

IND0029 - techUK

About techUK

techUK is the trade association which brings together people, companies and organisations to realise the positive outcomes of what digital technology can achieve.

With over 800 members (the majority of which are SMEs) across the UK, techUK creates a network for innovation and collaboration across business, government and stakeholders to provide a better future for people, society, the economy and the planet.

By providing expertise and insight, we support our members, partners and stakeholders as they prepare the UK for what comes next in a constantly changing world.

Introduction

It has been important for our industry to be a part of the pre-negotiation scoping phase to provide inputs on which aspects of the future trade agreement with India we should improve and amend. techUK welcomed the opportunity to feed into Department for International Trade's call for inputs on the UK-India free trade agreement in August 2021.

On a broader point, techUK supports a wide and open stakeholder engagement approach, that keeps all stakeholders, including industry, civil society and consumer organisations informed and engaged in formulating negotiating objectives.

Key priorities for the tech sector

techUK is pleased to see that the Government is looking to pursue a comprehensive digital chapter in the future UK-India FTA. From the perspective of the tech sector, the UK's strategic approach to these negotiations reflects the key asks of our industry including:

- **Cross-border data flows without compromising data protection standards;** the UK and India need to ensure they have the right legal frameworks in place as part of any future trade agreement to allow data to flow freely across international borders (with minimum levels of regulatory interference) for businesses and consumers, whilst ensuring appropriate levels of privacy and data protection.
- **Ban on data localisation;** techUK believes that a future FTA with India should include a reciprocal commitment that ensures that no party shall require the use of computing facilities or their location in a Party's territory as a condition of market access. Data localisation requirements represent an unnecessary barrier to trade that increases the cost of storing data for businesses.

- **Preventing the mandatory transfer of source codes, algorithms and encryption keys**; so that businesses will not be forced to disclose or transfer their product source code as a condition for market access.
- **Digital Tariffs and Non-discrimination of what is provided in Digital Format**; techUK encourages the UK government to include a strong commitment in a future UK-India trade deal to ban the imposition of customs duties in connection with the import or export of what is provided in a digital form, i.e. transmitted electronically.
- **Collaboration on emerging tech**; the UK government should aim to support the growth of emerging technology companies by establishing frameworks for cooperation in the development of regulation in a future UK-India FTA.
- Recognising the international validity of **e-signatures and electronic contracts**.

It is important to note that the governments of India and the UK are at different points in their journeys to reform their domestic legal regimes on personal data protection and international data transfers. At the time of writing this evidence, the Ministry of Electronics and Information Technology (MEITY) in India is considering the latest iteration of a comprehensive draft data protection law, the Data Protection Bill of 2021 (DPB 2021)¹ that has been released by a Joint Parliamentary Committee (JPC) that was reviewing an earlier version called the Personal Data Protection Bill of 2019 (PDP Bill). The DPB 2021 may soon be tabled in Parliament for its passage. Currently, the draft rules carve out two subcategories of personal data – “sensitive personal data” (SPD) and local processing of “critical personal data” (CPD).

They then require the local storage of SPD and local processing of CPD by default. Though the rules do not bar entities from transferring SPD and CPD across borders, such transfers may only be engaged in on highly limited grounds and only after the authorisation of both the Indian Government and the proposed Data Protection Authority of India is sought. This approach creates challenges for UK tech businesses. It would require the creation of additional storage systems, which may increase costs for organisations operating in India. For SMEs and start-ups, this could limit their global competitiveness since they would be forced to bear these costs at a time when they are trying to start out and launch their digital services.

techUK members call on the UK government to seek a clear definition of what constitutes ‘critical personal data’, ‘sensitive personal data’ and ‘reasonable purpose’ exemptions.

It is vital that the UK-India FTA negotiations are not fraught with the risk of pace vs quality. The potential Early Harvest Agreement must include a comprehensive digital chapter that meets the digital trade standards the UK set last year and reflects the objectives set out in the UK’s strategic approach.

¹ See the (Draft) Data Protection Act of 2021 contained in the Annexure in the Report of the Joint Parliamentary Committee on the Personal Data Protection 2019, available at http://164.100.47.193/Isscommittee/Joint%20Committee%20on%20the%20Personal%20Data%20Protection%20Bill,%202019/17_Joint_Committee_on_the_Personal_Data_Protection_Bill_2019_1.pdf (last accessed on January 24, 2022).

Once the UK-India FTA including a comprehensive digital chapter has entered into force, it will be easier for UK technology firms to export to India. Enabling cross-border data flows with an adequate data protection framework will help businesses carry out key operations that necessarily involve processing data from multiple jurisdictions. It will also allow tech businesses on both sides to leverage emerging technologies that rely on distribution of data, such as cloud computing, data analytics or applications of artificial intelligence. Ban on data localisation will remove an unnecessary barrier to trade that increases the cost of storing data for businesses. For SMEs and start-ups, data localisation requirements limit their global competitiveness since they would be forced to bear these costs at a time when they are trying to start out and launch their digital services.

Regulatory cooperation will bring significant benefits for our sector. There is a great opportunity for the UK to work with India to strengthen cooperation in the AI development and deployment. Cloud, data analytics, data innovation, fintech and telecoms are other areas where both governments should seek collaboration between regulators and policymakers.