TRADE TALKS AT A CROSSROADS: AN ASSESSMENT OF INDIA–US POSITIONS ON SERVICES AND DIGITAL MARKETS

AUGUST 2025

Overview

This report is based on collaborative research by four leading Indian policy and research institutions, and builds on discussions from a multistakeholder workshop in June 2025, which included diverse stakeholders from relevant sectors and professional backgrounds. It aims to contribute to a more informed and constructive understanding of how India and the US can approach digital and services trade in a manner that is both commercially meaningful and mutually respectful of each other's policy imperatives

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INTRODUCTION

On February 13, 2025, Indian Prime Minister Narendra Modi and US President Donald Trump agreed to launch negotiations for a bilateral trade agreement between India and the United States. Two months later, on April 26, the two countries concluded their second round of negotiations and set an ambitious target of finalising a 'phase one' deal by October this year.

In 2024–25, the US was India's largest trading partner, accounting for 18 percent of India's exports and 10.73 percent of its total bilateral trade. According to the Office of the US Trade Representative (USTR), India maintained a trade surplus in goods with the US amounting to $45.7 billion in 2024, a point of concern that the US has raised.

The US continues to pursue a trade policy grounded in supporting domestic manufacturing and supply chain security, with services playing a secondary, though economically significant role. For India, this may create space to expand its already strong presence in areas such as Information Technology (IT), finance, and healthcare services. However, the US' emphasis on balanced and reciprocal trade relationships may also bring increased scrutiny to India's domestic regulatory frameworks across several digital and service sectors.

President Trump's America First Trade Policy is fundamentally aimed at addressing two concerns: (i) large and persistent trade deficits; and (ii) unfair trade practices by other countries. Currently, the Policy focuses on manufacturing and production of goods, and relying on tariffs to either encourage companies to bring production back to the US or pressure trading partners to offer better terms for market access. The emphasis on manufacturing is nearly absolute, with the 2025 Trade Policy Agenda even linking potential success in the service sector to a more robust production economy, leading to windfalls for the service sector.

A limited emphasis on services in US trade policy is surprising, not least because the US has consistently had a surplus in services trade. In 2024, America's trade surplus in services rose to a whopping $293 billion.[1] This potentially creates opportunities for countries like India with strong capabilities in sectors such as finance, healthcare, and IT to expand their market share in the US.

At the same time, however, the US desire for balanced and equitable partnerships means that countries may have to be accommodating on services governance domestically, across sectors, if they seek better market access for their businesses. The National Trade Estimate Report (NTER), an annual estimation outlining various non-tariff measures encountered by US companies across global markets, has identified a range of trade barriers in India within the service sector.

The 2025 edition of the NTER identifies a range of such measures in India, particularly within certain service sectors. While some of these measures may largely impact foreign entities, research suggests they can also pose operational challenges for domestic firms. Thus, addressing some of these issues could present opportunities to enhance the overall business environment and support the competitiveness of Indian companies, both at home and abroad.

This collaborative report by our four institutions, outlines areas where the two countries may find alignment, as well as those that may require further dialogue, particularly in the context of services segments like legal, accounting, broadcasting, retail, financial, insurance, and various digital services. Drawing on trade frameworks such as the United States–Mexico–Canada Agreement (USMCA) and the US–Japan Digital Trade Agreement, we examine key concerns raised in the 2025 NTER and evaluate how they may shape the contours of a future trade agreement.

We also identify priority areas for India in the negotiations, including improved mobility for skilled professionals, progress on a social security totalisation agreement, and appropriate safeguards in areas such as procurement and digital regulation. We consider how India might navigate demands for greater alignment with international standards, while preserving essential regulatory autonomy and advancing its domestic development objectives.

This report could not have been possible without the guidance and inputs from various stakeholders from the over 50 private sector, government and civil society, who joined us for an immersive workshop on digital and services trade in late June 2025. As the India-US discussions are currently underway, we hope this report will contribute to the body of knowledge that underpins alignments between the two natural partners in the days ahead.

Guide to Navigating this Report

Given the wide range of regulatory, political, and trade-specific issues addressed in this paper, readers may find it helpful to approach the three chapters with an understanding of their distinct structure and analytical method. Chapter 1 offers a sector-by-sector analysis of trade in services—including legal, accounting, e-commerce, insurance, banking, and broadcasting—using a four-quadrant framework. This structure was adopted to enable a rigorous comparison between India's WTO/GATS obligations, domestic political economy constraints, US regulatory baselines, and each sector's trade outlook. The quadrant method is particularly suited for these mature service sectors where institutional positions are entrenched and comparative legal clarity is essential for assessing room for reform or alignment.

In contrast, Chapter 2 adopts a thematic and cross-sectoral lens to address emerging issues in digital trade, such as India's evolving data governance framework, outbound data flows, the classification of digital products in US trade agreements, and the implications of India's proposed Digital Competition Bill. A quadrant-based method was deliberately avoided here, given the fluid and overlapping nature of these regulatory developments, and the focus instead placed on how India's evolving digital architecture interacts with established US trade templates.

Chapter 3 concludes the paper by cataloguing India's longstanding systemic concerns—from visa restrictions and public procurement barriers to export controls and unilateral tariffs—using a format akin to the NTER. This format was chosen to reflect how these issues are raised in bilateral fora, offering a consolidated view of structural friction points that cut across sectors and regulatory domains.

CHAPTER 1: TRADE IN SERVICES

Overview of GATS

Trade in services is categorised under four distinct modes of supply under the World Trade Organisation's (WTO) General Agreement on Trade in Services (GATS):

- Mode 1 (Cross-Border Supply) refers to services provided from the territory of one country into another, such as IT services or online consultancy
- Mode 2 (Consumption Abroad) involves consumers travelling to another country to consume services, such as tourism and education
- Mode 3 (Commercial Presence) covers the establishment of a business presence, like subsidiaries or branches, in another country to supply services locally
- Mode 4 (Movement of Natural Persons) allows individuals to temporarily enter another country to supply services directly

WTO Members make specific commitments under each of these four modes of supply in their WTO Schedules of Commitment. These commitments determine the extent to which foreign service suppliers can access a country's market and under what conditions they can do so. A commitment can: (i) fully open a sector ("None"); (ii) partially liberalise it with conditions; or (iii) maintain as many restrictions ("Unbound"). Countries also list national treatment commitments, which specify whether foreign services and service suppliers will be treated on an equal footing with domestic providers.

Importantly, WTO Members are not required to commit to full liberalisation across all modes or sectors; commitments are negotiated and vary significantly across countries and industries. The commitments made by each country define the baseline for what is legally guaranteed at the WTO and set the bar for how much additional market access countries may seek in bilateral or regional agreements.

India's Competence in Trade in Services

India has established a formidable presence in the global trade in services across these modes, particularly excelling in Mode 1 services, such as IT, software, business process outsourcing, and knowledge process outsourcing, where it is regarded as a global leader. India's exports under Mode 4 are also significant, driven by the movement of skilled professionals in sectors like IT, healthcare, and engineering. Mode 2 is reflected in the growing inflow of international students and medical tourists to India. In contrast, Mode 3 remains relatively less dominant, though Indian companies are gradually expanding their commercial footprint abroad.

India's strength in services trade is a key pillar of its economic growth and international competitiveness. The US is a particularly important market in this context, where India's competitive advantage in areas like IT and professional services continues to drive increasing exports. However, as stated above, as India's services trade with the US expands and the trade balance shifts in India's favour, it is important to remain vigilant. The America First Trade Policy, although currently focused on addressing trade deficits and unfair practices in goods trade, may eventually extend similar scrutiny to services.

I. Professional Services

A. Legal Services

India's Regulatory Regime and GATS Commitments

India's legal services sector remains largely closed to foreign participation. Membership in the Bar Council of India (BCI), which is restricted to Indian citizens, is a prerequisite to practice law. The BCI notified the Rules for Registration and Regulation of Foreign Lawyers and Foreign Law Firms in India, 2022 in 2023, but its operationalisation is limited.[2] The rules require foreign firms to register in India before carrying out any form of practice, however, the BCI has not issued the requisite documentation for registration. A subsequent clarification indicates that foreign firms may only advise non-Indian clients on foreign law.[3] A narrow scope, coupled with seeming non-cooperation on the administrative front, has raised concerns about the limited utility and legal ambiguity of the reform.

A 2025 amendment to the BCI's Foreign Lawyer Rules allowed foreign lawyers to service both Indian and non-Indian clients. However, the new amendment adds stipulations that may constrain foreign lawyers more severely than the 2022 rules. The rules now require foreign lawyers flying into India to service clients to notify the BCI in advance and disclose client details. The requirement has been criticised for violating the sanctity of client-attorney privilege and overreaching beyond BCI's jurisdiction, as the body cannot regulate foreign legal services.[4]

Legal services are unbound under GATS Mode 3. Mode 3 refers to the establishment of a physical presence in a host country. In the context of legal services, it would mean a foreign law firm setting up an office in the host country. India has not committed to permitting foreign legal services under Mode 3. Therefore, the BCI rules technically do not violate this trade norm by prohibiting the commercial presence of foreign lawyers in the country.

Political Economy Considerations

India's legal services sector remains tightly controlled by entrenched domestic interests, primarily the BCI and state bar associations. These actors have long opposed the entry of foreign legal professionals, citing risks to employment, the dilution of professional standards, and threats to national legal sovereignty.

Even modest steps toward liberalisation met resistance. In 2012, the Madras High Court ruled that foreign lawyers were temporarily permitted to advise on foreign law.[5] However, the BCI subsequently challenged the ruling.[6] The BCI's 2022 "Foreign Lawyers Rules," which allowed limited cross-border advisory services, were promptly challenged in the Delhi High Court. The petition, filed by Narendra Sharma and others, questioned the BCI's statutory authority under the Advocates Act, 1961, to issue such rules, signalling continued pushback from the domestic legal fraternity.[7]

In early 2025, the central government introduced the Draft Advocates (Amendment) Bill, proposing to transfer regulatory authority over foreign lawyers from the BCI to the Union government.[8] Though suggestive of a more liberal orientation, the bill was withdrawn within weeks following strong opposition from legal associations.

Our discussions indicate, however, that there is a divide within the legal fraternity on whether legal services should be liberalised. There are many within the legal fraternity who believe that, contrary to the BCI's and state bar associations' contentions, the entry of foreign lawyers would create employment opportunities and raise professional standards without compromising national legal sovereignty.

Comparison with the United States

In the US, there are no federal restrictions on foreign law firms. However, the right to advise on US law is determined at the state level. Foreign lawyers can establish offices or law partnerships, but must pass state bar exams or comply with specific state rules to advise on domestic law. But this is a professional barrier, not a protectionist one, as American lawyers are also required to pass the bar to practice law in a given state. Some states permit foreign lawyers to register as foreign legal consultants, enabling them to advise on the laws of their home jurisdiction. As such, the US legal services market remains fairly accessible from a Mode 3 perspective, even if not harmonised nationally.

