

Draft National e-Commerce Policy

India's Data for India's Development

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FOREWORD

1. Within a short period in the recent past, the significance of economic activities in the digital space has grown substantially, both globally and in India. The contribution of data flows to global GDP continues to increase and the size of digital economy in India is expected to grow substantially in the near future. Vast opportunities by way of job creation, productivity improvement and enhanced consumer choices will result from these developments. However, for India to fully benefit from the opportunities, it is important that policy is contemporaneous with the underlying challenges of e-commerce ecosystem and is forward looking.
2. In India, as across the globe, the Electronic Commerce market has been witnessing consistent growth in recent years. The Indian B2C e-commerce market was valued at USD 38.5 billion in 2017 and is estimated to rise to USD 200 billion in 2026,¹ while B2B e-commerce was estimated to be around USD 300 billion. Despite the high rate of growth of e-commerce in India, the sector is still at a nascent stage and according to some estimates, it is about 3 per cent of the retail market worth USD 860 billion, excluding travel and tourism.
3. Elements of the envisaged policy framework are already in place in India through ongoing policies on some aspects of the digital economy, including through some flagship programmes of the Government like Make in India, Digital India, Skill India, Smart Cities and Startup India. In addition, the Justice Sri Krishna Committee was constituted to make recommendations related to data protection framework and protection of privacy in the digital environment. The Personal Data Protection Bill is now under consideration. While these developments will provide/ enable the Policy and legal framework in respect of some crucial aspects of e-commerce, other remaining regulatory gaps shall be addressed through this Policy. It would also attempt to ensure that policy and programmes impacting e-commerce are harmonious across Ministries and Departments of the Government. This draft document seeks to provide for consideration and discussion, a possible policy framework that will enable the country to benefit from rapid digitalization of the domestic, as well as global economy.

Since electronic commerce is driven by technology and data, private companies develop new business models to benefit from the evolving technology and volumes of data generated. New service sectors and

¹ <https://www.ibef.org/industry/ecommerce-presentation>

subsectors have developed as a result of changing business models and modus operandi of service providers.

4. While Digital India is already unfolding, its pace needs to be accelerated, and innovation and enterprise need to be encouraged inclusively by providing a facilitative ecosystem for stimulating the digital economy. Digital India initiatives like Sugamya Bharat Abhiyan, BHIM, COE-IT, CERT-In, DigiDhanAbhiyaan, Digitize India, Ebiz, Electronic Development Fund and GeM have been introduced by the government to facilitate commercial activities using internet-enabled devices, to bridge the technology and coordination gap between the stakeholders of a commercial activity, to secure Indian cyberspace and to improve business environment by enabling fast and efficient access to government services through online portals.
5. The National E-Commerce Policy ('the Policy') seeks to identify the path to achieve this goal through a multi-pronged approach, including the following: creating a facilitative regulatory environment for growth of e-commerce sector; empowering domestic entrepreneurs; encouraging Make in India; safeguarding interests of the consumers; leveraging access to data; mainstreaming the segments of our economy, hitherto having limited access to the digital ecosystem (MSMEs, vendors, traders etc.), by empowering them through skilling and providing institutional support to familiarize them with technology; promoting domestic research and development in digital innovation in order to foster homegrown alternate, cheaper and efficient service providers suited for the Indian market, including those in digital payment processes, like RuPay and BHIM; enabling domestic players in the Indian market to be sustainable in the digital economy; and stimulating the participation of micro, small and medium enterprises, start-ups and traders in the digital economy.
6. The overall objective of this Policy is to prepare and enable stakeholders to fully benefit from the opportunities that would arise from progressive digitalization of the domestic digital economy.

EXECUTIVE SUMMARY

Electronic commerce and data are emerging as key enablers and critical determinants of India's growth and economic development. In order to enhance the capabilities and realise the potential of the electronic commerce sector, it is imperative that India develops robust administrative, regulatory and legal mechanisms. The National e-Commerce Policy lays down strategies to address issues pertinent to the sector. Consumer protection, data privacy and maintenance of a level-playing field are some of the crucial issues. The Policy takes into account interests of all stakeholders, be they investors, manufacturers, MSMEs, traders, retailers, startups and consumers. The strategies envisaged should provide a basis for unlocking productivity, generating new-age jobs, protecting critical personal information, enhancing consumer awareness and facilitating onboarding of domestic producers, manufacturers, traders and retailers.

The National e-Commerce Policy aims to create a framework for achieving holistic growth of the e-commerce sector along with existing policies of Make in India and Digital India. Inclusive growth of the sector will be an important catalyst for achieving economic growth and other public policy objectives.

The e-Commerce sector is driven by technology and data. Continuously evolving technologies and volumes of data generated in a consumer-oriented country like India require an enabling regulatory framework for empowering domestic entrepreneurs, leveraging access to data, connecting MSMEs, vendors, traders, etc. to the digital ecosystem as well as empowering consumers to retain control of the data generated and owned by them.

Data is a valuable resource for any individual, corporation or a Government. Access to data helps in informed decision-making. Data can either be standalone individual data such as the financial details of clients available with banking institutions, or be at the level of community such as data created by recording and storing information about movement of vehicles at an intersection or data generated by climatic conditions. Data can be used for analytical, statistical, business and security purposes. The unprecedented explosion in the volume of data creates as much a threat to its misuse as it creates opportunities for utilization for policy making.

Business models of companies are increasingly centered around data. Targeted advertisements, personalized recommendations and data strategies as a means to attain competitive advantage by corporations are some ways that value has been attached to data. As much as these mechanisms are beneficial to the companies, the importance of ownership of data must not be undermined. An individual consumer/user who generates data retains ownership rights over

his/her data. Processing of such data by corporations without explicit consent must be dealt with sternly. Privacy concerns and data security concerns must be given due importance.

Artificial Intelligence(AI) has developed self-learning capabilities, based on analysis of data, given large enough data sets for processing. An individual user might be unaware of the information created/discovered by the corporations on the basis of data generated by him/her. The National e-Commerce Policy aims to streamline protection of personal data and empower the users/consumers to have control over the data they generate and own.

Globally, small beginnings have been made for communities to take some control over their own data.

India, having the second largest population in the world, with a young, consumer-oriented society, is emerging as a virtual treasure trove of information. India is likely to become one of the largest sources of commercially useful data in the world.

Further, the presence of 'network effects' means that in the era of data, larger the number of consumers and sellers it is connected to, the greater the access to potential sources of data and greater the likelihoods of its success. Digital capital (granting data the status of 'capital' at par with financial capital of a corporation) has come to be reckoned as one that matters no less than intellectual property or industrial capital (funds). Greater access to data provides a greater digital capital to a corporation, granting it an advantage over its competitors. Without access to adequate data, MSMEs and start-ups remain at a disadvantage to develop a large number of innovative solutions. Streamlining the access to data, while protecting privacy of users, in the current vibrant start-up culture would be a win-win situation for all stakeholders.

A handful of companies today dominate the digital economy. They are successfully exploiting the significant first mover's advantage in the data-driven ecosystem. Once a certain scale is reached, it becomes virtually impossible for the 'second mover', on its own to, make an entry in this ecosystem.

In light of the increasing importance of data protection and privacy, the National e-Commerce Policy ("Policy") aims to regulate cross-border data flow, while enabling sharing of anonymised community data (data collected by IoT devices installed in public spaces like traffic signals or automated entry gates).

Conditions are required to be adhered to by business entities which have access to sensitive data of Indian users stored abroad. Sharing of such data with third party entities, even with customer consent, is barred under the Policy. Violation of conditions of this Policy will be made accountable to prescribed consequences (as formulated by the Government of India). However, certain categories of data

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are exempted from restrictions on cross-border data flow. Data not collected in India, B2B data shared between business entities under a commercial contract, data flows through software and cloud computing services (having no personal or community implications), data (excluding data generated by users in India from sources like e-commerce platforms, social media activities, search engines) shared internally by multinational companies are exempted from restrictions on cross-border data flows.

