

Comments on India's Draft National E-Commerce Policy

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In a filing with India's Department for Promotion of Industry and Internal Trade, ITIF argued that a misguided focus on the control and location of data will reduce its potential social and economic utility.

India's draft National E-Commerce Policy (the "Policy") rightly recognizes many policy issues, concepts, and technologies that will determine the success of its digital economy, especially the role of data (see the annex for a summary of the draft Policy's key goals). India should be commended for taking such a holistic view of the policy framework. However, the draft Policy includes a range of misguided and harmful policy proposals that together reflect a short-term, mercantilist approach to digital development. Most importantly, a misguided focus on the control and location of data in India will reduce the potential social and economic utility of data. Similarly, an overriding focus on supporting local tech firms and facilities (essentially import substitution but for domestic data processing and computing facilities) and prioritizing exports over imports is missing the point as to the broader economic benefits of digital technologies. Just as economic nationalism inevitably leads to lower productivity for firms and higher costs for consumers, "data nationalism" will similarly lead to poor economic outcomes as these policies will detract from India's ability to benefit from data-driven innovation, increase the cost of key capital goods, likely lead to broad economic inefficiencies, and harm India's globally competitive information technology (IT) sector, among other ramifications. This submission highlights some of the draft Policy's positive proposals and analyzes why many other provisions are misguided or mistaken (while proposing alternative policies in some areas).

The draft Policy rightly focuses on data as it, along with information communication technologies (ICTs), will play an increasingly important role in supporting economic productivity and innovation. The increased digitalization of organizations, driven by the rapid adoption of technologies such as cloud computing and data analytics, has increased the importance of data as an input to commerce, impacting not just information industries, but traditional industries as well. In terms of

a quantitative analysis of the economic impact of cross-border data flows, it has been estimated that globally 75 percent of the value added by the Internet and data flows occurs in traditional industries, in part through increases in productivity. The use of data analytics in virtually all industries has streamlined business practices and increased efficiency, but also made the movement of data more important. Organizations increasingly rely on data for a number of purposes, including to monitor production systems, manage global workforces, monitor supply chains, and support products in the field in real time. Companies collect and analyze personal data to better understand customers' preferences and their willingness to pay, and adapt their products and services accordingly. It is a simple fact that international trade involving consumers cannot take place without collecting and sending personal data across borders—data such as names, addresses, billing information, etc.

Indeed, data is the lifeblood of the modern global economy. Data-driven innovation is making a significant mark around the world because the rapid growth in the ability to collect, store, analyze, and share large quantities of information at low cost drives new forms of economic activity, scientific discovery, and social innovation. Digital trade and cross-border data flows are expected to continue to grow faster than the overall rate of global trade. Globally, McKinsey analysis finds that, over the past decade, data flows have increased world GDP by 10.1 percent.

India has already been a major beneficiary of digital technologies and the ability for data to flow freely across borders. With the liberalization of the Indian economy, the Information Technology and Business Process Management (ITBPM) sector has seen exponential growth—from a mere 1.2 percent of Indian GDP in 1998 to 9.5 percent in 2015. India is the world's leading provider of IT-based business services, accounting for approximately 55 per cent of the US\$185-190 billion global services outsourcing business in 2017-18. India's IT and IT-enabled services industry grew to US\$167 billion in 2017-18. Exports from India's IT industry increased to US\$126 billion in FY18. The computer software and hardware sector in India attracted foreign direct investment (FDI) inflows worth US\$32.23 billion between April 2000 to June 2018. India's leading role in IT services exports (i.e., services trade that depends on data flows) has had a spillover effect, including in developing strong IT-capable human resources. Indian policymakers need to keep this sector in mind, as many of the provisions in the draft Policy would put this sector's success at risk.

India should reconsider many of the draft Policy's proposals as a globally competitive and innovative digital economy in India will in part depend on the ability of individuals and firms to engage in commerce without unnecessary and discriminatory restrictions, and geographic barriers, on how firms can use and transfer data. Indian policymakers should take a careful, considered approach as the Indian government considers enacting key policies that relate to data, such as for data privacy and protection, regulatory access to data, anti-trust, and intellectual property. Beyond the draft Policy, policymakers in India are currently considering how to enact key laws and regulations that will have a major impact on India's digital economy. Many of this submission's recommendations also apply to these other draft laws and regulations. The following sections provide a detailed analysis of some of the key provisions in the draft policy.