Trade Implications

This divergence creates a sharp asymmetry in India–US trade negotiations. Given its position in the USMCA, the US is likely to press for national treatment for legal services—something that India's current framework does not accommodate. With India offering little room for liberalisation and the US facing few comparable restrictions, this imbalance may spill over into negotiations in adjacent sectors. India's stance may lead to friction in domains where it seeks flexibility or concessions. Going forward, India may need to reassess whether its current posture on legal services, rooted in domestic protectionism, is optimal. This is particularly the case as there is no unanimity within the legal fraternity on keeping the Indian legal market closed.

B. Accounting Services

India's Regulatory Regime and GATS Commitments

India's regulatory framework for accounting services is restrictive, effectively barring foreign firms from establishing a commercial presence in the country. Under Indian law, only firms structured as partnerships may conduct auditing services, and only Indian-licensed Chartered Accountants (CAs) may be equity partners in such firms.[9] Foreign ownership in audit firms is expressly prohibited.[10] These structural and ownership barriers are mirrored in India's GATS Schedule, which makes no specific commitments for foreign accountancy firms under Mode 3 (commercial presence). In this sense, India's domestic policy of excluding foreign firms aligns with its WTO commitments, which leave accounting services "unbound", meaning India has not taken on any commitment on them.

Notably, India's cautious approach to liberalising accounting services reflects its broader regulatory posture in multilateral and plurilateral negotiations. For example, India has not joined the WTO Joint Initiative on Services Domestic Regulation, which seeks to promote transparency and fairness in licensing and qualification requirements across service sectors. While these disciplines do not mandate market access liberalisation, they introduce procedural obligations that could limit regulatory discretion. In sensitive professional domains such as accounting, where oversight is exercised by self-regulatory bodies like the Institute of Chartered Accountants of India (ICAI), India's decision may be driven by a preference to maintain flexibility in how domestic licensing and practice standards are defined and enforced.

Political Economy Considerations

The ICAI plays a dominant role in shaping India's stance. It maintains that only locally trained accountants possess the requisite understanding of Indian tax codes, corporate law, and compliance mechanisms. The ICAI, backed by smaller domestic accounting firms, has consistently opposed foreign entry, viewing it as a threat to employment, professional standards, and sovereignty over audit practices.[11]

Despite pressure from multinational clients and some Indian corporates for limited liberalisation, notably through joint venture proposals in 2012, the ICAI succeeded in preserving the status quo. The result is a compromise model where global accounting majors operate through legally separate but closely associated Indian affiliates. This arrangement provides limited access to global expertise while maintaining the ICAI's control over the sector.

Recent developments suggest a gradual shift in stance. As of June 2025, the ICAI has released draft guidelines to regulate cross-border networks, with a focus on consulting services.[12] These guidelines will require domestic CA firms to register arrangements with foreign networks and adhere to compliance standards, marking a transition from informal collaborations to regulated frameworks that enable domestic firms to build on a global scale. These steps indicate a strategic recalibration: India is cautiously facilitating global partnerships that enhance the competitiveness of domestic CA firms, albeit under a tightly regulated regime that preserves the ICAI's regulatory authority.

Comparison with the United States

The US market for accounting services is more open than India's. There are no federal FDI restrictions on foreign accounting firms. However, state-level professional licensing regimes impose rigorous entry requirements. Foreign nationals may become Certified Public Accountants (CPAs) provided they satisfy state-specific criteria relating to education, experience, and examination performance. Indian CA qualifications are not automatically recognised, but may receive partial equivalency. As a result, the primary restrictions in the US operate through licensing and professional accreditation rather than structural barriers to entry or ownership caps.

Article 15.5(1)(b) of the USMCA prohibits requiring service suppliers to operate under a specific legal entity or joint venture model. This clause reflects a deregulatory approach toward service structuring that sharply contrasts with India's mandatory partnership model for accounting firms. US negotiators are likely to highlight this asymmetry in any future discussions on market access.

Trade Implications

India's approach to Mode 3 in accounting services creates an asymmetry in India-US trade relations. While the US permits foreign entry conditioned on compliance with licensing rules and professional standards, India's policy blocks foreign firms from establishing audit practices altogether. This limits opportunities for US audit and consulting firms and may become a sticking point in broader services negotiations.

The digitisation of accounting services further complicates the challenge. Emerging platforms for e-auditing, AI-based bookkeeping, and cloud accounting blur traditional service delivery modes, making regulatory strictures increasingly anachronistic. A more balanced regulatory review that allows limited and well-regulated foreign participation could better serve India's economic and trade objectives while protecting its domestic accounting ecosystem.

II. Retail Distribution Services

GATS Commitments and India's Domestic Regulations

India has made no binding commitments under the GATS with respect to distribution services, including retail. In its WTO schedule, the sector is marked as 'unbound' under Mode 3 (commercial presence), which means India retains complete discretion over its domestic regulations. In practice, the retail distribution sector in India remains heavily regulated and largely closed to foreign investment in key segments.

Multi-brand retail is subject to stringent FDI restrictions. Foreign equity participation is capped at 51 percent and requires prior government approval, with the additional caveat that individual Indian states retain the discretion to permit or prohibit such investments in their jurisdictions. Further, foreign investors must comply with a complex set of conditions, including[13]:

- A minimum investment of approximately $100 million, with at least 50 percent earmarked for back-end infrastructure (e.g., logistics, warehousing, cold chains, and packaging).
- A local sourcing requirement, mandating that 30 percent of the value of goods sold must be procured from Indian small industries.
- A zoning requirement, permitting foreign retailers to operate only in cities with populations exceeding one million and as approved by the state government.

Single-brand retail is relatively liberalised, with up to 100 percent FDI permitted under the automatic route. However, similar local sourcing conditions (30 percent) and physical store presence requirements still apply.

In the e-commerce space, India's FDI policy distinguishes sharply between two models:

- Marketplace model (purely intermediary): 100 percent FDI is permitted.
- Inventory-based model (where the platform owns the inventory and sells directly): FDI is prohibited, except for food products or single-brand retailers that meet additional conditions, including operating physical stores in India.

E-commerce platforms are also prohibited from selling goods from vendors in which they have an equity interest or from influencing prices on their platforms. All of these elements have been raised as concerns by the US government across multiple editions of the NTER. Additionally, India's 2023 draft National E-Commerce Policy reflects a regulatory ethos aimed at ensuring greater oversight of the digital retail ecosystem. The draft outlines proposals, including requirements to ensure platform neutrality and other restrictions. These measures are framed around objectives such as consumer protection, fair competition, and data governance. While the proposals have not yet been adopted, they offer insight into India's evolving policy priorities in the digital commerce space.

Political Economy Considerations

India's retail investment policy is driven less by GATS commitments and more by domestic political economy concerns. Key interest groups, including traditional shopkeepers, small traders and sections of the agricultural and cooperative sectors, oppose FDI in multi-brand retail due to concerns around displacement, reduced margins, and potential monopolisation by large multinational chains.

The sourcing and infrastructure requirements outlined in the FDI policy are designed to address these constituencies. For example, mandating investment in back-end infrastructure aims to improve supply chains and logistics, benefiting domestic producers. Meanwhile, the 30 percent sourcing mandate is viewed as a safeguard for small and medium-sized enterprises in India. The zoning conditions similarly help insulate smaller towns and rural areas from foreign competition.

Notably, no recent study has been conducted on the potential impact of FDI restrictions on Indian firms. It may be time for an empirical evaluation, as studies show that Micro Small and Medium Enterprises (MSMEs) are digitising faster than ever in the country, and see digitisation as a key lever of growth and access to global markets.[14]

US Regulatory Landscape

The US maintains a largely open and liberal retail investment regime. There are virtually no foreign ownership restrictions in the retail sector, whether for single-brand or multi-brand operations. Retailers, including large foreign players, can enter the US market freely, subject only to general zoning, labour, and antitrust regulations that apply equally to domestic and foreign firms.

In the e-commerce domain, the US does not distinguish between inventory-based and marketplace models from an FDI perspective. Platforms like Amazon operate using a hybrid model that includes private label sales, dynamic pricing, and warehousing, all of which are restricted under India's policy framework. The US government also does not impose data localisation requirements or foreign equity limitations on e-commerce ventures.

While certain US states may have sector-specific restrictions (e.g. on foreign ownership of agricultural land), these do not apply to retail or digital commerce in any meaningful way. Overall, the regulatory framework in the US is market-driven, with professional conduct, taxation, and consumer protection being the main policy levers.

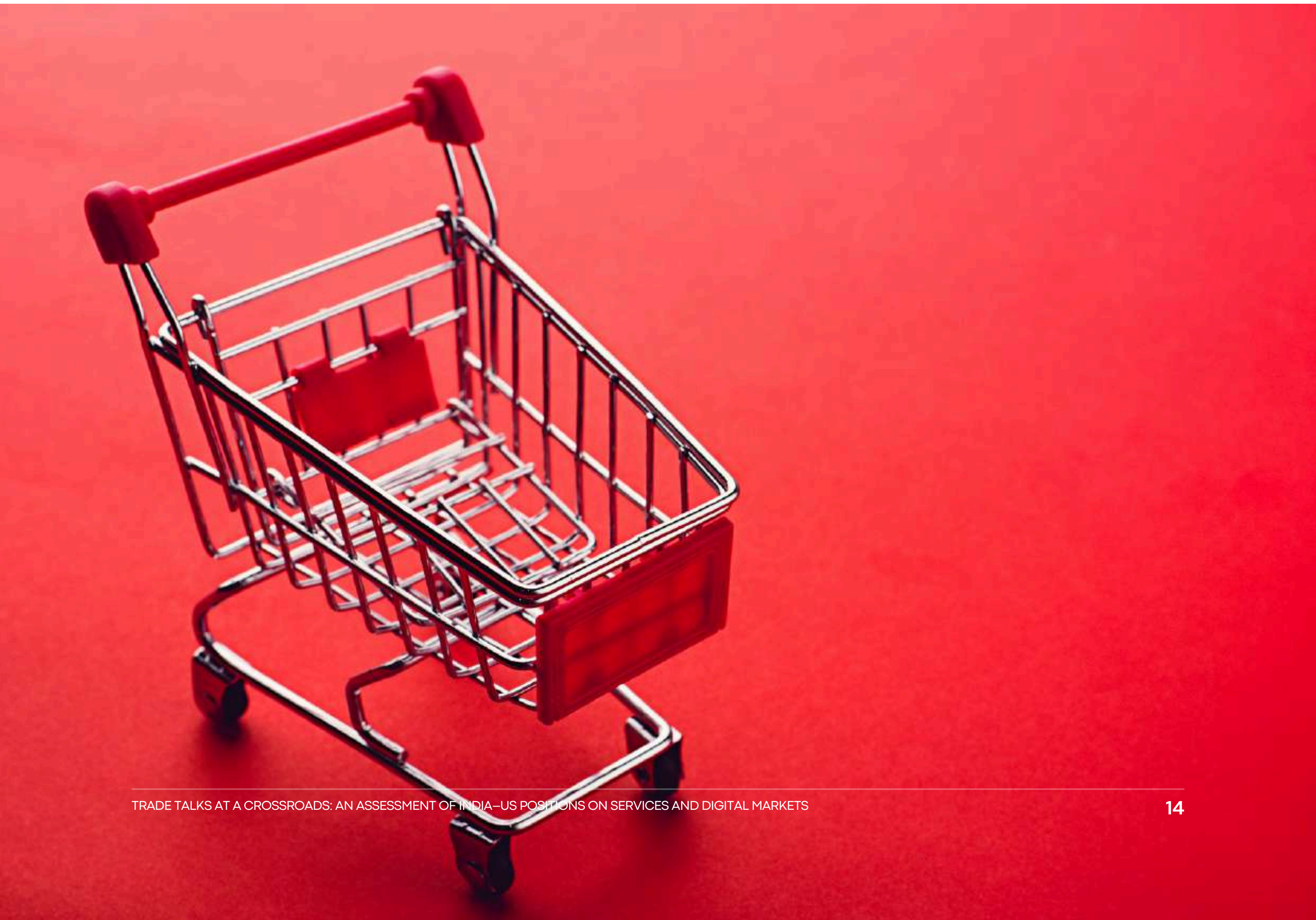
Trade Implications

The divergence between the Indian and US regulatory approaches creates significant friction in bilateral trade negotiations. From a US perspective, India's tightly regulated retail environment, marked by equity caps, sourcing mandates, and sectoral carve-outs, constitutes a barrier to commercial presence under GATS Mode 3.

