techUK Submission to the Department for International Trade call for input on the UK-India free trade agreement

About techUK

techUK is a membership organisation launched in 2013 to champion the technology sector and prepare and empower the UK for what comes next, delivering a better future for people, society, the economy, and the planet.

It is the UK's leading technology membership organisation, with more than 850 members spread across the UK. We are a network that enables our members to learn from each other and grow in a way which contributes to the country both socially and economically.

By working collaboratively with Government and others, we provide expert guidance and insight for our members and stakeholders about how to prepare for the future, anticipate change and realise the positive potential of technology in a fast-moving world.

Executive Summary

- Tech is one of key under-pins to the strong India-UK bilateral partnership. Both nations are world leaders in technology and innovation. India is the 2nd largest source of FDI into the UK, tech & telecom sector contributes almost 38% to this pie. UK is Indian tech industry's 2nd largest export market after the US. UK's telecommunications, computer and information services exports to India totalled £178 million in 2020.

- Traditionally Indian tech companies have been having a large presence in the UK, investing in local skills development and contributing to the UK's economy. Not only large companies, even small & medium sized tech companies from India see UK as an important market and have been making forays into the region. Needless to say technology partnerships and innovation in areas like Cloud, AI, IoT, Robotics, Automation, Analytics, etc. will become key drivers for this bilateral relationship to flourish further.

- The UK and India already possess the scale, scope, data, IT and communications engineering and research skills. Therefore, R&D collaboration, innovation partnerships and bilateral digital trade must be strengthened as far as possible on next generation technologies.

- Digital services are going to drive the future trading partnership between the UK and India, and it is therefore important that digital trade is central to future UK-India trade relations.

- For many UK and Indian companies, each country is amongst their largest footprint outside the UK (for trade & investment), and key to their Indian, UK and global operations. Key to achieving a successful trade deal will be striking the right balance between the movement of people, innovation and free data flows and regulatory alignment.

1) Which areas of a potential future free trade agreement would you want the UK government to prioritise on trade talks with India?

Cross-border flow of data without compromising data protection standards

Across sectors and borders, data is an essential component of innovation, productivity growth and economic expansion. It is important that an FTA ensures the ability to transfer data to and from India without compromising data protection standards.

We believe that 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. These commitments provide business the assurances they need that they can collect, process, and transfer data between the two countries, without facing unnecessary red tape while maintaining commitment to the UK's Data Protection Act 2018. The free flow of data is essential in many industries and sectors to run operations smoothly.

techUK welcomes the fact that India is updating its data protection rules. The Personal Data Protection (PDP) Bill is a significant step forward in the development of data protection law in India. A large number of the Bill's provisions mirror those of the EU's General Data Protection Regulation (GDPR). However, there are some concerns with certain elements of the Bill, including data localisation requirements and definitions of 'personal and sensitive data' amongst others. The data localisation requirements mirrors a disappointing trend of increasing data localisation requirements around the world, which do not provide additional protections to personal information but does hinder cross-border activity. The UK government should also seek more clarity on what constitutes 'critical personal data' and further defining the 'reasonable purpose' exemptions.

The UK should ensure that any commitment it makes in future trade agreements does not jeopardise the EU Adequacy decision. 75% of the UK's cross-border data flows are with EU countries and preventing any barriers to future UK-EU data flows should be the UK's priority.

It should be a key UK priority to ensure that financial data is not subject to separate carve outs in future trade agreements to increase competitiveness and growth in this area.

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.

The PDP Bill states that critical personal data, which is defined by the government, generally cannot be transferred outside of India at all. This essentially puts what is defined as 'critical' in the hands of the government. This requirement creates significant costs to UK companies, who would need to set up additional data processing and storage facilities in India to comply. In addition, India's recently revised report on the Nonpersonal Data Governance Framework by the Committee of Experts also conjures a number of potential challenges. The expanded definition of a Data Business to include an entity which not only collects non-personal data, but also personal data is likely to give rise to multiple registration requirements as a consequence of including personal data within the definition of a data business. As the report stands, it is not clear whether IP-protected content will be excluded from the scope of the framework.

The UK government should base provisions on data localisations on the UK-Japan CEPA (Chapter 8). This would prevent either country from requiring that the computing facilities that store the data are located in that country as a condition of doing business there. This means UK businesses operating in India can plan their business growth and use existing servers without worrying about the extra cost of setting up new data servers in India.

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. This commitment should extend to all digital products regardless of source rather than being limited to just the signatories of the agreement, thus helping embed the moratorium in international law. Such a step would ensure that customs duties do not impede the flow of information, data, research works, music, video, software, and games for the benefit of authors, creators, artists, and entrepreneurs. The revenue implications of applying customs duties are likely to be relatively small and would come at the expense of more significant gains in consumer welfare and export competitiveness.