With an aim to develop capacities of the domestic industry, the Policy takes forward the core components of the Digital India initiative: (i) the development of secure and stable digital infrastructure; (ii) delivering Government services digitally; and (iii) universal digital literacy. Development of data-storage facilities/infrastructure is an important vision of the Policy wherein data centres, server farms, towers, tower stations, equipment, optical wires, signal transceivers, antennae will be granted 'infrastructure status' to facilitate last mile connectivity across urban and rural India. Domestic alternatives of foreign-based cloud services and email facilities are also promoted under the Policy.

To streamline functioning of the e-Commerce sector under the FDI Policy, e-commerce websites/applications are required to ensure that all product shipments from other countries to India must be channelized through the Customs route. The Policy provides for integrating Customs, RBI and India Post systems to improve tracking of imports through e-Commerce. All e-Commerce websites and applications available for downloading in India must have a registered business entity in India as the importer on record or the entity through which all sales in India are transacted.

Online sale of counterfeits is a worrisome trend. Anti-counterfeiting measures have been prescribed under the Policy. e-Commerce entities are required to publicly share all relevant details of sellers who make their products available on websites/platforms of these entities. All the sellers/retailers are required to furnish an undertaking of genuineness of products to the platforms and the same must be made accessible to consumers by the platforms. Mechanisms to enable trademark owners (and licensees) to be informed about any possible counterfeit product being sold on a platform have been included in the Policy. The platforms will be required to seek authorization from trademark owners before listing high value goods, cosmetics or goods having impact on public health on their websites. Complaint mechanism, along with requisite procedure and timeline, are prescribed. Anti-piracy measures are also required to be put in place by the platforms. Transparency, consumer-oriented strategies and prevention of sale of prohibited items (as prescribed by DGFT) have been addressed under the Policy.

Issues related to e-Commerce fall under the ambit of different Ministries, Departments as well as State Governments. Recognizing the inter-disciplinary

nature of e-Commerce, the Standing Group of Secretaries on e-Commerce (SGoS) is recognised as the main mechanism to tackle inter-departmental issues effectively. The Policy recognizes the importance of enacting regulations in the areas of taxation, law, small enterprises and start-ups, consumer protection, payment systems, content liability and environment in harmony with the necessities and interests of the digital ecosystem.

Domestic digital economy is sought to be facilitated by creation of industrial standards for smart devices and IoT equipment, automation of logistics sector, adoption of Customs Electronic Data Interchange (EDI) platform, Customs validation for availing benefits from schemes like duty drawbacks, minimizing procedures and documentation, conducting cluster specific programmes for exporters to increase awareness on procedural formalities, inclusion of e-Commerce in the proposed National Integrated Logistics Plan and continued focus on Digital India initiatives.

Indian domestic manufacturers/MSMEs/start-ups/sellers/retailers stand to benefit from the enhanced visibility provided by e-commerce platforms. Improved infrastructure, lower selling price and reduced costs associated with marketing and outreach of products over a digital platform contribute to promoting online sales. Transaction costs adversely affect MSMEs and start-ups more than the big corporations. Therefore, the Policy proposes removal of application fee for claiming export benefits. Likewise, possibilities of avoiding obtaining the BRC are proposed to be explored by DGFT in consultation with RBI. This would reduce the related costs for MSMEs and start-ups. The benefits of end-to-end delivery offered by private logistics companies should be brought to the MSMEs and start-ups by leveraging the wide network of India Post to negotiate lower costs with international freight carrier companies.

The National e-Commerce Policy is aimed to address concerns which go beyond the sale and purchase of products by electronic means. In the era of Industrial Revolution 4.0, economic development is based on data which is generated, stored, transmitted or processed in large volumes. The increasing importance of data warrants treating it at par with other resources on which a country would have sovereign right. It is said that data is the new oil. Therefore, just like oil or any other natural resource, it is important to protect data, prevent its misuse, regulate the use and processing of data and address the concerns related to privacy and security. The Policy recognises the importance of data while enabling the domestic industry to benefit from the advantages and opportunities created by electronic commerce.

SCOPE AND OBJECTIVES

The National e-Commerce Policy addresses six broad issues of the e-commerce ecosystem viz. (i) data; (ii) infrastructure development; (iii) e-commerce marketplaces; (iv) regulatory issues; (v) stimulating domestic digital economy; and (vi) export promotion through e-commerce. It identifies critical aspects of each issue and lays out strategies to achieve the Government's vision. The identification of aspects and strategies takes into account needs and expectations of all stakeholders and accords the interests of startups, small manufacturing, trading and service enterprises a high consideration.

There is no universally accepted definition of e-commerce². In this Policy, the terms 'e-commerce', 'electronic-commerce' and the 'digital economy'³ are used interchangeably, as the context requires. e-Commerce includes buying, selling, marketing or distribution of (i) goods, including digital products and (ii) services; through electronic network. Delivery of goods, including digital products, and services may be online or through traditional mode of physical delivery. Similarly, payments against such goods and services may be made online or through traditional banking channels i.e. cheques, demand drafts or through cash.

Guiding principles

India is a significant part of the global digital revolution. This revolution, among other things, has provided businesses as well as consumers, access to a large variety of products at competitive prices. India has exceeded expectations as regards the growth of mobile telephone usage and more specifically mobile data usage. In just three years since 2014, monthly data usage in the country has increased fifteen times, as smartphones and mobile internet became cheaper and faster. At the end of 2014, the average monthly data consumption was only 0.26GB per person, which increased to over 4GB at the end of 2017 (Source: TRAI). Greater internet usage means generation of more data and therefore, greater requirement to prioritize privacy, consumer protection and regulate flow of data for leveraging it to benefit the domestic economy.

The Government has the responsibility to ensure that India's development aspirations are met, while preventing market failures and distortions. The Policy seeks to create a regulatory environment to ensure that there is genuine competition in the market, which encourages entrepreneurship and innovation. As the digital economy evolves, new business models emerge. With the changing nature of the economy, varied regulatory challenges come to the fore. Response

² Some definitions of e-commerce and the digital economy are placed at Appendix I for reference.

³ For definitions of digital economy also refer to the Appendix I.

to these should be prompt. A few challenges before us are in the arena of law and order, revenue-base erosion, privacy, anti-competitive behavior, consumer protection, etc. Addressing these issues needs to be done in a way that the pace of growth in the e-commerce sector does not flag.

International negotiations on e-commerce

In multilateral as well as plurilateral and bilateral fora, there is a demand to engage on binding commitments on data and other aspects of the digital sphere, under the aegis of e-Commerce.

India has thus far not been a party to negotiations on e-Commerce at the multilateral level. These negotiations, under the aegis of the World Trade Organization (WTO), are intended to create binding obligations on all the WTO member countries, including India. The push for initiating negotiations on substantive obligations related to e-commerce includes elements like permanently accepting the moratorium on imposing customs duties on electronic transmissions. With increasing digitization, more and more products like books, music, films, video games, etc. are being traded electronically. By agreeing to the permanent moratorium, countries which have tariff schedules, which allow putting duties on these kinds of products, will give up these rights and lose revenues. The tariff schedules agreed to at the WTO are in a form that developing countries have typically got higher tariffs and they have paid for these in other areas of the Uruguay Round Agreements.

By making the moratorium permanent, and with more and more products now traded digitally in the era of additive manufacturing and digital printing, the GATT schedule of countries will erode and will vanish ultimately. Assuming that all non-agriculture products can be traded electronically, then everything will be traded at zero duty. So, the protection that is available to India, for the nascent industries in the digital arena will disappear at once, and that is an immensely important issue which concerns public policy makers in the developing world.

During negotiations, policy space must be retained to seek disclosure of source code for facilitating transfer of technology and development of applications for local needs as well as for security. Policy space to grant preferential treatment of digital products created within India must also be retained.

I. DATA

In the context of e-commerce, data is any type of information converted into a binary digital form that is efficient to store, process and transfer across different devices, platforms, servers and borders. Data is a valuable resource for any individual, corporation or a Government. It has a real and measurable value, and can be processed to aid decision-making. Data generated over the internet is automatically stored in the data cloud, which is a network of computers, information technology and software applications.