However, underpinning all of ITIF's analysis and recommendations are some fundamental principles that policymakers should keep in mind as they consider policy changes:

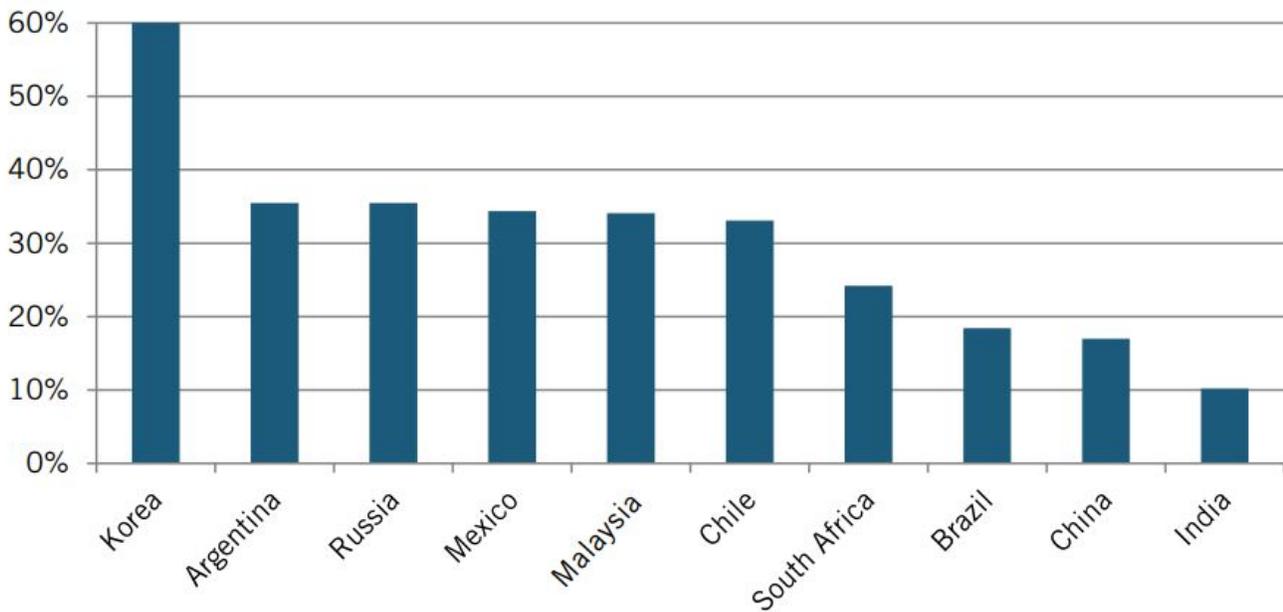
Reduce or eliminate artificial costs for ICT products and digital goods and services. As ITIF outlines in "A Policymaker's Guide to Spurring ICT Adoption," cost is a major driver of adoption for consumers and firms alike, as rising prices generally lead to falling demand. This should be a central concern as the cost of Internet access remains beyond the reach of many millions of Indians. ICTs are particularly important to focus on as they represent a key "general purpose technology" which supports economic productivity. In a conclusive review of over 50 scholarly studies on ICT and productivity published between 1987 and 2002, Dedrick, Gurbaxani, and Kraemer found that "the productivity paradox as first formulated has been effectively refuted. At both the firm and the country level, greater investment in ICT is associated with greater productivity growth." In fact, nearly all scholarly studies from the mid-1990s have found positive and significant effects of ICT on productivity. The beneficial effects of ICT on productivity have been found across different levels and sectors of economies, from firms to industries to entire economies, and in both goods- and services-producing industries.