The UK should also urge India to support the continuation of the global moratorium at the WTO level.

Prevent the mandatory transfer of source codes, algorithms, and encryption keys as a condition of market access

A future UK-India FTA should seek to prevent 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. The prevention of mandatory transfer should also include data, intellectual property, digital content and trade secrets. The UK government should explore the possibility of including a clause stating that no party shall require the transfer of, or access to, source code of software, algorithms, or encryption keys owned by a person of another party, as a condition for the import, distribution, sale or use of such software, or products containing such software, in its territory.

Such wording would not prevent the provision of source code in commercially negotiated contracts, nor would it prevent requiring the modification of software to comply with a party's laws and regulations. The clause should seek to include an agreement that such laws and regulations will not lead to arbitrary or unjustifiable discrimination, or be a disguised restriction on trade, and do not impose restrictions that are greater than are necessary to achieve their objectives.

Open government data

One way that the UK government can facilitate the development of AI technology is to seek provisions in an FTA that commit parties to make government data available to the public in machine-readable and searchable open formats, and allow it to be searched, retrieved, used, reused, and redistributed. Facilitating the provision of accessible, organisable public data will help allow innovative UK AI companies to develop and train their products and deploy them readily in foreign markets. The UK has set a precedent of including this provision in the UK-Japan CEPA.

Collaboration on emerging tech

The reality of technological change today means that it will not be tariffs that are the main barrier to digital trade, but regulatory divergence.

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. Ensuring approaches are aligned in areas such as data ethics, AI and digital do a great deal to enable trade as these technologies develop. The UK should follow the example of the Digital Economy Agreement and include commitments to cooperate and maintain a dialogue on the promotion and development of mechanisms that facilitate the interoperability of regulatory regimes. The Singapore-Australia DEA provides a model for doing this with its accompanying MoUs. Given the fast-moving nature of technology and the regulatory challenges that can arise from it, these additional MoUs provide a flexible and adaptive framework to advance the interests of both Parties in cooperation with each other.

India and the UK are leaders in the field of AI. India ranks ninth in terms of the number of AI specialists while in the area of core research publications in AI, India ranks third in the world. The UK is a world-leader in AI research and innovation, with the resources, finance, and expertise to help deliver India's AI and data ambitions.

There is a great opportunity for the UK to work with India to strengthen cooperation in the AI development and deployment, encourage the sharing of best practices and information between the AI ecosystems, facilitate increased access to AI technologies, markets and talent and support the development and adoption of ethical governance frameworks for the responsible development and use of AI technologies and the alignment of governance and regulatory frameworks. Cloud, data analytics, data innovation, fintech and telecoms are other areas where both governments should seek collaboration between regulators and policymakers.

Small and Medium-Sized Enterprises (SME)

techUK encourages the UK Government to include provisions designed to support small and medium sized businesses in an FTA with India. SMEs require assistance in participating in global markets and an FTA could serve as a vehicle to strengthen SMEs' export potential.

A future UK-India FTA should identify ways to assist SMEs to take advantage of the commercial opportunities of the future trading partnership between the UK and India and promote and facilitate trade and investment opportunities for SMEs. The UK government should establish its own publicly accessible website containing information regarding the benefits of the new agreement for SMEs and designate SME contact points.

UK businesses view a duplication of the provisions on Small and Medium- Sized Enterprises in Chapter 20 of the UK-Japan CEPA as an ideal outcome of the UK-India FTA negotiations.

Telecoms

techUK supports sound and pro-competitive telecoms chapters in FTAs that mirror the standards we have in the UK to ensure a level-playing field between international markets. This includes best regulatory practice on non-discrimination in wholesale access to the "last-mile" and evidence-based regulatory interventions and equally for evidence-based regulatory forbearance. The recent TCA with the EU is the current benchmark.

In sum, market access barriers in telecommunications are:

- Lack of liberalisation (no market access), which effectively bars foreign competition;

- Foreign ownership restrictions (limited market access), which may lead to complicated and inefficient joint-venture structures; and

- Inadequate regulatory institutions and/or rules to enable access to infrastructure on fair terms (flawed market access).

UK telecoms businesses in India find it challenging to navigate the processes of obtaining licences and licencing rights. The issue is lack of a streamlined process to apply for licencing. The UK government should seek clear rules on licencing to make it as costless and burdenless as possible for UK companies to operate abroad.