The web browser, the internet service provider, websites, online platforms, operating system of electronic devices are few examples of applications/software which automatically store data generated while using them. Information on the frequency of visiting a website to the search results to the time spend in reading an article/blog – every action of the user generates data, which is simultaneously stored in the cloud. Technology companies which provide access to the internet through the above-mentioned applications/software maintain datasets, and process and analyze data to develop ways to serve the users better.

Data can either be standalone individual data such as the financial details of clients available with banking institutions, or be at the level of community such as data created by recording and storing information about movement of vehicles at an intersection or data generated by climatic conditions. Data can be used for analytical, statistical, business and security purposes.

There has been an unprecedented explosion in the volume of data generated during a commercial activity or a non-commercial activity (social media, climate data, health data, etc.) over the internet. The world population of persons above 14 years is 5.5 billion. Out of this, 2.5 billion have smart-phones. The Internet of things (IoT) is expected to bring 50 billion devices online.

Creating economic benefits from data, that is, monetization of data, is an important business model adopted by many corporations to generate profits by analyzing, processing and utilizing data.

Data is the basis on which online advertisements are tailored and consumer preferences are gauged. During the last decade a further evolution has taken place. Big data⁴ and the use of Artificial Intelligence (AI) thereon have taken data crunching to the level of 'deep learning', which is automated problem solving through neural network layers. Image recognition, facial recognition software,

⁴ Big data refers to data sets that are too large or too complex for traditional data processing application software to deal with.

self-driving cars, which were earlier seen as works of science fiction are now reality.

The most critical factor in success of an enterprise

A few illustrations should suffice to highlight the critical importance of data for the digital economy. The burgeoning retail trade through online platforms has data flows at its foundation. Communication over mobile phones using mobile applications and other real-time exchanges, not only generates a vast array of data, including physical location, financial details and consumer preference, it also creates a dynamic profile of the individual user. The individual's profile can be used for a variety of commercial purposes, such as precision marketing, targeted advertisements and credit worthiness assessments. The history of browsing and search by consumers also generates rich information on consumer preferences and, at times, their potential purchasing power. By tracking the search and browsing histories, online retail websites are able to target consumers with tailor-made marketing content. Companies with maximum access to data about consumers stand to make windfall profits from leveraging this through targeted advertising and product development.

Going further, data generated by activity in one area can provide a competitive edge for a new business in another area. Further, algorithms can mine a vast amount of unstructured data generated from diverse sources, including Internet of Things (IoT), for identifying trends and patterns which have considerable commercial value. Social media platforms and search engines convert data into many cognitive services, including translation and visual recognition. These not only generate new streams of revenue, but can be sold to other firms for use in their businesses. Future growth in artificial intelligence is likely to depend on algorithms that are increasingly self-teaching. The more the information or data, better are the results from artificial intelligence in analyzing this data. Thus, access to data has emerged as a main determinant of success of an enterprise in the digital economy.

The Policy acknowledges the importance of data as an asset and identifies the means to protect data generated in India, enhance data security, prevent violation of privacy and create domestic standards for devices which are used to store, process and access data. It will assist the government in creating a strategy to promote electronic commerce in India among vendors, consumers, intermediaries, etc. and integrating existing Indian logistic service providers operating in the physical world with the digital economy.

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The experience of countries so far

The internet era was heralded as an era for the people. With increased access to smart technology and access to internet becoming commonplace, it was expected that the world wide web would provide a uniform platform to all-big and small-be it organizations, sellers, businesses or individuals,

With greater access to markets it was hoped that start-ups and small enterprises would benefit. Reality has been somewhat different. Some home-grown enterprises did emerge and flourish and niche solutions emerged. Benefits of larger variety of products and increased competition by way of lower prices did reach consumers. However, this era was also witness to large scale capital dumping, by enterprises with deep pockets, to finance sustained selling at losses, which threatened the existence of small businesses. Traditional regulation methods struggled to check such occurrences. Larger enterprises consolidated gains, becoming yet larger. Size itself emerged as a market barrier.

Therefore, expectations that the internet would minimize inequality by providing uniform access and would contribute to achievement of development objectives were not met.

Role of Data in India's growth story

The rules by which the digital world operates, that is, the rules of the digital world must be understood, to partake of the growth it promises.

In this world, digital capital has come to be reckoned as one that matters no less than intellectual capital (IP) or industrial capital (funds). An individual who has access to maximum information about the market, is in a position to dominate it. India having one of the largest populations in the world, being a large, young, consumer-oriented society is emerging as a virtual treasure trove of information. India is likely to become one of the largest sources of such commercially useful data in the world. Further, the presence of 'network effects' means that in the era of data, the larger the firm, the greater the access to potential sources of data and greater the likelihood of its success.

Access to data can lead to the development of a large number of innovative solutions. In a vibrant start-up culture, this is a win-win situation.

Data: to whom does it belong

An Individual owns the right to his data. Therefore, if at all the data of an individual is used, it must be with his/ her express consent. This consent has to be express, in a form understandable and regarding the uses to which it shall be put.

Even after data is anonymized, the interests of the individual cannot be completely separated from it. Data about a particular group will always have something of value for them.

Data about a group of individuals and derivatives from it is thus the collective property of the group. Thus, the data that is generated in India belongs to Indians as do the derivatives there from.

In the age of e-Commerce, companies come to have access to large amounts of data of individuals. A pertinent issue that arises here is whether the company has any right to this data, especially if it decides to exploits it.

There have been arguments that data held by large corporations must be made available to other companies, through some sort of 'compulsory licensing'. Another suggestion that has been made in academic discourse is that of making data available at 'FRAND'⁵ terms. However, this forgets the basic premise that these companies do not own the data, which they have processed and monetized.

Would an individual be expected to pay the company for access to his own data? Would a Government be willing to pay private corporations for data about its citizens? These are crucial questions in determining what the Indian data regime should look like.

The data of a country, therefore, is best thought of a collective resource, a national asset, that the government holds in trust, but rights to which can be permitted. The analogy of a mine of natural resource or spectrum works here.

India and its citizens have a sovereign right to their data. This right cannot be extended to non-Indians (the same way that non-Indians do not have any prima-facie right or claim to, say, an Indian coal mine). This understanding flows from the acknowledgement that data about an Indian, is his/her own. Even after anonymization, the interests of the individual cannot be completely separated from the derivatives that may be obtained by analyzing and drawing inferences from a certain set of data. Data can, therefore, best be likened to a societal

⁵ Fair, reasonable and non-discriminatory terms. This expression is generally used in the context of standard essential patents.

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'commons'. National data of various forms is a national resource that should be equitably accessed by all Indians. The same way that non-Indians do not have access to the national resources on the same footing as Indians, non-Indians do not have equal rights to access Indian data. However, access to it can be negotiated, in national interest.

Thus, the e-commerce policy is about how best to exploit this national resource, for maximizing growth and for delivering greatest benefits to all sections of society.

Small beginnings globally

Today, just a handful of companies have managed to dominate the digital economy. Because of the significant first mover advantage, once a certain scale is reached, it becomes virtually impossible for a 'second mover' to, on its own, make an entry in the market. Globally, small beginnings have been made for communities to take some control over their own data. Some of these beginnings are illustrated in Annexure 2.

India: towards citizen empowerment

Apart from data that is being generated as discussed above, India has its own sources of data – the publicly developed APIs: Aadhar, Bharat Interface for Money (BHIM), e KYC and the Goods and Services Tax network. There have been continued efforts towards citizen empowerment. The RTI Act is an important milestone in this respect. Giving citizens the control over their own data is the next step.

Not just a privacy issue

This is not just an issue of privacy. A comprehensive framework for protecting privacy of Indian citizens is under way with the draft Data Protection Bill. However, the issues under consideration in this Policy are of far wider reach. Anonymization of data before using it is a start.

At this juncture there is no legal framework that would permit the government to impose restrictions on cross-border flow of data. Without having access to the huge trove of data that would be generated within India, the possibility of Indian business entities creating high value digital products would be almost nil. Domestic technology companies would be merely processing outsourced data work. Further, by not imposing restrictions on cross-border data flow, India would itself be shutting the doors for creation of high-value digital products in the country.