This asymmetry is especially stark in e-commerce, where US platforms face restrictions not present in their home market. The inability to pursue inventory-led models or preferential vendor arrangements in India limits operational flexibility for US firms, such as Amazon and Walmart-owned Flipkart. These constraints are seen as discriminatory, especially given that Indian firms do not face analogous limitations when operating in the US.

Moreover, India's retail investment policy may become a bargaining chip in broader trade negotiations. US negotiators are likely to press for the relaxation of FDI rules, particularly in multi-brand retail and e-commerce, as part of any deal involving digital services, data flows, or investment facilitation. India, in turn, may seek concessions on data localisation, technology transfer obligations, or labour mobility.

In this context, India's continued adherence to a restrictive FDI regime could limit its leverage in emerging domains, such as digital economy rulemaking, supply chain integration, and advanced logistics. A calibrated reassessment of the policy, especially in light of technological shifts, consumer preferences, and global supply chain realignments, may offer a path to balancing domestic priorities with evolving trade and investment partnerships.



III. Financial Services

A. Banking Services

GATS Commitments and India's Domestic Regulations

India's banking sector remains heavily regulated and dominated by public-sector banks (PSBs). Under India's GATS commitments, foreign banks are allowed to operate either through branches (subject to an annual quota of 12 new licenses) or via locally incorporated wholly owned subsidiaries. However, in practice, foreign banks face additional regulatory hurdles. For instance, the Reserve Bank of India (RBI) requires them to submit detailed branch expansion plans each year, which are often subject to opaque review criteria and discretionary approval. This restricts their ability to scale operations freely.

Foreign ownership is also tightly capped. In private sector banks, foreign ownership of up to 74 percent is permitted; foreign ownership exceeding 49 percent requires prior approval from the government. In nationalised PSBs, foreign holdings are limited to just 20 percent, with no scope for management control. Similarly, foreign investment in key financial infrastructure, such as stock exchanges, depositories, and clearing corporations, is capped at 49 percent to maintain domestic control over systemic institutions.

Moreover, all significant foreign investors in banks must pass the RBI's 'fit and proper' test, which, while intended to ensure sound governance, lacks transparent benchmarks and often delays investment decisions.[15] Even when strategic investors are approved, India typically requires them to reduce their effective voting rights to 26 percent over time, thereby undermining their long-term influence and strategic planning.

India's banking sector liberalisation is consistent with the latitude permitted under its GATS Schedule. Under GATS Article XVI, India retains the right to impose quantitative restrictions and licensing conditions where it has not taken full commitments. Moreover, India has not participated in the plurilateral Trade in Financial Services Agreement, unlike some developed economies that have taken extensive liberalisation commitments.

Political Economy Considerations

India's decision to nationalise its major commercial banks in 1969 was rooted in both ideology and economic necessity. Confronted with a crisis of credit access in the rural economy, stagnant growth, and the fallout from geopolitical and climate shocks in the 1960s, the Indira Gandhi-led government sought to break the perceived nexus between big industry and finance. Nationalisation was seen as a way to extend banking services to underserved areas, mobilise domestic savings, and direct credit towards priority sectors such as agriculture, exports, and small-scale industries.[16] During this period, foreign banks were permitted to operate only as branches, with a limited scope typically confined to servicing multinational clients, trade finance, and urban corporate banking, with no systemic role in India's broader developmental agenda.

The 1991 balance of payments crisis and subsequent liberalisation reforms marked a turning point. The first Narasimham Committee (1991) recommended allowing private and foreign banks to enter the market to improve competition and efficiency either through branches or subsidiaries subject to minimum assigned capital and reciprocity.[17] Following this, the RBI permitted the entry of foreign banks as branches, subject to reciprocity and other prudential considerations. Foreign banks and finance companies were also allowed to invest up to 20% as technical collaborators (within an overall 40% ceiling) in new private sector banks, subject to government approval, provided the foreign bank had no existing presence in India. Foreign equity participation in new Indian private banks was permitted, and joint ventures between foreign and local banks in non-banking financial services were allowed in line with the foreign investment policy. As a result of these reforms, 19 new foreign banks with a total of 47 branches were allowed to operate in India since January 1992.[18]

The second Narasimham Committee (1998) reiterated support for foreign bank participation in the Indian financial sector by suggesting that in addition to operating as branches, foreign banks should be permitted to establish subsidiaries or joint ventures in India. These entities were to be treated on par with Indian private sector banks, including with respect to branch expansion and directed lending obligations. The Committee introduced more stringent eligibility criteria, suggesting that only reputed foreign commercial banks with a well-diversified ownership structure should be allowed to set up subsidiaries or majority-owned subsidiaries. It also recommended raising the minimum start-up capital requirement for such subsidiaries from the existing US$10 million to US$25 million, to be brought in upfront rather than in a phased manner. Further, it suggested that foreign banks already operating in India through branches, and demonstrating a good track record, may be encouraged—on a case-by-case basis—to convert into subsidiaries.[19]

In 2005, the RBI published a discussion paper proposing a formal roadmap for such subsidiaries, intending to revisit the matter in 2009.[20] However, the global financial crisis derailed these plans, reinforcing the RBI's caution about exposing the Indian banking system to foreign shocks. It was only in 2013 that the RBI released comprehensive guidelines for foreign banks to incorporate locally as wholly owned subsidiaries, offering near-national treatment in return for meeting Indian regulatory obligations, including priority sector lending, local governance, and capital ring-fencing. Between 2013 and 2024, this framework has seen only modest uptake, with most foreign banks continuing to prefer the flexibility of operating through branches.

However, India's stance has begun to shift, subtly but steadily, under the pressure of capital needs. The sale of significant stakes in distressed institutions like Yes Bank to Japan's Sumitomo Mitsui Banking Corporation and the ongoing divestment of IDBI Bank signal the government's willingness to liberalise ownership norms to attract long-term foreign capital.[21] This pivot is driven by India's ambitious growth targets, large infrastructure pipeline, and a banking system that remains under-capitalised relative to the economy's scale

US Regulatory Landscape

The US operates a dual banking system, where any bank (including foreign entrants) may choose a federal charter (national bank) or a state charter (state-bank), with overlapping supervision by federal agencies (Federal Reserve, Office of the Comptroller of the Currency (OCC), Federal Deposit Insurance Corporation (FDIC), Consumer Financial Protection Bureau) and state banking departments.[22] Under the International Banking Act of 1978, branches and agencies of foreign banks must obtain an OCC federal license (or a state license) and then comply with uniform federal standards on reserves, capital, accounting, and, if FDIC-insured, deposit insurance. Separately, the Foreign Bank Supervision Enhancement Act 1991 requires advance approval from the US Federal Reserve (beyond OCC or state) to open any new branch or agency, and grants the Fed authority to examine or close US offices of foreign banks.[23]

Foreign banks generally favour operating as branches rather than US-incorporated subsidiaries because branches sidestep FDIC insurance and its associated capital and premium requirements. Foreign banks face lighter corporate-governance and reporting obligations, avoiding the Bank Holding Company Act's stress tests, Dodd-Frank Act's enhanced prudential rules, and intermediate holding-company mandates—

and can rely on their parent's capital base instead of raising and maintaining a complete set of local capital in the United States.

However, branches must still comply with state consumer-protection and lending laws in each jurisdiction. For example, under New York Banking Law, the Superintendent of Financial Services may examine the books, records, and accounts of any foreign bank branch or agency in New York, as well as related records maintained outside the state, to ensure compliance and protect depositors. This patchwork of federal–state oversight can create coordination challenges, though memoranda (e.g., the 1998 State Coordination Agreement) aim to streamline examinations across regulators.[24]

Unlike India's hard equity caps (74 percent in private banks, 20 percent in PSBs), the US imposes no statutory limit on foreign ownership of either national or state-chartered banks, consistent with its GATS Schedule (Mode 3: no numerical restrictions). Instead, it relies on prudential safeguards, capital adequacy, liquidity ratios, local ring-fencing via intermediate holding companies, home-host supervisory cooperation, and review under the Committee on Foreign Investment in the US (CFIUS) for national-security concerns to ensure foreign banks pose no systemic risk while granting them full market access.

Trade Implications

India needs foreign capital to meet its growth goals, which is why foreign banks are showing greater interest in the Indian market than Indian banks are in the US. However, India still places strict limits on foreign ownership and voting rights in banks, whereas the US allows full foreign ownership and regulates it through strict prudential norms. If India wants better access for its banks in the US, it could raise concerns about the complexity of dual regulation (federal and state). But since US rules are mostly prudential and apply equally to all banks, this may not be a strong negotiating point. Instead, India can consider offering greater access to US banks within limits in return for concessions in other sectors where it seeks market access. If the US wants India to ease its banking restrictions, it will likely have to offer something of value in exchange.

India has emerged as a global leader in digital public infrastructure (DPI), with platforms such as UPI (Unified Payments Interface) and the Account Aggregator Framework gaining global attention. US firms, including fintech majors and payment processors, are actively exploring partnerships, but restrictive FDI rules in banking and financial intermediation limit deep integration. Furthermore, India's data localisation norms and RBI's tight controls on cross-border payments and digital lending add compliance costs for US players.

B. Insurance Services

GATS Commitments and India's Domestic Regulations

India's insurance market has been gradually liberalised over the past 25 years. Between 2015 and 2024, the foreign investment ceiling increased in steps: 26 percent until 2015, then 49 percent (following the Insurance Act 2015), and subsequently 74 percent (with the Insurance Amendment Bill 2021). In the 2025 Union Budget, the government announced a move to 100 percent foreign ownership, signalling full liberalisation. However, India still has regulations that favour domestic incumbents and place onerous restrictions on foreign insurance providers. This position is also primarily in line with India's commitments under GATS in the insurance sector, which are largely unbound for both market access and national treatment across most modes of supply, with limited commitments only for specific segments such as freight insurance, reinsurance, and reinsurance intermediation—and even these are subject to significant regulatory and operational restrictions.[25] For instance, the state-owned Life Insurance Corporation of India (LIC) enjoys an explicit government guarantee on all its policies, a unique subsidy that draws customers.[26] Additionally, other legal safeguards require that a majority of any insurer's board be resident Indians, and that foreign-domiciled insurers or those with 33 percent foreign ownership hold higher solvency margins.[27] Thus, in practice, these rules create indirect constraints for foreign entrants even when the FDI levels are below the ceiling limit.