This means policymakers should aim to eliminate (and avoid introducing further) tariffs and discriminatory taxes and ensure that users can buy best-in-class technology from anywhere in the world (e.g., remove local content requirements, limits on foreign direct investment, and restrictive certification or licensing arrangements). For example, Kaushik and Singh found that for every \$1 of tariffs India imposed on imported ICT products, India suffered an economic loss of \$1.30 because of lower productivity. India has the potential to reduce the prices for many goods given its existing use of tariffs and other measures that increase cost, as shown in ITIF's report "Digital Drag: Ranking 125 Nations by Taxes and Tariffs on ICT Goods and Services." For example, in India's 2014 budget, India announced new 10 percent tariffs on ICT and other goods in its July 2014 budget, even though it is currently a member of the Information Technology Agreement. Tariffs on capital goods such as ICTs only stifle adoption and deployment of these innovation- and productivity-enhancing tools, which slows broader Indian economic growth.

India's greatest economic challenge is bolstering its productivity. As Figure 1 shows, the level of Indian labor productivity trails that of other developing countries such as Argentina, Russia, Mexico, Malaysia, Brazil, and China. And even though labor productivity levels in Brazil and China are still less than 20 percent of U.S. levels, their productivity levels (as a percentage of the U.S. level) are still more than 70 percent higher than India's. Moreover, India's productivity gap compared to peer developing nations has generally grown over the past four decades. For example, China started off with one-third of India's productivity level in 1970; four decades later Chinese productivity level is 67 percent higher. In fact, growth in Chinese labor productivity has significantly outstripped India's since the year 2000. Emphasizing this point, the Asian Productivity Organization's *2012 Productivity Databook* noted that, in part because of the disparity in their sectoral productivity levels, "all sectors of China's economy grew faster from 2000 to 2009 than those of India, except for transport, storage, and communications, showing India's special strength

in ICT services.” India’s draft Policy should emphasize how Indian policymakers can assist Indian businesses, especially small firms, in leveraging digital tools to bolster their productivity across every sector of the economy.

Figure 1: Select Country Labor Productivity as Percent U.S. Level, 2012.



The value of data comes from the insights that individuals and firms are able to derive from it, not from the data center or country the data is stored in. Recent technological advancements—such as faster computing, better algorithms, and more-robust communication networks—have made it easier and cheaper to collect, store, analyze, use, and disseminate data. The draft Policy recognizes the central role that data plays in the modern economy; however, it misdirects much of its policy attention in the misguided direction that the location of data matters in maximizing the value of data. It doesn’t. Success in the data economy depends on how effectively firms can leverage data to generate insights and unlock value. For many firms, major gains will come from getting as many firms as possible to adopt and use off-the-shelf computer software and cloud services to help them better collect, access, and analyze their own data or that from third-party services and to use cloud-based analytics platforms to provide insights from the data. For others, the challenge is developing and deploying artificial intelligence and machine learning tools for their own operations and as third-party consultants to others. Enacting artificial barriers to data flows and forcing firms to store data in local data centers does not improve data-driven innovation. The leverage India gets from trying to exert control over where data is stored or processed is exceedingly low; Indian policymakers would generate far more benefit from assisting Indian firms in understanding how they can create value through data analytics or by creating data streams around manufactured or agricultural goods.

Responsibility should flow with data. Policymakers should put responsibility at the heart of their policy framework for data privacy, protection, and regulatory oversight. The firm that collects the data is legal responsibility for abiding by data-related laws, wherever the data is stored. And

firms are responsible for how their third-party business partners, affiliates, etc. use their consumers' data. If a firm operates within a country's jurisdiction, by providing goods or services to customers in a country, it has "legal nexus" in the country and thereby has to follow that country's laws. Countries should focus on holding firms accountable for how they manage data, not on where it is stored. A company can't escape Indian laws by simply transferring data out of the country—the responsibilities accompany the data. This focus on responsibility also reflects the critical fact that modern technology, especially globally distributed technologies like the Internet and cloud data storage, means that each country's domestic regulatory regime for data, such as privacy, needs to be global in scope and application. The international extension of this policy focus is that each country's regulatory regime needs to be interoperable, as each country faces the same challenges in applying their laws to firms that may transfer data between jurisdictions.