Location of the computing facilities like data centres and server farms within the country will not only give a fillip to computing in India but will also lead to local job creation. With changes in technology and evolution of the economy, current ways of doing business will change. It is expected that some activities, like back office processing, will decrease. Many aspects of business activity will get automated and there will be increased use of artificial intelligence. In this context, policy making for job creation assumes more significance than ever before. In the future, economic activity is likely to follow data. It is hence vital that we retain control of data to ensure job creation within India. Cloud computing should become an economic activity in India. Data analytics in the era of industry 4.0 should become a major job creator.

Strategies

It is almost a cliché today that data is the new oil. Unlike in the case of oil, data flows freely across borders. It can be stored or processed abroad and the processor can appropriate all the value. Therefore, India's data should be used for the country's development. Indian citizens and companies should get the economic benefits from the monetization of data.

1.1 A legal and technological framework to be created that can provide the basis for imposing restrictions on cross-border data flow from the following specified sources:

- a) Data collected by IoT devices installed in public space; and
- b) Data generated by users in India by various sources, including e-commerce platforms, social media, search engines etc.

The legal and technological framework would also provide basis for sharing the data collected by IoT devices under (a) above with domestic entities for use in research and development for public policy purposes.

1.2 A business entity that collects or processes any sensitive data in India and stores it abroad, shall be required to adhere to the following conditions:

- a) All such data stored abroad shall not be made available to other business entities outside India, for any purpose, even with the customer consent;
- b) All such data stored abroad shall not be made available to a third party, for any purpose, even if the customer consents to it;
- c) All such data stored abroad shall not be made available to a foreign government, without the prior permission of Indian authorities;
- d) A request from Indian authorities to have access to all such data stored abroad, shall be complied with immediately;
- e) Any violation of the conditions mentioned above shall face the prescribed consequences (to be formulated by the Government).

1.3 Restrictions on cross-border flows of data shall not apply to the following:

- a) Data that is not collected in India;
- b) B2B data sent to India as part of a commercial contract between a business entity located outside India and an Indian business entity;
- c) Software and cloud computing services involving technology-related data flows, which have no personal or community implications; and
- d) MNCs moving data across borders, which is largely internal to the company and its ecosystem, and does not contain data that has been generated by users in India from various sources, including e-commerce platforms, social media activities, search engines etc.

1.4 Suitable framework will be developed for sharing of community data that serves larger public interest (subject to addressing privacy-related issues) with start-ups and firms. The larger public interest or public good is an evolving concept. The implementation of this shall be undertaken by a 'data authority' to be established for this purpose.

II. INFRASTRUCTURE DEVELOPMENT

A robust digital economy that aids the country's development trajectory requires a physical infrastructure as well. This section delineates broad strategies to achieve this.

Strategies

- 2.1** 'Digital India' consists of three core components: (i) the development of secure and stable digital infrastructure; (ii) delivering government services digitally; and (iii) universal digital literacy. This Policy aims to take forward these core components to realise the policy framework envisaged in this document.
- 2.2** Steps will be taken to develop capacity for data storage in India. An assessment needs to be done regarding how data-storage-ready the available infrastructure in the country is. Creation of infrastructure for storage would take some time. A time-frame would be put in place for the transition to data storage within the country. A period of three years would be given to allow industry to adjust to the data storage requirement. Certainty about the intent and direction of government policy is important to maximize private investment in this sector.
- 2.3** The Harmonized Master List of Infrastructure -sectors grants 'infrastructure status' to certain categories of sectors, goods and services to guide the various agencies responsible for supporting infrastructure in various ways, including financing their development. This enables regulation of the listed infrastructure in a more streamlined manner. Benefits of such regulation have led to India having one of the largest roadways and railway networks in the world. Data centres, server farms, towers and tower stations, equipment, optical wires, signal transceivers, antennae etc. will be accorded 'infrastructure status' Physical infrastructure for setting up of data centers (power supply, connectivity etc.) will be established by the relevant implementing agencies, while financing agencies may identify these as infrastructure that they may intend to support. This would facilitate achieving last mile connectivity across urban and rural India, including hilly areas, as aimed under the Digital India initiative.
- 2.4** Domestic alternatives to foreign-based clouds and email facilities will be promoted. Ways of promoting this could include budgetary support.

III. e-COMMERCE MARKETPLACES

THE ONLINE MARKET FOR GOODS AND SERVICES

e-Commerce marketplaces are digital platforms, i.e. online platforms on which goods (physical or digital) or services, are sold. An e-commerce marketplace is expected to provide all-round benefits in comparison to its physical counterpart, by increase in access and economies of scale in operation.

With the advent of online e-commerce in India, consumers have benefitted from increased competition in the market by way of getting access to greater variety of products at competitive prices. Another benefit in this field has been the development in the area of logistics (delivery partners), which has provided employment to a significant number of people.

e-Commerce platforms have also given access to producers/sellers in far-flung areas of the country. Sellers of high-quality products have prospered with greater access to consumers. Producers of niche articles have also benefited. There are several instances of symbiotic growth where producers of traditional products have been provided opportunities to create steady supply of items for sale. This has resulted in 'on-boarding' of small traders and manufacturers. Backward linkages have helped in making such traders and manufacturers internet-ready and aware of the benefits of selling online. This has been a welcome byproduct. Aggregators or platforms that provide services like carpentering, plumbing etc. online has benefited both skilled workers by being a source of employment generation as well as consumers by providing ready and reliable source of services.

Strategies

(A) FDI

The FDI Policy in e-commerce has been developed in order to ensure that the marketplace provides a level playing field to all participants, while ensuring that distortionary effects, either through means of price control, inventory or vendor control does not happen. A situation of capital dumping is to be strongly discouraged.

The policy aims to clearly demarcate what constitutes a marketplace model and what comprises an inventory-based model of sale and distribution. The policy aims to invite and encourage foreign investment in the 'marketplace' model alone. An e-commerce platform, in which foreign investment has been made, therefore, cannot exercise ownership or control over the inventory sold on its platform. In

this manner, foreign investment is not seen as a threat by small offline retailers of multi-branded products.

Apart from facilitating foreign investment in e-commerce marketplaces, the FDI policy, also takes into account interests of domestic manufacturers/traders/sellers/MSMEs/start-ups and seeks to create a level playing field in retail. Online marketplaces should not adopt business models or strategies which are discriminatory, that is, which favour one or few sellers/traders operating on their platforms over others. MSMEs and start-ups are often not equipped to set up and maintain complex distribution channels and cannot afford the expenditure of a significant marketing campaign. Therefore, FDI policy mandates fair and non-discriminatory treatment of all the stakeholders, including MSMEs and start-ups, operating on a marketplace. Other conditions have also been laid down in the FDI policy to provide the framework within which an e-commerce marketplace is to function. It is important to ensure that the letter as well as the spirit of the policy is met.

(B) Other strategies relating to e-commerce marketplaces

The following shall be applicable to all e-commerce websites/applications:

- 3.1** All product shipments from other countries to India must be channelized through the customs route.
- 3.2** An integrated system that connects Customs, RBI and India Post to be developed to better track imports.
- 3.3** Any non-compliant e-commerce app/website will not be given access to operate in India. Necessary mechanisms may be put in place by MeitY and the other concerned government departments.
- 3.4** All e-commerce sites/apps available for download in India must have a registered business entity in India as the importer on record or as the entity through which all sales in India are transacted. This is important for ensuring compliance with extant laws and regulations for preventing deceptive and fraudulent practices, protection of privacy, safety and security.
- 3.5** All e-Commerce sites/apps available to Indian consumers (displaying prices in INR) must have MRPs on all packaged products, physical products and invoices. Department of Consumer Affairs would evaluate violations and decide corrective actions for such sites/apps.
- 3.6** In view of the misuse of the 'gifting' route, as an interim measure, all such parcels shall be banned, with the exception of life-saving drugs. India Post must conduct due diligence on "from and to" shipping entities and addresses and set thresholds in the shipment booking system to eliminate misuse of the Foreign Trade (Development & Regulation) Act, 1992.

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- 3.7** Consumer/Business Payments from Indian banks and payment gateways to unauthorized and unregistered (GST non-compliant) sites/apps shall be barred.
- 3.8** As a transparency requirement, e-commerce entities would be mandated to make a full disclosure to the consumer regarding the purpose and use of data collection upfront, in a simplified and an easily understandable form on their websites/ application interfaces.