India's reinsurance regime also favours incumbents, since 2015 domestic reinsurers have a mandatory first-refusal right on treaties, and non-life insurers must offer any deal to Indian reinsurers before engaging a foreign one.[28] A waiver for life reinsurance was introduced later in 2019; however, non-life foreign reinsurance still follows a two-step process that requires cedants to first obtain quotes and then offer the best terms to Indian reinsurers before accepting any foreign offer. Additionally, cross-border reinsurers must be registered with the regulator and obtain a Filing Reference Number (FRN) through the Cross-Border Reinsurance portal. The application for FRN is to be made by any one local insurer and through the upload of rating and financial documents of the cross-border reinsurer.[29] An auto-renewal facility is available for three consecutive financial years following issuance of an FRN, after which the insurer must submit a fresh application through the Cross Border Reinsurers (CBR) portal.[30]

Moreover, there are indications that discriminatory requirements on cross-border foreign reinsurers for collateralisation or localisation of assets may be introduced in 2025, which may create a potential conflict. The Insurance Regulatory and Development Authority of India (IRDAI) issued a notice in February 2024 that from 2025, collateral requirements would come into effect, An Indian cedant will be required to hold a minimum collateral of 80 percent for CBRs with a credit rating of A- or above from Standard or Poor's (or equivalent) and 100 percent collateral from CBRs with a credit rating below A-. The collateral shall be either in the form of an irrevocable Letter of Credit from the CBR or premium/funds withheld by the ceding insurer.[31]

Political Economy Considerations

India nationalised its life insurance industry in 1956 with the creation of LIC and its general insurance industry in 1972 to achieve development and social goals.[32] While it began liberalising the insurance sector in 2000, a legacy of the preceding era persists where some assert that insurance must serve broad social objectives, such as providing low-cost coverage to the rural and poor, that private firms alone might not pursue.[33] Critics of complete liberalisation also state that foreign entrants will not be as committed to India's social priorities.[34] State-owned LIC, with its sovereign guarantee, exemplifies this model by channelling savings into long-term infrastructure and public projects. The government's cautious approach also enjoys political support from insurance unions, cooperative movements, and other groups, and is seen as preserving a public safety net. Nevertheless, India has moved steadily toward market-based solutions. T**he shift to 74 percent FDI and the removal of ownership limits reflect recognition that foreign capital and expertise are necessary to grow India's insurance market and expand coverage. Most recently, 100 percent FDI was approved on the condition that premiums be invested domestically, a compromise allowing foreign funds while ostensibly safeguarding local capital markets.**[35]

US Regulatory Landscape

US insurance regulation is largely state-based. In 1944, the US Supreme Court ruled that insurance is interstate commerce subject to federal law.[36] However, the US Congress overturned the verdict by passing the McCarran-Ferguson Act (1945) to affirm that acts of Congress which do not explicitly regulate the business of insurance will not have precedence over state laws regulating insurance. Since then, each state insurance department enforces licensing, capital, and consumer-protection rules for insurers and agents. Federal involvement is limited to the extent that the Federal Insurance Office under the Treasury Department monitors systemic risk and international matters, and major insurers can be designated systemically important (subject to US Federal Reserve oversight).[37]

On the whole, foreign insurers entering the US face no outright FDI limits federally, but must obtain licenses in each state (admitted insurers) that they seek to operate in, and meet local requirements (solvency, local presence, management residency, etc.). Alternatively, if an insurer is unwilling to take a risk, then a surplus lines broker places risks with a non-admitted insurer when coverage cannot be obtained from admitted insurers in the state.

While US law does not impose a federal ceiling on foreign ownership in insurance, the state-driven nature of regulation introduces a complex patchwork of additional conditions that can be both prudential and non-prudential in character. Foreign insurers must navigate state-specific requirements that go beyond solvency and capital norms, including excise taxes, higher licensing fees, US citizenship or residency conditions for key personnel, and, in many states, explicit restrictions on government-owned or controlled insurers (both domestic and foreign). Several states also lack mechanisms for the initial entry of foreign insurers unless they are already licensed elsewhere in the US. These fragmented rules reflect the federalist structure of US insurance regulation and are captured as sector-specific limitations in the US Schedule of Commitments under GATS.[38]

Trade Implications

The legacy regulatory preferences that favoured Indian firms, particularly in reinsurance, have drawn criticism from the US for undermining national treatment principles. The US is likely to seek binding commitments on market access and national treatment similar to the disciplines it secured in USMCA.

At the same time, India has a window to pursue reciprocal gains. The US concluded 'Covered Agreements' with the EU (2017) and the UK (2018), under which it removed collateral and local presence requirements for reinsurers from those jurisdictions, subject to strong home-country supervision.[39] India could seek similar treatment, particularly recognition of IRDAI's regulatory standards and exemption from duplicative compliance, which would allow Indian reinsurers to enter the US markets more smoothly. Further, India may request inclusion as a 'reciprocal jurisdiction' under the National Association of Insurance Companies' passporting framework, which enables certified reinsurers to operate across multiple states without redundant licensing, easing fragmentation risks.[40]

Such requests could either support the expansion ambitions of Indian firms or be used as leverage to resist additional US demands in other sensitive sectors. **Recent announcements on sectoral liberalisation suggest that insurance is one area where the two sides are broadly aligned. Yet, whether India goes further in eliminating all remaining non-prudential barriers such as taxes, management residency, or limits on foreign government-owned insurers, will likely depend on the concessions Washington is willing to offer in return, either in this sector itself or in other domains.**

C. Electronic Payments

The 2025 NTER also raises issues with the National Payments Corporation of India's (NPCI) market share cap rule, which has yet to be implemented. Two companies, Google and Walmart-owned PhonePe, account for a large share of UPI transactions. Implementing the market cap rule may be unfeasible, as it would require Google and PhonePe to reject transactions and deny service, which may, in turn, jeopardise the success of UPI and prompt consumers to turn to other modes of payment. It seems unlikely that NPCI will implement the rule in the foreseeable future.

IV. Audiovisual Services

GATS Commitments and India's Domestic Regulations

Audio-visual services are an influential medium for cultural expression and trade and are heavily regulated.[41] WTO members use measures such as content regulation, restrictions on foreign ownership and control, and tax incentives and government subsidies to limit foreign cultural influences and spur domestic programming. Negotiations on audio-visual services have been highly contentious in the history of GATS.[42] In fact, the commercial and cultural stakes in international trade in audiovisual services were so high that disagreement over how to address them nearly derailed the Uruguay Round.

Audio-visual services under GATS are listed within a sub-sector of the communications services and classified into the following subdivisions:

1. Motion picture and videotape production and distribution services
2. Motion picture projection service
3. Radio and television services
4. Radio and television transmission services
5. Sound recording[43]

In the Uruguay Round, India offered limited concessions on film production, film distribution and terrestrial broadcasting of audio-visual services. India only committed to motion picture or videotape distribution services. Even within this sub-category, India scheduled partial commitments in commercial presence (Mode 3) and left all other modes unbound.[44] Whereas, the US undertook substantial commitments to further liberalise various sub-categories. The US also urged India through a plurilateral request to liberalise the audio-visual sector, particularly in sub-divisions such as advertising services, motion picture production and distribution services, videotape production and distribution services.[45] Despite this, India continues to retain barriers to entry in specific segments through foreign equity ceilings, licensing and registration requirements, restrictions on cross-media ownership, and limitations on advertising, among others.

India regulates broadcast distribution tightly, and any barriers through domestic audio-visual regulations restrict the entry of foreign service providers. There are limits on foreign ownership in the audiovisual and media sectors, specifically in FM radio (49 percent), newspapers (26 percent), and digital media firms that upload and stream news and current affairs (26 percent). India's Uplinking and Downlinking Guidelines for Television Channels also set out nationality and residency-based conditions for appointment in managerial positions of any company seeking to uplink a channel.[46] These provisions can be interpreted as direct barriers for foreign-owned media companies and are potentially discriminatory.

The Ministry of Information and Broadcasting (MIB) favours domestic Indian satellites to provide capacity for direct-to-home (DTH) television services. For example, DTH providers cannot directly contract foreign satellite capacity; they must purchase capacity from Antrix, the commercial arm of the Indian Space Research Organisation (ISRO), which only grants permits if domestic satellites cannot supply it.[47] ISRO permits the use of foreign satellite capacity provided the foreign satellite operator sells the capacity to ISRO, which in turn resells the capacity to the end-user with a surcharge. These measures discourage market access for foreign content and infrastructure providers by limiting the ways to reach Indian consumers.

The NTER also raises issues with the Telecom Regulatory Authority of India's (TRAI) regulation of

broadcasting services. TRAI regulations regulate the rates of channels and place restrictions on how service providers bundle them. Overall, rate regulation and bundling restrictions limit the amount of subscription revenue that broadcasters can earn, which increases their dependence on advertising revenue. The argument raised by broadcasters is that fewer restrictions on subscription revenue will allow them to invest in producing niche, innovative content.

Bundling restrictions also limit the ability to combine niche content, like informational/documentary channels, with popular content such as sports. Such restrictions can have an outsized impact on foreign content produced by small content providers, which may not have the resources to negotiate individually with India's 60,000 local cable operators, 880 multi-system operators (Den, Hathway), 4 Direct-to-Home providers (Tata Sky, Airtel), and 333 broadcasters.[48]

Notably, the local industry has consistently raised concerns about the economic burden of regulation on the sector. In a response to a TRAI consultation paper on Inputs for formulation of National Broadcasting Policy-2024, the Indian Broadcasting and Digital Foundation, an industry association, noted that "economic regulation is damaging the commercial prospects of the Cable and Satellite TV Broadcasting sector".[49] Citing a 2022 Competition Commission of India market study, the IBDF also noted that the current scheme of TRAI regulation in place in the cable and satellite broadcasting industry, namely price ceilings and bundling restrictions, militated against the fundamental economics of the sector.[50]

The US industry has earlier voiced concerns over India's Central Board of Film Certification (CBFC) and its lingering legacy film certification issues.[51] The CBFC has a well-reported history of issuing certifications for foreign films without obtaining certified copies of the imported film's licence and customs clearance permits.[52] Internal lapses in tracking film certification records also carry the risk of duplicate certificates being issued to multiple individuals who do not hold the copyright over the film. These lapses have raised concerns about unauthorised content distribution and infringement of proprietary rights.

Political Economy Considerations

The Indian government heavily regulates both the content and carriage components of the audio-visual sector due to the cultural and social sensitivities involved. India has consistently relied on this position (even during the Uruguay Round) to indicate that trade in this sector must account for the need to preserve cultural identity and social values.

Prior to liberalisation, audio-visual services were tightly controlled by the public sector. The mid-1990s brought in private cable and satellite transmissions and deregulation of broadcast news and ultimately opened the industry to regional, national and transnational entities.[53] Gradually, transnational media corporations arrived in India with the appeal of the growing purchasing power of the expanding Indian middle class.[54] India initiated regulatory reforms from the 1990s that have been crucial in facilitating the entry of private players and openness to foreign capital in various sectors, including the audio-visual services sector.

