



September 3, 2020

The Honorable Robert E. Lighthizer  
U.S. Trade Representative  
Office of the United States Trade Representative  
600 17th Street NW  
Washington, DC 20508

Dear Ambassador Lighthizer:

We, the undersigned organizations, write to express our strong concerns regarding the recent report released by the Expert Committee on Non-Personal Data (“Report”) in India to mandate the sharing of ‘non-personal data’ (“NPD”) with the Government of India (“GOI”) and business competitors in India.

If implemented, the requirements in the Report would raise serious concerns with respect to U.S. companies’ ability to maintain high standards of data security in India, severely disadvantage our competitiveness in the Indian market and undermine intellectual property rights of U.S. companies. We request, therefore, that USTR raise industry concerns early in India’s policy making process about the implications of the Report’s recommendations and urge the GOI against the adoption of any policy that requires the compulsory sharing of business information.

Our organizations represent every corner of the U.S. economy, including the manufacturing, agriculture, automotive, life sciences, financial services, retail, and technology sectors. Protection of proprietary data is critical to the functioning of all of our companies, as we leverage this data around the globe to drive business efficiencies and empower customers, while enabling more made-in-America goods and services exports.

The Expert Committee – led by a prominent Indian business leader and comprised of Indian private sector, public sector, and civil society representatives – was created by the Ministry of Electronics and Information Technology to “deliberate on a data governance framework” for NPD. The Committee’s Report focuses exclusively on a compulsory data sharing framework, outlining recommendations that would undermine critical business processes through nothing short of an expropriation of proprietary business data from U.S. companies.

If the report is endorsed and subsequently used as a basis for legislation by the Indian government, these proposals will significantly harm U.S. businesses, dramatically impact the ability of our companies to participate in the Indian market, and impede the flow of U.S. goods and services to India. The Report also sets a poor global precedent and undermines India’s hard-fought improvements to its intellectual property rights regime and ease of doing business.

Specifically, we are most concerned with the Report’s expansive definition of NPD, which would cover most company-held data as well as intellectual property, trade secrets, processes, and insights. The Report also recommends the creation of a broad and unprecedented new NPD Regulatory Authority that would have vast powers to decide which businesses are in scope – potentially from any sector of the economy – and what data they must share with the Government and/or their competitors.

The Authority would have the power to, among other things, adjudicate data sharing disputes and enforce regulations, while also requiring companies to share NPD for national security, law enforcement, community benefit, policy development, better delivery of public services, research, competition, and/or innovation purposes. Worryingly, the Report is silent on issues of due process for businesses and on whether the proposed framework is consistent with Indian law and India’s obligations under the World Trade Organization.

Finally, the Report proposes wide-ranging data localization requirements with no evidence for how these would further safeguard data or protect privacy. The report fails to mention concrete policy objectives for mandating local storage of sensitive NPD – a new classification for data that it creates – and instead, vastly broadens the scope of localization far beyond what has been proposed under the current draft of the Personal Data Protection (PDP) Bill. Subjecting such a wide range of datasets to local storage requirements without clear security or privacy rationale would create extreme and likely unviable compliance costs, reducing the capacity of US businesses to innovate and grow in India.

Given the importance of the Indian market to U.S. businesses and the strong negative precedents the Report’s recommendations could set for expropriating proprietary business data worldwide, we respectfully urge you to engage with your Indian counterparts to ensure the GOI does not endorse the Report’s proposals and that they are not considered as a basis for legislation or regulation.

We thank you for your quick attention on this important matter and look forward to working with you to ensure U.S. businesses can stay competitive in India and globally.

Sincerely,

ACT | The App Association  
American Association of Exporters & Importers  
American Council of Life Insurers

American Property Casualty Insurance Association  
Biotechnology Innovation Organization  
Coalition of Services Industries  
Computer and Communications Industry Association  
Express Association of America  
Information Technology Industry Council  
Internet Association  
Motion Picture Association  
National Foreign Trade Council  
Reinsurance Association of America  
Retail Industry Leaders Association  
Semiconductor Industry Association  
Software & Information Industry Association  
TechNet  
U.S. Chamber of Commerce  
United States Council for International Business

CC: Wilbur Ross, Secretary of Commerce  
Michael Pompeo, Secretary of State  
Larry Kudlow, Director of the National Economic Council