(C) Anti-Counterfeiting Measures

e-Commerce players would be required to undertake the following measures:

- 3.9** Seller details should be made available on marketplace website for all products. This shall include the full name of the seller (the name of the legal entity), address and contact details including email and phone number.
- 3.10** Sellers must provide an undertaking to the platform about genuineness of products they are selling and the same must be made accessible to consumers.
- 3.11** Trade mark (TM) owners⁶ shall be given the option to register themselves with e-commerce platforms. Whenever a trade-marked product is uploaded for sale on the platform, the platform shall notify the respective TM owner. This facility shall be put in place by platforms and made available for interested TM owners.
- 3.12** In case TM owners so desire, e-commerce platforms shall not list/ offer for sale, any of the owners' products without prior concurrence. However, in case TM owners choose to opt for this, they would have to undertake to respond to platforms within a certain time limit.
- 3.13** In case of specified high value (luxury) goods, cosmetics or goods having impact on public health, marketplaces will be required to seek TM owner's authorization (that is, authorized/distributor/reseller agreement) before listing the product.
- 3.14** In case a complaint is received about a product being fake/counterfeit, the same shall be conveyed within 12 hours to the owner of the TM. If the owner of a TM informs the platform about the product being sold on its platform to be counterfeit, it shall notify the seller and if the seller is unable to provide evidence that the product is genuine, it shall take down its listing and notify the TM owner of the same, as per the provisions of law;
- 3.15** The platform shall enter into an agreement with each of the sellers on its platform, under which it shall obtain guarantee of authenticity and genuineness of the products sold by the seller, and also provide for

⁶ The term 'owner of trademark' includes licensees thereto.

consequences of violation of the same. It shall also seek a guarantee from the sellers that the product has not been impaired in any manner and that all warranties and guarantees of the brand owner are applicable and shall be honoured accordingly. Products of any sellers who are unable to provide such a guarantee shall not be listed on the platform.

- 3.16** Though post-sale, delivery of goods to the customers and customer satisfaction will be responsibility of the seller, there is a caveat to this. Since counterfeiting is a major concern, in case a customer makes a complaint to that effect, marketplaces would have liability to return the amount paid by the customer. In addition, the marketplaces shall cease to host the counterfeited product on their platform, thereby taking down every information related to the product.
- 3.17** Marketplaces should provide for creation of financial disincentives for sellers if found to be selling counterfeit products. In addition, if a seller is found to be selling counterfeit products, the marketplace should blacklist that seller from selling on its platform for a specified period.

(D) Anti-piracy measures

Online distribution of pirated content is a matter of serious concern. The following are strategies proposed to be put in place to tackle this.

- 3.18** Intermediaries shall put in place measures to prevent online dissemination of pirated content. Intermediaries shall identify 'trusted entities', whose complaints are resolved on priority. The identification of trusted entity and anti-piracy measures shall be done on a voluntary basis.
- 3.19** Upon being notified by the owner of copyright protected content/ work that a website or e-commerce platform is making available, selling or distributing the copyrighted content/ work without the prior permission/ authorization of the owner, such website or platform should expeditiously remove or disable access to the alleged content.
- 3.20** A body of industry stakeholders will be created that shall identify 'rogue websites'. Rogue website would refer to those that host predominantly pirated content. After verification, these rogue websites shall be included in the "Infringing Websites list". This shall invite the following:
- a) Internet service providers shall remove or disable access to the websites identified in the IWL within set time-lines.
 - b) Rogue websites earn their revenues through online payments made based on a subscription or advertisement revenue models. Such payments have to be routed through Payment Gateways, which shall not permit flow of payments to or from such rogue websites.
 - c) Search Engines shall take necessary steps to remove websites identified in the IWL, in their search results.

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- d) Advertisers or advertising agencies shall not host any advertisements on the websites identified in the IWL.

(E) Authentic Ratings and Reviews

- 3.21** There should be transparency and non-discrimination in publishing of ratings and reviews. All ratings and reviews for verified purchases must be published as registered by the consumer, except those found to be promotional, abusive or inappropriate in a community setting.
- 3.22** Marketplaces are required to devise mechanisms to prevent fraudulent reviews and ratings by the sellers and their affiliates.

(F) Consumer Oriented Customer Service

- 3.23** Publication/display of phone number and email address for consumer grievances is mandatory for all ecommerce sites and applications where purchase and sale of products is taking place.
- 3.24** A system of acknowledgment of consumer complaints to be put in place as well as clear cut timelines for their disposal. These timelines are to be displayed prominently on the website/ application.
- 3.25** A first resolution to all consumer complaints must be provided within 1 week.

(G) Prevention of Sale of Prohibited Items

- 3.26** Websites or applications where purchase-sale of products take place, must display list of products which are prohibited, as prescribed by DGFT or any other competent authority, on their site.
- 3.27** Sellers must provide an undertaking to the platform/site/application that they are not engaged in transacting in such products on the platform and the same must be made accessible to consumers.
- 3.28** In case it is found that products being sold are prohibited, or a complaint to that effect is received, the platform shall immediately remove the listing or other reference to the product. The time limit for this shall not exceed 24 hours. Such sellers shall also be blacklisted from the platform and the relevant authorities notified.
- 3.29** The liability of the platform in case used for sale of prohibited goods shall be determined as per provisions of law.

IV. REGULATORY ISSUES

We are witnessing a new world: a digital world. In this world, the presence of network effects means size begets size: be it an e-commerce platform, social media network or search engine.

While the earlier century saw trends towards consolidation - with MNCs emerging and gaining strength with access to economies of scale, now the story is somewhat different. The story is of data and the access to it. The greater the access to data, the greater the potential for AI to come up with solutions based on it and the greater the likelihood of a company's success.

The more buyers an online e-commerce platform can attract, the more sellers will want to sell on it, and so on. The more people a social media platform can attract, the more 'networked' they can be, the more advertising revenues it enjoys and the more data it can leverage since it knows more about people, their friends and connections and their preferences.

Also, while people had hoped that the internet era would be a tool to minimize inequality and would give greater access to a larger number of sellers, benefit smaller sellers etc., reality has been somewhat different. While consumers have had access to benefits of increased competition by way of lower prices and greater variety, selling at loss and 'cash burning' and capital burning had anti-competitive consequences. Authorities struggle to tax. Regulators find it difficult to hold entities responsible, that have physical presence hundreds of millions of miles away.

Governments are finding existing regulations and structures inadequate to deal with issues thrown up by the digital economy. Businesses find that once scale beyond a certain point is reached, it makes entry into that area by a 'second-comer' next to impossible. Barriers to entry are especially difficult for start-ups and small businesses to breach.

The presence of customs duties (albeit bound) provide a tool in the hands of governments in case they want to control access to domestic markets. However, the same cannot be said for digital transmissions which travel into the country online. Given the moratorium on custom duties on electronic transmissions, the issue of taxing 'additive' manufacturing emerges.

Tax-men in, both, developed as well as developing countries are grappling with new issues posed by the online businesses. Individuals raise objections to companies having access to information about them. Faceless screens often do not provide any avenue in case products or services are found wanting in quality.

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While one may see these companies prosper, but more often than not, it is the shareholders of these huge online companies who rake in the money. The returns to the society which hosts these companies are somewhat limited.

Sustainability is therefore a key word. How sustainable is this scenario, especially for a developing economy?

Strategies

A. Inter-disciplinary nature of e-commerce

Existing statutes and laws need to evolve to take into account the changing ways of doing business and changing business models. This includes IoT, network effects, latest technologies, modes of delivery, treatment of data, online placing of orders, online marketplaces, free ancillary services like logistics etc.