As stated earlier, India's audio-visual sector is largely unbound, and this has allowed lawmakers to bring in controls to protect consumers and domestic strategic industries. TRAI's regulations on content aggregation and distribution do not allow bundling of channels or certain types of distribution partnerships. The objective is to prevent unfair tie-ins between popular and niche channels, ultimately protecting consumers. Content aggregation is commonly used internationally, as it allows niche and foreign content to be bundled and sold by domestic partners without a significant local presence or sales force. The NTER recognises that these regulations cause difficulties for small and international content providers because these companies must interact with each of the many local cable operators, radio broadcasters, and television broadcasters they seek to target.

US Regulatory Landscape

The Federal Trade Commission (FTC), the Federal Radio Commission (FRC) and the Federal Communications Commission (FCC) are the three key federal agencies regulating the media ecosystem in the US. Today, the FCC holds primary responsibility for regulating interstate and international communications by radio, television, wire, satellite, and cable within the US. An independent US government agency overseen by Congress, the FCC is directed by five commissioners who are appointed by the US President and confirmed by the US Senate.

Even before the Uruguay Round, the US had begun deregulating its audio-visual sector. The FCC started overturning existing rules on radio and television as early as the 1970s and moved towards an overall reduction in FCC oversight of station and network operations. Between 1981 and 1985, US lawmakers significantly altered laws to empower media licensees, thereby reducing the FCC's control. Subsequently, the regulatory shift enabled the creation of large mass-media companies that increasingly controlled the US media market. By the late 1980s, the US Congress was growing increasingly concerned about media market consolidation and the costs of deregulation. As a consequence, lawmakers began to slow the FCC's release of control. However, the US maintained its approach of deregulation and in 1996 the Telecommunications Act was passed and brought in a wave of deregulation in the form of: (1) extension in TV and radio station license terms from five to eight years; (2) corporations were allowed to acquire unlimited TV and radio stations; and (3) cross-ownership of TV and radio stations in the top 50 markets.[55]

Presently, the Communications Act of 1934 (Communications Act) allows the FCC to regulate the audio-visual sector within the US. The Communications Act expressly preserves some state regulatory authority over these technologies, and this split in powers has been the source of dispute. The FCC has the upper hand in such conflicts as the Communications Act gives it broad regulatory authority along with the ability to preempt state laws that frustrate its regulatory actions.[56] However, the FCC's statutory authority is not boundless and is limited by the scope of its regulatory jurisdiction, laws that protect or define state powers and legal precedents that courts use to maintain the balance between the federal and state governments.[57]

Unlike India, the US has avoided restrictions on content and instead focused more on caps on foreign investment in the communications sector. The Communications Act limits the level of foreign ownership in broadcast and common carrier wireless licensees and requires FCC approval if foreign ownership exceeds certain thresholds.[58] Specifically, FCC approval is necessary before aggregate foreign ownership in the controlling US parent company of broadcast, common carrier wireless, and certain other FCC licensees exceeds 25 percent of the US parent's equity and/or voting interests.[59] The FCC can approve higher levels of foreign ownership if it is of the view that doing so will be in the public interest. The FCC considers national security, law enforcement, foreign policy, and trade policy issues in its public interest analysis of foreign ownership petitions, and coordinates as needed with relevant executive branch agencies.[60] Thus, broadcast networks are protected by ownership limits.

Trade Implications

India has significant trade potential in specific sub-sectors of the audio-visual services industry. India's exports of audio-visual services include films, music, television software, and radio programmes, as well as post-production facilities, computer animations, and graphics. However, India's regulatory model in broadcasting can clash with these trade aspirations. Notably, under GATS Article IV, India's commitments in the audiovisual sector are limited, and the US maintains broad freedom in audiovisual imports. The NTER urges India to adopt an 'open skies' satellite policy to improve market access for foreign providers.[61] In any US–India trade discussions, broadcasters would likely press India to relax such restrictions.

On the other side, India may point to US ownership rules as analogous measures: the FCC's foreign-ownership limits protect US broadcasting.[62] Both sides share an interest in increasing content diversity (e.g. digital streaming). A possible compromise can be scoped in the film certification process, where treaty co-productions may not require a film certification. Many countries permit films to be deemed suitable for domestic consumption if they meet the requirements of bilateral or multilateral treaties. These typically require proportional financial and creative input from both parties to the treaty. For instance, Australia and France use similar mechanisms to expand their film footprint for international projects with little domestic subject matter. India can explore these solutions to tap into the US's $649 billion media and entertainment industry and bolster India's growing film production capabilities.

CHAPTER II: DIGITAL SERVICES

I. Localisation and Cross-Border Data Flows

A. America's Position on Data Flows

The NTER 2025 raises concerns about India's existing and proposed data localisation mandates.[63] The former pertains to the RBI implementing a requirement in 2018 for all payment service suppliers to store all information related to electronic payments by Indian citizens on servers located in India.[64] In 2019, the RBI extended this rule to banks operating in India.[65] US firms contend that these data storage requirement hampers the ability of service suppliers to detect fraud and ensure the security of their global networks

More recently, the Draft Digital Personal Data Protection Rules (Draft Rules), which provide implementation guidance for large tracts of India's nodal data protection law, the Digital Personal Data Protection Act, 2023, introduce data localisation requirements under Rules 12(4) and 14. Rule 12(4) prevents significant data fiduciaries ("SDFs") from transferring personal data specified by the central government outside India. Rule 14 provides that any transfer of data outside India will be subject to restrictions that the Central Government may impose regarding the disclosure of data to certain foreign governments or their agencies. Rule 14 was likely introduced to address issues with data being transferred to foreign adversaries and will, in all likelihood, not be applied to the US.

The Japan-US Digital Trade Agreement and the USMCA both prohibit data localisation requirements. For instance, Article 19.12 of the USMCA explicitly states that no party may require a covered person to use or locate computing facilities within its territory as a condition for conducting business in that territory.

Similarly, Article 11 of the Japan-US Digital Trade Agreement and Article 19.11 of the USMCA affirm the principle of allowing free cross-border data flows. However, these provisions also recognise that restrictions may be imposed under certain conditions. Any such measure must not constitute arbitrary or unjustifiable discrimination, nor serve as a disguised restriction on trade. Moreover, restrictions must not be more trade-restrictive than necessary. In essence, while the agreements aim to prevent forced data localisation and promote cross-border data flows, they allow for narrowly tailored exceptions that minimise government-imposed distortions to digital trade.

B. US-India Misalignment on Cross-Border Data Flows and Data Localisation

The regulation of cross-border data flows has emerged as a key sticking point in India–US digital trade discussions. The US has historically adopted a liberal stance on data mobility in trade agreements, whereas India's approach has predominantly prioritised domestic security and regulatory priorities. However, recent US regulatory shifts show a growing convergence in how both countries approach sensitive data transfers.

The Digital Personal Data Protection Act, 2023 (DPDP Act) and the Draft DPDP Rules, 2025 (Draft Rules) will fall short in aligning with the USMCA, the Japan-US Digital Trade Agreement and the NTER. We elaborate on the friction between India's data protection framework and the trade obligations under Article 11 of the Japan-US Digital Trade Agreement and Article 19.11 and 19.12 of the USMCA below:

1. **Determination of Untrusted Jurisdictions:** Articles 11 of the US-Japan Digital Trade Agreement and 19.11 of the USMCA promote unrestricted cross-border data flows, subject to limited, clearly defined exceptions. This approach contrasts with India's stance under the DPDP Act. Section 16 of the Act introduces a 'negative list' mechanism, restricting data transfers to jurisdictions deemed untrustworthy. However, the DPDP Act does not specify the criteria the Central Government will use to determine which countries are placed on this list. It is widely assumed that geopolitical factors will influence these decisions. Until the government officially notifies the list of restricted jurisdictions, the basis for such designations remains speculative.

   General Concern: Any blacklisting of jurisdictions under the DPDP Act must adhere to the principles of non-discrimination and necessity. India's compliance with these standards is essential to avoid the appearance of a disguised trade barrier, which could put it at odds with Article 11 of the US-Japan Digital Trade Agreement and Article 19.11 of the USMCA. If the DPDP Act or its implementing rules were ever challenged under these agreements, they would need to demonstrate compliance with these obligations.

   The inclusion of data localisation requirements in the DPDP Rules appears legally tenuous, as the parent legislation contains no express provision authorising such measures. If localisation mandates are included in the final version of the rules, they are likely to face legal challenges.

2. **Data localisation requirements risk creating arbitrary or unjustifiable restrictions on trade:** Under Section 16(2) of the DPDP Act, sector-specific regulations can override the general framework for cross-border data transfers set out in Section 16(1). In practice, India has adopted an 'all-of-government' approach to data localisation, implementing a range of cross-sectoral policies that restrict data transfers abroad.

   India has already introduced a fragmented framework of localisation mandates across various sectors. For example, the RBI requires payment data to be stored locally. In the telecommunications sector, regulations mandate the local storage and processing of subscriber data and prohibit the transfer of accounting information related to users. Similarly, the Ministry of Electronics and Information Technology, through its cloud service provider empanelment process, requires data centre facilities to be located within India and mandates that data must reside exclusively on Indian soil.

   Moreover, the rules under the DPDP Act may exceed the authority granted by the parent legislation. While the Act permits the transfer of personal data outside India except to countries placed on a negative list, the draft rules appear to introduce a whitelist approach, allowing transfers only to

explicitly approved jurisdictions. This shift effectively narrows the original intent of the Act, raising concerns about the legal validity of the rules.

General Concern: As India enacts sector-specific data localisation frameworks, it may increasingly risk non-compliance with Article 11 of the US-Japan Digital Trade Agreement and Article 19.11 of the USMCA, potentially exposing itself to disputes under current or future trade agreements. A fragmented, non-harmonised localisation regime increases the likelihood of arbitrary or unjustifiable trade restrictions, particularly affecting foreign service providers. These sector-specific mandates often lack mechanisms to assess whether the measures are necessary or proportionate, thereby favouring domestic data retention by default.

However, restrictions on cross-border data flows cannot serve as disguised protectionism that benefits domestic firms at the expense of foreign competitors. Any such measure must be justified and proportionate to its stated objective—it must not be broader or more burdensome than what is strictly necessary to achieve its intended purpose, in line with the necessity test.

3.. **Discriminatory Treatment of Large Data Processors:** The Draft Rules under the DPDP Act propose that the government may impose conditions on outbound transfers of personal data from India by both Indian and foreign businesses, thereby restricting the free flow of data across borders. Significant Data Fiduciaries (SDFs) are likely to include large data processors. The criteria outlined in the DPDP Act for designating a firm as an SDF include the volumes of data processed by the entity, which may be subject to data localisation requirements for specific categories of personal and related traffic data. A government-appointed committee would be empowered to identify specific types of data that SDFs would be prohibited from transferring outside India.

