as the bedrock of the bilateral partnership were also raised during Mr. Modi’s state visit.

## What taxation measures has the CCIA raised concerns about?

One of the taxation tools that U.S. tech firms have long taken exception to is the expanded version of the “equalisation levy” that India charges on digital services. India in 2016, with the goal of “equalising the playing field” between resident service suppliers and non-resident suppliers of digital services imposed a unilateral measure to levy a 6% tax on



In 2020, the Centre came out with the **'Equalisation Levy 2.0'**, which imposes a 2% tax on gross revenues received by a non-resident "e-commerce operator" from the provision of 'e-commerce supply or service' to Indian residents or non-resident companies having a permanent establishment in India.

The equalisation levy, when it was first introduced in 2016, led to double taxation and further complicated the taxation framework. Besides, it also raised questions of constitutional validity and compliance with international obligations. The 2020 amendment again led the levy to become sweeping and vague in its scope. Further, in 2021, instead of introducing an amendment, the government issued a "clarification" to say that the expression 'e-commerce supply or service', inter alia, includes the online sale of goods or the online provision of services or facilitation of the online sale of goods or provision of services.

The CCIA argues that the government decided to put the levies in place and continue their imposition unilaterally even as 135 other countries await clarity on an Organisation of Economic Cooperation and Development (OECD) agreement to overhaul the global tax system. This deal would ask countries to remove all digital services tax and other similar measures and to commit to not introduce such measures in the future.

## What about India's IT Rules 2021?

The Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021, has been flagged by the consortium of foreign tech firms under the some of the most "problematic policies". The IT Rules place compliance burden on social media intermediaries (SMIs) and platforms with five million registered users or more, which means several U.S. firms end up falling under the ambit.

Some points of concern raised are the "impractical compliance deadlines and content take-down" protocols — the IT Rules require intermediaries to take down content within 24 hours upon receiving a government or court order. The platforms are also required to appoint a local compliance officer. Moreover, with the amendments made to the Rules late last year, SMIs are now obligated to remove, within 72 hours, information or a



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user complaints about the decisions of SMIs regarding their content-related issues and have the power to reverse those decisions. Additionally, in January this year, the Ministry of Electronics and IT (MeitY) added another layer of compliance, requiring platforms to make reasonable efforts to prevent the publication of content fact-checked as fake or false by the Press Information Bureau (PIB).

## What are the criticisms of the new draft of the data protection law?

While the firms appreciate a “notable improvement” in the government’s new draft (and the fourth iteration) of the **Digital Personal Data Protection Bill** released in November 2022, ambiguities about cross-border data flows, compliance timelines, and data localisation still remain.



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India, with more than **759 million active internet users** representing more than 50% of its population is a gold mine for data. The country is also planning to become a hub for data processing, wanting to host data centres and cloud service providers. This means that India’s policy on the flow of data across borders will impact the same on a global level, as was seen with the European Union’s landmark General Data Protection Regulation (GDPR). While there are various arguments in favour of data localisation requirements by governments, such requirements also tend to significantly increase operating costs of companies and can be seen as discriminatory by foreign companies.



The importance and use of data in today's technology-driven world is immense. Countries mandate data that are created within their borders to remain stored within their territorial boundaries. This process of storing data locally is referred to as data localisation.

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Foreign tech companies like Meta or Amazon operating in India find it convenient to store their data, say in the U.S. or wherever they have their servers. This means that such data has to leave Indian borders. The new draft has only one line about cross-border data flows — Section 17 of the Act says that cross-border flow of data will only be allowed for a list of countries notified by the Centre. On what basis will these countries be notified and what will the terms for such transfers be is not mentioned in the draft. Industry experts wonder whether whitelisting some countries for allowing data transfers would mean that other countries are automatically blacklisted. The CCIA argues that instead of taking this “opaque” approach, the law could be strengthened by “proactively supporting cross-border data flows through certifications, standard contractual clauses and binding corporate rules”.

**Also read: [Are data localisation requirements necessary and proportionate?](#)**

Besides, the previous version of the Bill, which imposed data localisation requirements on data fiduciaries (companies or entities who decide the purpose and means of processing personal data) for specified types of personal data, drew criticism from companies and foreign governments alike. Firms now argue that the new draft instead leaves grey areas by dropping the provisions on localisation, leaving room for speculation whether this could mean de facto localisation.

## What have firms said about the draft Telecom bill?

The CCIA contends that the draft Telecommunications Bill, 2022, has a sweeping regulatory ambit in that it “would redefine “telecommunication services” to include a wide range of internet-enabled services that bear little resemblance to the telephony and



The current draft of the Bill puts both Telecom Service Providers (TSPs) and Over-the-top (OTT) communication services under the definition of “telecommunication services”. OTT communication services include messaging platforms such as Whatsapp, Telegram, Signal, Google Meet etc., which use the network infrastructure of TSPs like Airtel and Jio to provide features that compete with telecommunication services such as voice calls and SMS services.

The CCIA contends in its note that the proposed law if passed in its current form, would subject a number of platforms to “onerous obligations including licensing requirements; government access to data; encryption requirements, internet shutdowns, seizure of infrastructure, and possibly monetary obligations for the sector”. The industry body contends that the law would “impose a first of the kind global authorisation/licensing requirement for any digital firm”.

## What are the other policy barriers to digital trade with India?

Last year, the Parliamentary Committee on Finance, in order to address anti-competitive practices by big tech companies, proposed the adoption of a “Digital Competition Act”. This, the CCIA says would include estimated taxes for big or significant digital intermediaries, arguing that the proposal appeared “to be largely targeted at U.S. tech companies”. Moreover, the body, which has Google as a prominent member, also expressed discontent about the Competition Commission of India’s two successive fines of ₹936.44 crore and ₹1,337.76 crore, respectively, on Google last year, for “anti-competitive practices” in its Play Store policies and for abusing its dominant position in multiple markets in the Android mobile operating system domain. The body went on to categorise this as part of India’s attempt “to use antitrust laws as a smokescreen for protectionist industrial policy”.