- 4.1. With the constant evolution of digital economy, the nature of regulatory challenges also changes. The authorities are, therefore, expected to be aware of these changes and it is expected that policy responses are prompt to ensure that the spirit behind policies is not violated.
- 4.2. Given the inter-disciplinary nature of e-commerce, the tackling of specific issues that emerge may be the subject matter of different statutes—the Information Technology Act and Rules, the Competition Act, the Consumer Protection Act etc. The Standing Group of Secretaries on e-commerce (SGoS) shall give recommendations to address policy challenges. The SGoS is an important avenue of ensuring that the policy keeps pace with the digital environment. It will continue to be important in administering the e-commerce policy.
- 4.3. Given the need for constant change, constant amendments in the relevant Acts may not be possible. Changes, to the extent possible may be explored under existing statutes. An assessment may be undertaken by the concerned Ministries on provisions impacting e-commerce.
- 4.4. Various arms of the government are already attempting to adapt with the changes brought about by the entry of e-commerce players. Changes in regulations are underway. Wherever they impinge upon e-commerce or the digital economy, it is essential that the views of the nodal ministry are taken. With the specific allocation of business to DPIIT, it is the responsibility of DPIIT to see to it that the needs of the sector are adequately met. It is important to ensure that regulations evolve to facilitate the sector and do not become an obstacle for an important engine of growth for the Indian economy.
- 4.5. For us to benefit from the digital economy and make use of the reach that the internet provides, there are many aspects which need to be

smoothened out. Many issues may traditionally fall under the ambit of the State Governments. States have been given constitutionally mandated rights to administer in certain areas. It is important to acknowledge that e-commerce (when it takes place within the country) falls under the category of inter-state trade and commerce. Thus, has been allocated to the Centre under Schedule VII of the Constitution. It is hence the responsibility of the Centre to ensure its growth. And make rules therefor.

B. The Data-lens

The single biggest factor in e-commerce is data. It is essential that regulators examine transactions with reference to the access to data that they entail. Access to data can give rise to market distortions.

- 4.6.** One area where this is manifested is the high rates charged for advertising by social media platforms and search engines. Traditional logic states that this should purely be a market driven activity. However, the presence of network implies that a few social media platforms and search engines virtually control access to potential consumers. This puts them in a position to charge monopoly prices also make it very expensive for new firms, small enterprises and start-ups to reach consumers. These firms do not have deep pockets. To reach the market (leave aside finding and maintaining their position there) they would have to allocate an excessively high proportion of their budget and working capital to advertising. juxtapose this with the high rates of capital. Thus, high advertising charges become a barrier to entry. Advertising charges in e-commerce must be regulated, especially for small enterprises and start-ups.
- 4.7.** The network effect must also be kept in mind while analyzing mergers and acquisitions. World over, the experience has been that e-commerce players like social media platforms have taken over potential competitors early. This prevents the emergence of the threats to market position later on. As discussed elsewhere in this document, the presence of network effect implies that it is virtually impossible for 'second-movers' to enter the market.
- 4.8.** Data effect and the network effect are the reasons why selling at a loss has emerged as 'sustainable' for enterprises. Leveling of the playing field, must therefore be seen from a data-lens. These are aspects which the anti-trust regime must take into account, to meet the challenges of regulation in the arena of e-commerce.
- 4.9.** AI, big data, deep learning and cutting-edge technology are going to take center stage in the times to come. Indeed, they have already emerged as crucial factors. It is, therefore imperative that regulators and law makers must create dedicated 'technology wings' within their organizational set-

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ups. This would help them understand and analyze transactions in a proper light.

- 4.10.** In continuation, it is also important for the Government to reserve its right to seek disclosure of source code and algorithms. There will be a greater reliance on AI in decision making in future where parts of the process will become 'AI-fied'. Decisions will need to be explained. There is a need to strike a balance between commercial interests and consumer protection issues, as well as issues of larger public concern, like preventing racial profiling and maintaining constitutionally mandated rights, such as the right to equality.

C. Law and order

- 4.11.** With e-commerce and the digital economy becoming a part of daily life of more and more Indians, unique law and order challenges are also emerging. Privacy is an important aspect and all possible efforts must be made to ensure it. However, law and order in society is something that we cannot live without. The Government must stand up to the challenge. Access to data for purposes of maintaining and ensuring law and order cannot be over emphasized.
- 4.12.** Participants of the digital economy that have access to the data of Indians must nominate a local representative to be responsible for the affairs of the company in India.

D. Small enterprises and start-ups

- 4.13.** In the presence of network effects which create barriers to entry, small firms and start-ups attempting to enter the digital sector can be given 'infant-industry' status. The benefits of an 'infant industry' status could be accorded to such firms and start-ups and access to data could be at the centre of this approach.
- 4.14.** Integration of small enterprises and MSMEs in the digital sphere is important. In order to ease the process, of onboarding, for MSMEs and to provide them best practices, platforms, where they already exist, (like e-lala, Tribes India) will be strengthened.

E. Taxation issues

It has been globally accepted that there is a need to reconsider the traditional approach towards addressing the issues related to taxation. India has been quick to adjust to these changes. For instance, the concept of 'significant economic presence' was introduced in the 2018 Budget. It is important to move to the

concept of 'significant economic presence' as the basis for determining 'permanent establishment' for the purpose of allocating profits of multinational enterprises between 'resident' and 'source' countries and expanding the scope of 'income deemed to accrue or arise in India' under Section 9(1)(i) of the Income-tax Act, 1961.

The current practice of not imposing custom duties on electronic transmissions must be reviewed in the light of the changing digital economy and the increased role that additive manufacturing is expected to take. A 2017 UNCTAD report suggests that it would be mostly developing countries which would suffer loss in revenue if the temporary moratorium on custom duties on electronic transmissions is made permanent.⁷

F. Consumer protection

- 4.15.** The atypical nature of an e-commerce transaction necessitates a consumer protection framework specific to this sector.
- 4.16.** India will move towards a system for electronic redressal of grievances including making available compensation to the aggrieved consumer electronically. It is only rational that a transaction completed online should have an online system of grievances redressal which will, in turn, boost consumer confidence. In this regard, mechanisms will be developed to establish consumer courts as part of the mission mode e-government project in order to address grievances online.
- 4.17.** Unsolicited commercial messages (on various platforms including but not limited to SMSs, emails etc.) and calls will be regulated. A legal framework for this will be developed.

G. Payment related issues

- 4.18.** Issues related to payment processes and other financial transactions which are inherent to e-commerce will be addressed in order to prevent data-leaks/theft, protect privacy and sensitive data, and enabling secured transactions.

H. Tracking the digital economy

The prerequisite of good policy making is access to information about the domain for which policy is being framed. A large amount of data is being generated within government departments. Making government departments and services electronic is an important part of the Digital India initiative.

⁷UNCTAD Report on 'Rising Product Digitalization and Losing Trade Competitiveness' (2017)

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- 4.19. Departments should aim to use AI tools and attempt a predictive approach to policy making.
- 4.20. Further, getting information about the various facets of the digital economy is important for preparing policy for this sector. Collecting and analyzing data is an end in itself. This is an important task, which must not be neglected.
- 4.21. Continued focus on Digital India initiatives by the Government will help in development of e-commerce sector.

I. Exemption from content liability

Online platforms and social media have become important tools to enhance outreach, mobilize social welfare causes, promote trade, spread ideas and build business relationships. Internet penetration, coupled with user traffic, has brought these platforms and social media almost to every household in the country. With a growing importance of these entities, their social responsibilities also increase. Due to the fact that traders, merchants, individual users, organizations, associations are all dependent on them, the authenticity of content posted on their websites cannot be compromised. In this regard, it is important to emphasize on responsibility and liability of these platforms and social media to ensure genuineness of any information posted on their websites.

J. Environmentally sustainable growth

To further the Swachh Bharat Abhiyan, suitable policy will be devised to promote “reduce, reuse and recycle” practices by stakeholders.

V. STIMULATING THE DOMESTIC DIGITAL ECONOMY

Growth of developing countries is an important tool to achieve global growth. Likewise, a country's growth must not be limited to a particular geography or section of the population. This Policy aims to attain holistic and inclusive growth whereby access to technology and data extends to every section of society and every corner of India. Today, two of three people in India, do not have access to the kind of connectivity needed for digital trade and e-commerce. In addition, there is the problem of digital literacy and skills with only about 15 per cent of rural households being digitally literate (Digital literacy being defined as at least one person in the household who can use a computer, tablet or smartphone). Consequently, only 5 per cent of consumers in developing countries are able to access goods and services on e-commerce platforms. Rising digitization is also impacting trade and competitiveness of countries and access to ICT services determines access to financial flows. This asymmetry of digital development in India, is in fact an asymmetry of opportunity, which needs to be addressed.