Legal and Policy Concerns: The criteria for determining which categories of personal data must be localised remain undefined. The vague and broadly worded provisions of the Draft Rules raise the risk that all personal data could be subjected to localisation requirements, even when such protection is unnecessary. Such a lack of clarity could result in overregulation, disproportionately burdening businesses—particularly large entities—without a clear justification rooted in necessity or proportionality.

Undefined Restrictions on Outbound Data Transfers: As previously noted, Rule 14 of the Draft Rules grants the Central Government sweeping authority to impose future conditions on cross-border data transfers. This open-ended power introduces the risk of arbitrary or unpredictable regulatory changes, particularly as such decisions may fall outside the scope of public consultation. The resulting legal uncertainty poses significant compliance challenges for affected entities.

Binding Concerns: Without clearly defined criteria or procedural safeguards guiding when and how data transfer restrictions can be imposed or revoked, such measures may violate the principle of non-arbitrariness under Article 11 of the US-Japan Digital Trade Agreement. Additionally, foreign companies operating in India may face conflicting legal obligations, as they must comply with India’s data localisation mandates while also meeting data access or transfer requirements imposed by their home jurisdictions. These regulatory tensions could hinder their ability to provide services in India, ultimately affecting Indian users' access to global platforms and services.

C. US’s Domestic Laws on Data Flows

The Department of Justice adopted a Rule on Preventing Access to US Sensitive Personal Data and Government-Related Data by Countries of Concern or Covered Persons that came into effect on April 8,

2025.[66] The Final Rules create a framework that regulates for the first time the cross-border flow of data from the US to parent entities headquartered in 'countries of concern', including China (including Hong Kong and Macau), Cuba, Iran, North Korea, Russia, or Venezuela. This negative list approach is similar to the one adopted by India under Section 16 of the DPDP Act.

The US's new regime restricting CBDF of sensitive data is a dramatic policy shift. The US has long resisted restrictions on cross-border transfers of personal data and lacks a privacy law at the federal level. An additional concern is its impact on the review of foreign investments by the CFIUS, an interagency committee that assesses potential national security risks in these investments. The Final Rules create a 'backdoor CFIUS' mechanism that restricts investment transactions in US businesses by investors in "countries of concern", even if these transactions are cleared by CFIUS.[67] The Final Rules represent what is likely to be the opening salvo in the national regulation of the cross-border flow of data from the US to outside of the US, making the US a third standard-bearer in data privacy schemes alongside the European Union and China.

D. Situating India's Focus for Future Negotiations

India's stance on digital trade negotiations has focused on protecting its autonomy to regulate data in the public interest and ensure that the government can achieve its domestic digital and data governance goals without being encumbered by its trade obligations. India refused to endorse the proposal on 'Data Free Flow with Trust' proposed at the G20,[68] despite its close political relationship with Japan (which advanced this proposal). India also refused to sign the Regional Comprehensive Economic Partnership (RCEP) Agreement, which contained provisions on data localisation and cross-border data flows.[69] Briefly before rejecting the RCEP Agreement, India did allow the chapter to go through so long as exceptions on 'essential security interests' and legitimate public policy objectives were retained. This negotiation process demonstrated India's flexibility in negotiations on cross-border data flows.

With the adoption of the Final Rules, the US has exhibited a departure from its longstanding opposition to data transfer restrictions, bringing its policy stance closer to India's approach under Section 16 of the DPDP Act. Both frameworks now rely on a negative list model, linking data transfer restrictions to national security and geopolitical concerns. This regulatory shift may weaken the United States' advantage in trade negotiations. In essence, both jurisdictions cite similar rationales for protecting sensitive personal and national security-related data from unfriendly jurisdictions. The RCEP provision on cross-border data flows has the broadest exceptions, possibly because it includes several states that have imposed varying degrees of data localisation mandates. The USMCA also allows members to derogate from an obligation in the agreement if they are doing so to protect their 'essential security interests.' Similar verbiage may be considered in the India-US deal.

India can revisit its position in the RCEP negotiations in its talks with the US. India is not an outlier but a similarly situated actor that seeks to prioritise national/sovereign interests. Indeed, negotiating always entails some degree of compromise. As discussed earlier, India has, in the past, engaged in reciprocal compromise based on strategic interests. India needs not remain in the trenches against an 'all or nothing' deal that forces it to adopt consensus-based rule-making on all issues of digital trade. Experts have also recommended exploring approaches adopted by the Digital Economy Partnership Agreement between Singapore, Chile and New Zealand, whereby members can decide on an assortment of modules they want to comply with, allowing India to implement domestic frameworks that work in our interest.[70]

A tiered strategy for classification of blacklisted entities into 'green,' 'yellow,' and 'red' lists can be explored.[71] **Drawing inspiration from the US, which has instituted sector-specific privacy legislation with input from specific ministries, India can contemplate the stratification of industries when assessing the**

blacklisting of jurisdictions.[72] **Lastly, India can introduce mechanisms similar to the EU's Standard Contractual Clauses and Binding Corporate Rules to facilitate cross-border data flows while ensuring privacy protection.**

India's current approach to cross-border data flows and localisation reflects a broader effort to assert digital sovereignty and regulatory autonomy. However, in a rapidly converging global policy environment, exemplified by the US's new outbound data controls, India may benefit from recalibrating its stance. Pursuing strategic interoperability, adopting safeguard-based exceptions, and integrating contract-based mechanisms (e.g., standard contractual clauses or binding corporate rules) can help strike a balance between domestic regulatory goals and global trade compatibility.

II. Personal Information Protection

As it stands, Article 15 of the US-Japan Digital Trade Agreement and Article 19.8 of the USMCA requires parties to commit to will require India to adhere to the following data protection obligations:

1. Publish information on measures 'all users' can rely on to secure data protection of their personal data, including detailing: (1) how natural persons can pursue remedies; and (2) compliance obligations by enterprises.
2. Encourage adoption of alternate frameworks that allow for interoperability between different data protection regimes.
3. Restrictions on cross-border flows of personal data are necessary and proportionate.

To this end, mutual recognition of regulatory outcomes, alignment with broader international frameworks, information exchange and collaboration are agreed on a best-efforts basis. While the US is yet to enact a federal privacy law, India enacted the DPDP Act in 2023 and though not mentioned in the NTER, the legislation presents significant business hurdles for companies, and lacks basic alignment with other privacy laws in ways that make compliance burdensome for both companies (foreign and domestic) and users.

A. US-India Misalignment on Standards of Protecting Personal Information

1. **Consent-Heavy Framework:** The DPDP Act relies on a notice-and-consent framework to ensure the lawful processing of personal data. As an alternative to consent, all other lawful grounds for processing personal data have been amalgamated under the 'legitimate uses' section, including some grounds of processing that previously appeared under a 'reasonable purposes' category in previous iterations of the bill. Notably, the list of legitimate uses in Section 7 of the DPDP Act does not include similar provisions to the grounds of contractual necessity and legitimate interests found in EU-style data protection laws, leaving private fiduciaries with limited options for grounding the processing of personal data outside of consent, including for routine or necessary processing operations. Legitimate interest allows data to be used for any lawful purposes, such as fraud prevention, system security updates, or marketing, without requiring consent from users each time.

   Following the introduction of a data localisation mandate in the Draft DPDP Rules, the US-India Information and Communication Technology Working Group recently discussed mechanisms for cross-border data transfers.[73] Discussions focused on exploring the Cross-Border Privacy Rules (CBPR) system, a certification-based framework that enables the safe transfer of personal data between member countries. **However, even before India contemplates adherence to the CBPR, there are technical gaps in the DPDP Act that need to be addressed. For instance, the DPDP Act does not impose any direct obligation and liability on data processors, which is a standard requirement under**

the CBPR system and most of its members' frameworks. Currently, India is also not a member of the CBPR Forum, owing to inconsistencies between the DPDP Act and the foundational requirements of the CBPR system.

General Concerns: Articles 15 and 19.8 appear to account for diversity in the digital economy, including the diversity of destinations and business models, to allow contracting parties to adopt a broad toolkit for the lawful processing of personal data. With an overwhelming reliance on consent, India offers a limited toolkit for the lawful processing of personal data under the DPDP Act. This will limit the adoption of interoperable mechanisms (standard contractual clauses or any Cross Border Privacy Rules equivalent).

2. **Broad Exemptions Disenfranchise Users:** Article 15 and 19.8 require contracting parties to adopt or maintain a data protection framework that extends protection to "*all users of digital trade*". The obligation requires a framework that affords all users protection against the data processing activities of private and government data fiduciaries.

   The DPDP Act gives the government broad powers to exempt any of its agencies from all obligations under the Act. Any exempted agency of the government can collect and process personal data without following any of the safeguards prescribed in the legislation, such as securing consent, protecting data from breaches, and maintaining accurate and complete data, for any purpose the government determines. Section 17 of the DPDP Act allows the central government to exempt any instrumentality of the State for three purposes, (i) in the interests of sovereignty and integrity of India, security of the State, friendly relations with foreign States, (ii) to maintain public order or (iii) to prevent incitement to any cognizable offence relating to any of these.

   Binding Concern - Articles 15 of the US-Japan Digital Trade Agreement and 19.8 of the USMCA require the legal framework to be applicable to all users, including those interacting with government services that ingest and process personal data. Section 17 of the DPDPA disenfranchises users interacting with exempted entities from the protections of India's nodal data protection framework. Additionally, the DPDP Act does not specify how users can seek legal recourse against erring exempted entities in the event of a personal data breach; therefore, it fails to meet the requirement of providing users with avenues to pursue remedies as required under Articles 15 and 19.8.

3. **Absence of Necessity and Proportionality**: The DPDP Act's original approach permitted restricted data flows based on a negative list of countries, prohibiting transfers to nations deemed hostile to India's interests. However, the Draft Rules extend this restriction by prohibiting Significant Data Fiduciaries (SDFs) from transferring entire classes of data to any country. The Draft Rules create an artificial and inconsistent differentiation among entities. Specifically, they restrict data transfer for SDFs based on data categories, presumably by sensitivity, while allowing smaller entities to transfer the same types of data abroad. The Draft Rules do not explain why this distinction exists, creating regulatory uncertainty and a mandate that allows smaller entities to reap the benefits of these relaxed restrictions. Additionally, the DPDP Act and Draft Rules also allow for subjective and amorphous categorisation of select large entities as SDFs, and impose additional obligations.

   Binding Concern: Under the Indian regime, there is no statutory requirement to ascertain necessity or proportionality before imposing any data transfer restrictions on SDFs. Thus, SDFs will be subject to discriminatory and onerous obligations, without any determination on the necessity or proportionality of such restrictions. Therefore, these provisions fail to meet the requirement of ensuring restrictions on data transfers are necessary and proportionate under Article 15 and 19.8.

Thus, these restrictions create an artificial and inconsistent differentiation among entities. Specifically, they restrict data transfer for SDFs based on data categories, presumably by sensitivity, while allowing smaller entities to transfer the same types of data abroad. The Draft Rules fail to explain why this distinction exists, creating regulatory uncertainty and a mandate that allows smaller entities to reap the benefits of these relaxed restrictions. This approach clearly undermines the principles set out in the article, is discriminatory and arbitrary in nature, and risks being interpreted as an unjustified barrier to trade. Of equal concern is the lack of clarity around the constitution and mandate of the executive-appointed committee, particularly since its recommendations will have a bearing on the implementation of data localisation norms.