Strategies

- 5.1** Domestic industrial standards need to be formulated and facilitated for smart devices and IoT devices to meet the goals of the country including, inter alia, consumer protection, secured transactions, enhanced interoperability and ease-of-user interface. National standard-setting organizations will be involved in this exercise along with other stakeholders.
- 5.2** Delivering government services digitally is an important part of the Digital India initiatives. Logistics sector requires automation, including the services provided by the Department of Post.
- 5.3** Online Customs clearance will be facilitated by adopting Customs Electronic Data Interchange (EDI) platform, integrating all the Departments concerned such as Department of Posts, DGFT and RBI, and other stakeholders, eliminating manual processes under ease of doing business. In addition, provision will be made to source Export Data Processing and Monitoring System (EDPMS) data from RBI for confirmation of payments, instead of Bank Realization Certificate.
- 5.4** Customs validation will be enabled where required to benefit from schemes like duty drawbacks, DGFT being given access to the data, thereby minimizing procedure, documentation and facilitating online processing. This will be supported by permitting all international airports and other export/ manufacturing hubs to accept e-commerce export shipments in order to facilitate and promote e-commerce exports from India.

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- 5.5** There is also a need to increase awareness on procedural formalities (to be undertaken by Department of Post and DGFT) by conducting cluster specific programmes for exporters. The following steps will be taken to prevent the violation of existing rules to circumvent customs duties:
- Mandating shipper KYC by providing a unique code and national repository to identify foreign exporters and to track suspicious activities, such as sample shipping, gifting etc.;
 - Capping samples or gifts to a certain value per shipper per month, with any value above the threshold being subjected to duties.
- 5.6** e-Commerce will also be included in the National Integrated Logistics Plan being prepared by the Department of Commerce, which would focus on faster delivery with emphasis on lower costs.
- 5.7** Continued focus on Digital India initiatives by the Government will help in the development of e-commerce sector.

VI: EXPORT PROMOTION THROUGH e-COMMERCE

Whether or not an exporter is able to enter and sustain in the global market depends considerably on the business strategies and costs associated with breaking into foreign markets and sustaining. Establishing marketing channels, accumulating information on demand sources, packaging, and upgrading product quality are a few elements which contribute towards such costs. Electronic commerce is widely considered as an avenue to minimise costs of marketing, advertising and improving outreach. e-Commerce provides opportunity to sellers or traders and consumers to communicate and connect beyond the limitations of geography and time.

Recently, exporters have adopted e-commerce as means to reach new markets and consumers. Apparel, textile and jewelry exporters are few examples. One of the major benefits of exports through e-commerce is better value realization. This is due to low costs associated with e-commerce exports, as mentioned above, as well as reduction in costs due to multiple intermediaries in the traditional set-up. Instant payment and receipts are additional benefits for exporters who also save large costs related to distribution services, including reduction of handling charges at stores, theft, rent and additional infrastructural costs.

Despite the cost savings which e-commerce provides to exporters, there are other elements which influence the success of an exporter in international markets. Challenges related to responsiveness of exports rise from the onboarding costs, compliance requirements and competitive pressures in the international market. There are several factors which decide whether the export potential of a business entity is realised. These include the policy regime, regulatory, administrative or economic certainty, market structure, and firm and industry characteristics. These confounding factors should be suitably controlled.

India's net exports of goods and services in 2017 was USD 488.087 billion but net imports stood at USD 561.449 billion.⁸ A net trade deficit of USD 73.362 billion shows that there is an urgent need to promote exports (of goods as well as services) to reduce the deficit. As mentioned above, e-Commerce is widely considered as a medium to reduce costs related to penetration and sustainability of exporters in international markets. However, the export potential of e-commerce has not yet been realized due to issues like inability or unwillingness of exporters to demonstrate electronic data interchange capabilities (EDI)⁹ and costs of onboarding and compliance.

⁸ Figures taken from the World Bank Database.

⁹ Process of exchange of information over an electronic network.

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The Government of India, through schemes like Merchant Exports from India Scheme (MEIS) and Services Exports from India Scheme (SEIS) and policies like repatriation of remittances out of exports through online payment gateway service providers (OPGSPs), has attempted to incentivize exports. However, domestic manufacturers, traders, sellers, MSMEs and start-ups, which operate or intend to operate on a digital platform, continue to struggle with compliances and costs which reduce their competitiveness and sustainability in international markets. Burdensome administrative compliances and increased costs related to exports would make any business entity unwilling to export if the proceeds from exports are insignificant compared to these compliances and costs. Therefore, the Government of India should promote and facilitate exports through e-Commerce by not only incentivizing exports, but also by reducing administrative requirements and costs along with simplifying procedures related to compliances.

Strategies

- 6.1** Infrastructure development is an important catalyst for greater economic growth. Delivery of physical goods ordered on a digital platform forms a critical part of e-Commerce. Indian domestic manufacturers, sellers, traders, MSMEs or start-ups are moving towards e-commerce to gain greater visibility for their products. Outreach of these Indian entities can be further enhanced by promoting export of their products through e-commerce. In this regard, the proposed National Integrated Logistics Policy must take into account the special needs of the sector. e-Commerce must be dealt with separately under the Logistics Policy.
- 6.2** Lower selling price, coupled with reduced costs associated with marketing and outreach activities over a digital platform contribute to promoting online sales. As shipments in e-commerce exports are of low value, the preferred mode of shipment is via courier services. The extant Courier Imports and Exports (Clearance) Regulations, 1998 indicates that on the export side, these regulations shall not apply when the value of consignment is above Rs. 25,000 and involves foreign exchange transaction. Therefore, consignments valued above Rs. 25,000 are exported through cargo mode. While courier goods are cleared through a fast track mode, examination of parcels is kept to a minimum and clearance is on selective scrutiny of documents, cargo consignments do not enjoy such benefits. This increases the transaction costs and the delivery time for consignments valued above Rs. 25,000 through cargo mode. In this regard, the existing limit of INR 25,000 shall be increased to make Indian e-commerce exports attractive even for high-value shipments through courier mode.
- 6.3** The Reserve Bank of India allows repatriation of remittances out of exports. This is facilitated by Online Payment Gateway Service Providers

(OPGSPs). However, the small businesses who avail the outreach of e-commerce platforms to export their products to international markets, often receive payments via bank transfer. This results in these exporters to approach the banks for realization of bank transfer. They are required to file the Postal Bill of Exports (PBE) and attach invoice(s). Information like URL of website through which products have been sold, stock keeping unit number and payment transaction reference number are also disclosed. Such a lengthy documentation procedure maybe revised. In this regard, it may be contemplated whether production of payment transaction reference number or consignment number could suffice the requirements of PBE.

- 6.4** Manufacturers, sellers, traders, MSMEs or start-ups adopt business models to facilitate online sales in order to expand their outreach beyond geographical limitations. MSMEs and other domestic manufacturers are based across the country but shipments via courier for e-commerce exports are accepted by airports in Delhi, Mumbai and Chennai only. Therefore, implementation of EDI mode at courier terminals shall be fast tracked to facilitate quicker and easy dispatch of export consignments.
- 6.5** Transaction costs for MSMEs and start-ups would contribute to the selling price of their products. High selling price has a detrimental effect on the attractiveness of products in a market. Therefore, the provisions for collecting fee on applications submitted to claim export benefits should be done away with to reduce the transaction costs for MSMEs and start-ups.
- 6.6** Commercial banks impose a charge of INR 100 per shipping bill for Bank Realization Certificate (BRC) processing. If EDPMS data can be sourced from RBI, then necessity for obtaining BRC for claiming MEIS can be avoided. DGFT may explore this possibility in consultation with RBI.
- 6.7** Much of the delay and congestion at air cargo complexes handling in India, especially in Delhi, Mumbai and Kolkata can be solved if the cargo processing is done off the air ports. For this purpose, setting up of Air Freight Stations (AFS) off the air ports shall be encouraged, where all necessary cargo preparation and documentation can be done. Only the 'flight ready cargo' will move from the AFS in customs bond and enter the airport premises and get scanned at the airport before boarding the flights.
- 6.8** Costs for international logistics is presently borne by the exporting entity. The logistic companies providing these services often charge a considerable amount of money, which may be difficult for MSMEs, start-ups and other small Indian manufacturers to afford. This could make it difficult for these entities to continuously and sustainably export their products to the international markets. Private courier companies offer advantages like end-to-end delivery. In this regard, the wide network of

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India Post shall be leveraged to negotiate lower costs with international freight carriers.

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THE VISION

The global economy is swiftly moving towards digitization. Automation in manufacturing sector, use of artificial intelligence, online retail, development of software and applications for conducting activities over the internet which were earlier conducted offline, changing business models operating around access to data, smart classrooms etc. are a few examples where human intervention has minimized and on technology adoption has increased. The explosion of e-Commerce and volumes of data generated on daily basis has brought, what many consider as the Fourth Industrial Revolution. It is characterized by a fusion of various technologies that is gradually blurring the lines between the physical, digital and biological spheres. There is a potential that the global income levels may rise and the quality of life of people around the world may improve.

India has not been left untouched by these developments. Internet penetration has increased, more people across the country now have access to smartphones, e-Commerce sector has emerged as one of the fastest growing sectors which will account for overwhelming substantial proportion of the economy in the future.

The rapidly changing landscape of digital economy has seen rise of technology companies, new business models, and new segments of e-Commerce. Data remains in the heart of the digital ecosystem. Every action, whether commercial or personal, active or passive, individual or community-level, generates information in the form of digital data. Access to this data and processing it provides a strategic advantage to technology companies which monetize data to maximize their profits, while simultaneously adopting business models (based on analysis of data) to stay ahead in the race to dominate the sector.

While data is an invaluable resource, abuse of data is a major threat to the privacy of users, fair competition in the market, rights of marginalized sections of society, sustainability of MSMEs and start-ups and regulatory space and security of countries. The National e-Commerce Policy establishes strategies which protect misuse of data, while maintaining the spirit of existing regulations. e-Commerce warrants a framework which extends across segments, due to the cross-cutting nature of issues. The responsibility of a welfare state is to protect the interests and rights of people within its borders, while regulating the economy for a holistic growth of all stakeholders.

This National e-Commerce Policy has been formulated with a vision to provide a level-playing field to all stakeholders, including the individual consumers and MSMEs and start-ups. However, the Government has the responsibility to pursue a development agenda, while preventing market failures and distortions. The Government of India will continue to observe the rapid changes in the digital economy and respond accordingly by bringing new regulations and/or amending

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the existing ones. Issues related to e-commerce must now be addressed on priority and in a way that the pace of growth in the sector does not lag while the domestic stakeholders as well as the entire population is benefitted by the positive spillovers.

Given the fact that e-commerce involves cross-cutting issues –inter-departmental as well as across various governments(Central and State) – as time progresses, an evaluation may be made of the merits of a single legislation. This must be undertaken to help achieve the aim of streamlining the experience for consumers, expedite sustained growth of the sector, address inequalities amongvarious stakeholders, and drive towards consonance with other areas of the economy as they become digitalized.

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APPENDIX I

“e-Commerce”

DPIIT, FDI Policy, 2017:“e-Commerce” means buying and selling of goods and services, including digital products over digital and electronic network

MeitY:“e-Commerce” is a type of business model, or segment of a larger business model, that enables a firm or individual to conduct business over an electronic network, typically the internet. Electronic commerce operates in all four of the major market segments: business to business, business to consumer, consumer to consumer and consumer to business (<http://meity.gov.in/e-commerce>).

Consumer Protection Bill, 2018:“e-Commerce” means buying or selling of goods or services including digital products over digital or electronic network [Section 2(16)].

Central GST Act, 2017: “electronic commerce” means the supply of goods or services or both, including digital products over digital or electronic network [Section 2(44)]

E-Commerce Law of the People’s Republic of China (2018):“E-Commerce” as used in this Law refers to business activities that sell merchandise or provide services on information networks such as the internet. (Does not apply to financial products or services and use of information networks like news, programmes, publications, cultural products. [Article 2]

European Union:e-Commerce can be defined generally as the sale or purchase of goods or services, whether between businesses, households, individuals or private organizations, through electronic transactions conducted via the internet or other computer-mediated (online communication) networks. The term covers the ordering of goods and services which are sent over computer networks, but the payment and the ultimate delivery of the goods or service may be conducted either on- or off-line. [EU Glossary <https://ec.europa.eu/eurostat/statistics-explained/index.php/Glossary:e-Commerce>]

WTO: The term "electronic commerce" is understood to mean the production, distribution, marketing, sale or delivery of goods and services by electronic means. (Work Programme on Electronic Commerce, 1998)

OECD:e-Commerce transaction is the sale or purchase of goods or services, conducted over computer networks by methods specifically designed for the

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purpose of receiving or placing of orders. [OECD Glossary <https://stats.oecd.org/glossary/detail.asp?ID=4721>]

“DigitalEconomy”

Asian Development Bank: The digital economy refers to a broad range of economic activities that use digitized information and knowledge as key factors of production. [<https://www.adb.org/news/events/understanding-digital-economy-what-it-and-how-can-it-transform-asia>]

G20, Argentina 2018: The digital economy refers to a broad range of activities, which include the use of knowledge and information as factors in production, information networks as a platform for action and how the information and communication technology (ICT) sector spurs economic growth. [<https://www.g20.org/en/g20-argentina/work-streams/digital-economy>]

“Data”

Information Technology Act, 2000: “Data” means a representation of information, knowledge, facts, concepts or instructions which are being prepared or have been prepared in a formalised manner, and is intended to be processed, is being processed or has been processed in a computer system or computer network, and may be in any form (including computer printouts magnetic or optical storage media, punched cards, punched tapes) or stored internally in the memory of the computer [Section 2(1)(o)].

Personal Data Protection Bill, 2018: “Data” means and includes a representation of information, facts, concepts, opinions, or instructions in a manner suitable for communication, interpretation, or processing by humans or by automated means [Section 3(12)].

APPENDIX 2

Taking back control over data: some illustrations from around the world.

The Maori Data Sovereignty Network ('TeManaRaraunga')

The Maori community in New Zealand has developed a framework for data sovereignty for indigenous groups. Maori Data Sovereignty asserts that Maori data should be subject to Maori governance and that Maori organizations should be able to access this data to support their development aspirations. Maori data refers to data produced by them or data about them and the environments with which they have relationships.

Among others, it seeks to fulfill the aspirations of the Maori community for collective and individual wellbeing by asserting Māori rights and interests in relation to data and supporting the development of sustainable Māori digital businesses and innovations.

Project "Decode' in Amsterdam and Barcelona

The Decentralized Citizen-owned Data Ecosystems (DECODE) is a European Commission funded project. DECODE will explore how to build a data-centric digital economy where data that is generated and gathered by citizens, the Internet of Things (IoT), and sensor networks is available for broader communal use, with appropriate privacy protections.

It will allow people to decide which applications, platforms and tools can access their information, and allow governments and the private sector to use it for the common good. A data commons shall be built by sourcing information from the public. For instance, Barcelona, is experimenting with data to solving common urban problems like tracking noise levels and improving air quality.

As a result, innovators, startups, NGOs, cooperatives, and local communities can take advantage of such data to build apps and services that respond to their needs and those of the wider community.

Canada

Data sovereignty for indigenous people in Canada has been trademarked as 'OCAP' under the First Nations Information Governance Centre (FNIGC). OCAP are a set of standards which regulate the collection, protection, sharing and usage of First Nations data. OCAP stands for ownership, control, access and possession of data collection processes in the communities of First Nations. This ownership and control of data is in the hands of the community. Since 2010, FNIGC has been operating on behalf of the First Nations and OCAP is being complied with in certification process and information management systems. The

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FNIGC illustrates how sovereignty of a community can be realized in relation to data, information and knowledge.

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