4. **Lack of Clarity on Compliance Obligations by SDFs:** Currently, under the Draft Rules, there appears to be a lack of clarity on the definition of 'algorithmic software' under Rule 12(3), the 'due diligence' measures required to be undertaken, and the risk of harm envisaged.

   Binding Concern: In the absence of clarity around the meaning of algorithmic software and the nature of due diligence measures contemplated, Rule 12(3) fails to comply with the requirement of ensuring clarity in compliance obligations of entities under Article 15 and 19.8.

III. Other Potential Issues for India with US Demands in Digital Trade

1. India's Approach

India has, thus far, adopted a conservative approach to binding rules on digital trade. At the WTO, India has maintained that trade-related aspects of e-commerce should be discussed under the existing Work Programme and consequently should be exploratory and non-binding.[74] The first Indian FTA to contain a dedicated chapter was the India-Singapore Comprehensive Economic Cooperation Agreement (CECA), which came into force in 2005.[75] The others are the recently inked India-United Arab Emirates (UAE) Comprehensive Economic Partnership Agreement and the India-UK Comprehensive Economic and Trade Agreement. India has consistently championed the inclusion of binding and ambitious digital trade provisions in its trade agreements, emphasising cross-border data flows, prohibitions on data localisation, non-discriminatory treatment of digital products, and source code protection. The USMCA and the US–Japan Digital Trade Agreement both reflect this high-standard approach.

2. Definition of Digital Product

The USMCA defines digital products as computer programs, text, video, images, etc. that are digitally encoded and produced for commercial sale or distribution.[76] It also clarifies that digital products do not include a digitised representation of a financial instrument, including money.

3. Issues with the Definition of Digital Product

Article 19.4 of the USMCA provides for non-discriminatory treatment of digital products. It provides that "no Party shall accord less favorable treatment to a digital product created, produced, published, contracted for, commissioned, or first made available on commercial terms in the territory of another Party, or to a digital product of which the author, performer, producer, developer, or owner is a person of another Party, than it accords to other like digital products."

The US presumably includes a provision for non-discriminatory treatment of digital products to address any potential discrimination that is not captured by existing WTO rules.

4. De Jure and De Facto Discrimination

De jure discrimination occurs when a measure facially distinguishes between domestic and foreign digital products based on origin or nationality. India's now-repealed Equalisation Levy, particularly its 2020 expansion, exemplifies such an approach. The levy was explicitly imposed only on non-resident e-commerce operators, excluding Indian firms, even if they were engaged in identical activities. This design created a clear origin-based classification that would likely violate obligations, such as Article 19.4 of the USMCA, which prohibits less favourable treatment of a digital product created or owned by a person of another Party. While India justified the levy on the grounds of ensuring tax neutrality, such origin-linked provisions invite direct challenges in trade forums if covered under digital trade disciplines. If India had been a party to such commitments, the Equalisation Levy would have represented a textbook case of de jure discrimination, as it legally distinguished foreign-origin digital products for differential treatment.

De facto discrimination, on the other hand, arises when a measure appears neutral on its face, applying equally to all firms but disproportionately burdens foreign enterprises in practice. Canada's 2024 Digital Services Tax (DST) is a prominent example. Although structured as a revenue-threshold-based measure aligned with OECD BEPS Pillar One (e.g., global revenues above €750 million), the DST has drawn criticism from the US for disproportionately affecting large American tech companies.[77]

Similarly, India's DPDP Act classifies Significant Data Fiduciaries (SDFs) using revenue, volume, and risk-based thresholds. While the law does not mention nationality, a large number of foreign, particularly US-headquartered, firms may fall within the SDF category due to their dominant role in India's digital ecosystem. This regulatory structure could be perceived as de facto discriminatory if it results in stricter compliance obligations on US firms, thereby attracting scrutiny under trade agreement provisions even if the measure is framed in origin-neutral terms.

To mitigate risks arising from both de jure and de facto discrimination claims, it is critical for India to negotiate explicit carve-outs in any digital trade chapter. These should include exclusions for taxation measures, akin to those found in the USMCA, and broader public policy exceptions that allow differential treatment where justified by legitimate objectives like consumer protection, cybersecurity, or national interest.[78] Additionally, conditioning the application of non-discrimination obligations to 'covered persons', i.e., foreign entities with a commercial presence in India can help ensure that only those subject to India's regulatory framework benefit from such protections. Together, these safeguards are essential for preserving India's fiscal and regulatory autonomy in an increasingly contested digital trade environment.

5. Digital Products in relation to Public Procurement

Given the wide-ranging definition of a digital product, there are also implications for preferential market access, as physical products are increasingly incorporating digital components. For instance, would a self-driving car qualify as a digital product under this provision, which has implications for the automotive sector?

The definition of digital product also implicates procurement. The NTER mentions the 2020 revision to the Public Procurement (Preference to Make in India) Order, 2017, which mandated preferences for domestically manufactured goods, including defence procurement. The 2020 Preference to Make in India Order instructed each ministry or department to draft a follow-on order that favours domestic suppliers, permitting mandated percentages to be applied to benefit Indian suppliers. While the US has raised issues with the preference given to Indian vendors for procurement, it is essential to note that Section 2(k) of the America First Trade Policy provides as follows:

(k) The United States Trade Representative, in consultation with the Senior Counselor for Trade and Manufacturing, shall review the impact of all trade agreements — including the World Trade Organization Agreement on Government Procurement — on the volume of Federal procurement covered by Executive Order 13788[79] of April 18, 2017 (Buy American and Hire American), and shall make recommendations ***to ensure that such agreements are being implemented in a manner that favors domestic workers and manufacturers, not foreign nations****.*

Given that US trade policy seeks to favour US companies in public procurement, India can suggest that procurement be excluded from this chapter, as it is also attempting to use procurement as a means to enable its homegrown companies. **A wider consideration brought out in our discussion with experts is that many services products are now digitally delivered. For instance, there are multiple accounting products, such as Expensify and Intuit, that may fall under both accounting services and digital products. This holds across most service sectors.** Currently, these products lie in a grey area. However, as the lines between digital and physical services continue to blur, particularly with the proliferation of AI systems, both countries may need to decide if exceptions should be carved out for these services. Importantly, if these services were blocked in some way, the absence of a ready substitute could lead to adverse outcomes for Indian businesses that rely on them.

IV. Digital Antitrust

On March 12, 2024, the Ministry of Corporate Affairs released the Draft Digital Competition Bill, 2024 (DDCB), along with a report justifying its need. The DDCB establishes a framework to identify Systemically Significant Digital Enterprises (SSDEs) – entities with at least one crore end-users or 10,000 business users that provide ‘core digital services’.[80] These include online search engines, online social networking services, video-sharing platform services, interpersonal communications services, operating systems, web browsers, cloud services, advertising services, and online intermediation services. The DDCB introduces a set of horizontal obligations for SSDEs.

The DDCB is India’s version of the European Union’s Digital Markets Act[81] (DMA), which requires large digital platforms it deems ‘gatekeepers’ to follow certain prescriptions and proscriptions. The 2025 NTER calls out the DMA. It suggests that the gatekeepers designation under the law disproportionately captures US firms as compared to foreign firms, and therefore undermines US competitiveness in the European market by increasing compliance costs on certain US firms while not placing a similar burden on EU competitors. The DDCB will likely fall foul of the same consideration, albeit the threshold to become an SSDE under this law is much lower than the DMA. Therefore, it is likely that many Indian firms will also come within its fold. However, a broader point is that empirical research shows that a law like the DDCB will lead to adverse market outcomes for a majority of Indian MSMEs.[82] A report by the Esya Centre, which was based on a primary survey of 300 Indian MSMEs, found that a law like the DDCB would negatively affect 61 percent of these entities.[83] Experts agreed that a law like the DDCB was adverse to national interests.

CHAPTER III: ASSESSING US REGULATORY BARRIERS: AN INDIAN VIEWPOINT

I. US Immigration and Temporary Work Visas (H-1B/L-1)

The H-1B and L-1 visa programs (authorised by the US Immigrations Act of 1990) are among the most widely used programs that allow US employers to hire foreign professionals. The H-1B visa program allows employers to hire foreign workers in speciality occupations, with an annual cap on the number of visas issued. While the L-1 visa permits multinational companies to bring employees temporarily to the US if they were employed for at least one year abroad. It has two subdivisions, one for managers and executives (L-1A) and another for specialised knowledge workers (L-1B), who may be admitted for up to 7 and 5 years respectively.

Issuance of visas has long been a contentious issue between Indian and US officials, with increasingly complex and costly procedures emerging over time. For example, the so-called "50-50" fee was introduced by Public Law 114-113, which took effect on December 18, 2015. This rule required employers with 50 or more US employees, where more than half are in H-1B or L-1 status, must pay an extra $4,000 on each initial H-1B or change-of-employer petition.[84] Meanwhile, the H-1B electronic registration fee was set at $10 per beneficiary beginning in FY 2021, but has been slated to increase to $215 starting with the FY 2026 cap season (registration during March 2025).[85]

Simultaneously, US authorities have cracked down on perceived visa fraud and issued more Requests for Evidence (RFEs), causing longer adjudication times.[86] The Trump Administration in its first tenure had also signalled plans to narrow L-1B 'speciality knowledge' criteria, end the H-4 (spousal) work permits and had also briefly suspended the H-1B visa during 2020-21.[87] Some of these measures, which may arise again, along with visa caps and lotteries reflect an intent to limit the number of Indian professionals entering the US labour market.[88]

The impact of new visa fees and stricter enforcement has been widely described as immediate and significant. Experts indicate that the increased costs, often thousands more per visa, along with more onerous paperwork requirements, have discouraged some companies from sponsoring as many employees as they did in the past. Data show the effects: for FY2025, H-1B approvals fell by about 27 percent year-on-year, the lowest level in four years, despite continued high demand.[89] **Many Indian workers now hesitate to travel overseas or renew visas for fear of denials, creating uncertainty for project planning. L-1 visas (uncapped) also face more scrutiny, and combined with increased fraud investigations, this unpredictability undermines India's contractual service exports. In summary, Indian companies view the new visa regime's fees, higher denial rates, and opaque renewal outcomes as a barrier to 'Mode 4' trade in services.**

India has consistently raised concerns in bilateral and multilateral forums over the United States' implementation of its commitments under GATS Mode 4, particularly with regard to the temporary entry of business personnel such as intra-corporate transferees and service suppliers.[90] In India's view, arbitrary fee increases, such as those imposed by the 2016 Consolidated Appropriations Act and the Emergency Border Security Act, which sharply raised visa costs for firms with high reliance on H-1B and L-1 workers, undermine both the letter and spirit of US GATS commitments.[91] To address this India sought consultations at the WTO, arguing that these measures violate multiple GATS provisions and effectively nullify benefits owed to Indian service providers, especially when combined with the unilateral carve-outs for Chile and Singapore under US FTAs.[92] While Indian officials have urged the US to treat qualified professionals fairly and sought greater transparency on decisions such as RFEs.[93] Washington continues to assert that immigration policy is a matter of sovereign prerogative and outside the remit of trade negotiations.[94] India, for its part, has suggested limited reciprocal measures, such as improved visa facilitation for US business travelers, to address the imbalance, but meaningful progress remains elusive.

II. US Public Procurement Preferences (Buy American)

Indian firms face barriers in accessing US federal procurement due to a layered framework of thresholds under the Buy American Act (BAA) (41 USC. §§ 8301–8305) and the Trade Agreements Act (TAA) (19 USC. 2501 et seq.). These two statutes operate at different value thresholds and create a graduated system of preferences and exclusions depending on the origin of the product and the value of the procurement. At lower contract values, typically above the micro-purchase threshold (around $10,000), the BAA applies. It does not ban foreign-origin goods, but it encourages US sourcing by applying a price preference penalty when evaluating bids. For offers from large US businesses, foreign bids are inflated by 20% during evaluation; this increases to 30% if the competing US supplier is a small business, and 50% in certain Department of Defense procurements.[95] This mechanism ensures that a qualifying US bid is likely to win unless the foreign product is significantly cheaper, thereby creating an indirect barrier for foreign firms, including those from India.

An important exception to the Buy American Act (BAA) is the treatment of designated countries under the Trade Agreements Act (TAA). These designated countries include: (i) signatories to the WTO Government Procurement Agreement (GPA), (ii) countries with which the US has a Free Trade Agreement (FTA), (iii) Least Developed Countries as identified by the USTR, and (iv) certain Caribbean Basin countries. For each of these categories, specific contract value thresholds apply. For instance, under the WTO GPA, the current thresholds are $174,000 for goods and services and $6,700,000 for construction services.[96] These thresholds are revised by the USTR every two years. For procurements that exceed these thresholds and fall within the scope of the relevant trade agreement, US federal agencies are required to treat suppliers from TAA-designated countries on par with US suppliers, meaning they are eligible to participate and are not subject to price penalties that would otherwise apply under the BAA.

Since India does not find itself within the scope of a TAA designated country, Indian companies have limited or no access to most US federal government contracts due to domestic preference rules like the BAA and TAA. As a result, Indian manufacturers of machinery, electronics, or related goods are generally ineligible to participate in federal tenders. Even in services like IT, where such thresholds are less rigid, procurement agencies often prefer US-based vendors due to considerations such as data security, supply chain visibility, and local compliance.These restrictions effectively shut Indian exporters out of a US federal procurement market valued at over $600 billion annually. While US firms are eligible to bid for Indian defence and infrastructure projects, they too face significant restrictions under India's domestic preference policies, including local content requirements and offset obligations in the defence sector.

India has initiated formal discussions with the United States on being designated a TAA-compliant country, a move that would enable Indian companies to participate in US federal government procurement markets.[97] Indian officials have underscored that access to this market is critical for boosting high-value exports, however they also acknowledge that any such access would be contingent upon India offering reciprocal concessions.[98] This would likely involve easing existing domestic preference frameworks under initiatives like the Public Procurement (Preference to Make in India) Order and associated value addition thresholds, which currently limit foreign participation in Indian tenders. The US, for its part, has maintained a cautious stance on opening its procurement system to new entrants, especially in light of long-standing executive policy emphasizing domestic sourcing. This includes Executive Order 14055 and the recently issued Report to the President on America First Trade Policy, which directed federal agencies to strictly enforce Buy American rules and review the United States' participation in the GPA respectively.[99] Against this backdrop, India's push for TAA inclusion reflects both an economic opportunity and a complex negotiation requiring calibrated domestic policy adjustments.

III. US Export Controls on Advanced Technology

A barrier to deeper US-India trade integration lies in the United States' dual export control regimes: the Export Administration Regulations (EAR) and the International Traffic in Arms Regulations (ITAR). These frameworks, administered by the US Department of Commerce and the US State Department respectively, govern the export of sensitive technologies. However, their differing rationales such as commercial national security in the case of EAR and defence/intelligence considerations for ITAR, result in fragmented and often unpredictable access pathways for Indian stakeholders seeking to acquire or co-develop advanced technologies. This is particularly consequential in the context of India's semiconductor ambitions, defence indigenisation goals, and AI capacity-building efforts.

The EAR, codified under 15 CFR §§730–774, governs the export of dual-use items, that is technologies with both civilian and military applications, through the Commerce Control List (CCL). This includes advanced semiconductors, supercomputing chips, AI-enabling hardware and software, and the tools and machinery required to manufacture them. The CCL employs a license-review process based on multiple factors: end-use, end-user, destination, and item sensitivity. While license exceptions are built into the EAR framework, BIS does exercise case-by-case discretion in many instances, especially where potential military applications are identified.

The ITAR, in contrast, is authorised by the Arms Export Control Act, 1976 and implemented under 22 CFR §§120–130. It controls the export of military-specific items listed on the US Munitions List, including high-end defence platforms, missile systems, encrypted communications, and related software. The ITAR applies a rigid, case-by-case licensing model, particularly focused on safeguarding technologies that are seen as force multipliers or classified capabilities.

India's inclusion in the Strategic Trade Authorization Tier 1 (STA-1) under the EAR framework in 2018 marked a major step forward. Reserved for the United States' closest allies such as Japan and South Korea, this status allows license exceptions for many dual-use technologies, streamlining India's access to a range of sensitive goods and reducing bureaucratic barriers.[100] The move was meant to complement India's designation as a “Major Defence Partner” in 2016, reinforcing its alignment with US strategic and non-proliferation objectives.[101] However, STA-1 only applies to the Commerce-administered EAR regime.

The absence of an equivalent preferential treatment under ITAR continues to limit India’s access to advanced US defence technology. While AUKUS countries receive greater flexibility under ITAR, such reforms are limited in scope.[102] Despite the rhetorical momentum behind the US-India strategic partnership, most military platforms and subsystems still require individual license approvals from the US State Department, slowing down potential joint development projects. A bipartisan attempt in 2019 to amend the National Defense Authorization Act and streamline ITAR procedures for India ultimately failed due to domestic political gridlock.[103] Although the Biden administration undertook some administrative efforts to accelerate clearances including under the Strategic Trade Dialogue and through inter-agency coordination, no formal exemptions or process streamlining have been codified under ITAR.

Even with India’s STA-1 designation under the EAR regime, its access to certain advanced technologies such as lithography equipment and AI-grade chips remains subject to broader BIS restrictions imposed since 2022. These export controls, although not India-specific, apply globally and affect technologies critical to India’s semiconductor and AI development goals. In May 2025, BIS announced partial relief by easing license requirements for certain AI semiconductors destined for India, signalling incremental progress but falling short of a broader policy shift.[104]

This limited easing stands in contrast to India’s otherwise strong record under the EAR. In 2022, over 83% of export license applications for India were approved, with an average processing time of 37 days.[105] Yet, even such a favourable record does not guarantee future stability especially in sensitive categories like semiconductor manufacturing tools or AI hardware. For a country pursuing leadership in critical and emerging technologies, even small regulatory frictions can carry outsised consequences. This is why export controls particularly under ITAR remain a structural concern. Their rigidity, even for close partners, underscores why India continues to press for more predictable and enabling frameworks in bilateral engagements.

IV. Materialisation of Social Security Totalisation Agreement

Indian firms operating in the US face heavy dual contributions under both countries’ social security systems. To eliminate this double taxation of labour income, India has long sought a US–India Totalisation Agreement. Such agreements (common in US trade practice) exempt temporarily assigned workers from one country’s payroll taxes.[106] For example, India’s recent FTA with the UK includes a Double Contribution Convention ensuring Indian workers in the UK (for up to three years) pay into only one country’s system.[107] India hopes to negotiate a similar pact with Washington.

Commerce Minister Goyal has said India “has been advocating for a totalisation agreement” for years and will pursue it despite past delays.[108] **The US process requires detailed exchanges on each country’s social security system. India reports that the US recently sent questionnaires on India’s system (covering ~930 million people), which India has answered.** An agreement would prevent double contributions and allow workers relocating back to India to transfer accrued benefits. Indian industry estimates imply multibillion-dollar savings (e.g. ~$4 billion in US contributions credited by Indian firms).[109] India can perhaps push for a swift negotiation timeline and reciprocity, highlighting that allied countries (EU, Japan, etc.) already have such agreements with the US

V. Safeguards against tariffs under Section 232 of the Trade Expansion Act, 1962 and Section 301 of the Trade Act of 1974

India also seeks protection from broad US trade measures:

1. **Section 232, Trade Expansion Act, 1962**

   Section 232 of the US Trade Expansion Act of 1962 authorises the imposition of tariffs and import restrictions on goods deemed to threaten US national security. India was subjected to these measures in 2018, when the US imposed additional tariffs on steel (25 percent) and aluminium (10 percent), citing global overcapacity as a security threat. India responded with retaliatory duties, escalating bilateral tensions.[110] A partial resolution was reached only in 2023, when the two sides agreed to lift some of these tariffs through a mutually agreed arrangement.[111]

   Currently, India remains under review in other pending Section 232 investigations, covering sectors such as pharmaceuticals and automobiles, which could potentially result in fresh tariff actions. **The evolving scope of national security under US domestic law leaves exporters vulnerable to discretionary trade measures. India's trade advisors have pointed to the recent US–UK Section 232 agreement as a possible model: that deal provided country-specific tariff-rate quotas and staged reductions, allowing the UK to preserve market access while addressing US concerns.**[112]

   India could seek sector-specific or country-specific carve-outs based on mutual recognition of supply chain interdependence, especially in sectors such as critical minerals, APIs (active pharmaceutical ingredients), and defence-industrial integration. Negotiated quota-based or safeguard mechanisms with transparency and expiry dates offer better predictability than unilateral exemptions.

2. **Section 301, Trade Act, 1974**

   Section 301 of the US Trade Act of 1974 permits the USTR to investigate and impose retaliatory tariffs against foreign measures deemed discriminatory or unjustifiable and that burden US commerce. India has also been a target under this provision. In 2021, the US initiated investigations into India's Equalisation Levy (a digital services tax or DST) but suspended retaliatory duties after India joined a multilateral compromise under the OECD digital tax framework, agreeing to phase out the levy in exchange for tax credit adjustments.[113]

   The DST settlement illustrates that India can manage Section 301 risks through negotiated solutions that are WTO-consistent, time-bound, and transparent. It demonstrates that Section 301 measures are not necessarily permanent or punitive if accompanied by credible domestic reform and multilateral coordination.

   Going forward, India may request similar transparent dispute resolution for any Section 301 actions, ensuring measures are temporary and reversible through dialogue. Strategically, India can press for any US safeguard on strategic sectors (e.g., defence technology, life sciences) to include clear timelines, a narrow scope, and commitments to use WTO/FTA dispute resolution mechanisms/consultation. Notably, in WTO disputes over Section 232 (e.g., complaints brought by the EU, China, and others), the US has invoked Article XXI (the national security exception), but panels have increasingly scrutinised such invocations. India may leverage this trend by pressing for WTO-compatible standards of necessity, proportionality, and transparency in all future bilateral safeguard mechanisms. India's trade policy team will likely aim for carve-outs in its nascent US trade talks and robust commitments to use WTO/FTA dispute resolution mechanisms (as with the DST settlement), thereby protecting its exports from sudden tariff hikes.

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