A future UK-India trade agreement should seek to liberalise telecommunications trade in a number of ways:

- ensure that the definitions of public telecommunications networks and/or services must include an explicit reference to business to business supplies;

- enhance non-discrimination clauses for wholesale access, including an obligation on domestic suppliers not to discriminate in favour of their own downstream business, to ensure consistent, pro-competitive regulation of business grade wholesale access;

- ensure that UK providers enjoy the same rights to offer services and trade on equivalent terms as domestic providers, including not facing additional licensing or domestic ownership requirements;

- include direct, indirect and common costs, as well as a reasonable rate of return, where cost-oriented rates are applied. Such rates shall not include costs not related to the provision of public telecommunications services

UK telecoms businesses support the development of the MOU on Telecoms to drive bilateral development and deployment of new telecoms products and services. techUK believes the MOU should have wider scope and cover not only 5G but also 6G and broadband. When considering remote connectivity and digital inclusion, satellite operators can help the deployment of mobile 5G network in rural areas and this should be considered as part of the bigger landscape of technology.

Mobility

In a highly competitive and fast-moving sector, the ability to recruit talent easily and move them within a business is critical. Restrictions and bureaucratic requirements directly lead to increased costs and delays for businesses. In a competitive and fast-moving sector, the ability to recruit talent easily and move them within a business is critical and, as techUK has previously argued, there is much space to improve the UK's immigration system.[1] Not having the ability to place the right people at the appropriate time in the jurisdictions in which they have interests could become a considerable disadvantage.

techUK believes that the Government should adopt flexible migration policies which recognize the skills needs of the tech industry. Pre-covid, talent was moved frequently from India to the UK to deliver technology services and UK businesses would like to see an easing of the cost element to use the system. The new point-based system implemented in Jan 2021 is nationality agnostic, a decision welcome by the tech industry. The Global Talent Visa scheme, reinstatement of post-study work visas (Graduate route), and removal of the Skilled Worker visa cap are steps to making the UK a global hub for innovation. The pragmatic approach taken to implement these reforms is needed to create a fair and managed immigration system but there is more we can do to attract leading international talent.

We encourage the two governments to explore options to further streamline the integration of Intra-Company Transfer (ICT) route as part of the new Skills Worker route defined by the UK government in its immigration strategy. techUK members use the ICT route to move people between the UK and India on short-term based contracts. The ICT route enables companies to deploy offshore employees to onsite for specific deliverables and utilization of niche skills including cyber security, telecoms, infrastructure digital skills. The unavailability of this route may require members to consider other routes which may have an impact on local hiring and

rotation of employees.Both governments can consider the introduction of a Short Term ICT (3-12 months validity) similar to Tier 2 ICT Short Term Staff via or Tier 2 ICT Skilled Transfer visa which existed before 6 April 2017, where the salary threshold was as per SOC's salary. This category was useful for training key international assignees in UK and for very short-term economic projects. Many other European countries have options of short-term work permits.

Apprenticeship Levy

The apprenticeship levy remains one of the key tenets of the Government's approach to address the skills gap in the UK and develop domestic skills. Tech companies in the UK, whether British or international, have embraced the opportunities brought by the introduction of the apprenticeship levy in 2017. However, there is still more that can be done to ensure the levy works for both businesses and apprentices, and that the tech industry continues to be a positive force for apprenticeship development in the UK.

Although not exclusive to British and Indian tech companies, the operational challenges for domestic skills development, particularly related to the utilisation of the levy, have been recently highlighted by techUK and NASSCOM members through our joint work under the UK-India Tech Alliance, as part of the broader UK-India Tech Partnership, formed in April 2018, between both the UK and Indian governments.[2]

On the key issue of apprenticeship levy, we call on the Government to broaden the apprenticeship levy into a skills & training levy, increase the lifetime of apprenticeship levy funds from two to five years and increase the percentage of transferable funds to 80 per cent.

techUK recommends reforming the apprenticeship levy into a broader skills and training levy, and including in scope other forms of accredited training, that is more closely aligned to the practical and operational realities of the job. The broadening of the apprenticeship levy could include training provided in-house by companies and form part of the 'off-the-job' training requirements for apprentices.

Since April 2019, the apprenticeship levy system has allowed employers to share up to 25% of their funds with other businesses in their supply chain. This reform was wholly welcome and is a positive sign that the Government has been listening to concerns about the efficacy of the levy. Passing on a portion of the levy means companies can help fund training in smaller companies or those in their supply chain that might not have the resources to fund apprenticeships themselves which helps them develop their processes. In 2016, techUK recommended this very policy – that mechanisms should be put in place to allow levy-paying organisations to divert their levy funds for use within their supply or distribution chain. Our members have shared their views that this measure should go even further to enable them to fund skills development through their ecosystems.

The bureaucracy and complexity of the levy has left funds going unspent, with smaller businesses missing out. To combat stagnant apprenticeship growth in companies across the UK economy, techUK recommends reforming the apprenticeship levy to increase the lifetime of levy funds from two to five years. By combating overall issues with the apprenticeship levy, businesses would ultimately find it easier to use their funds within two years. However, as we learn from the successes and errors of the levy, a short to medium-term solution is required.

[1] "An Immigration System that Supports the UK Tech Sector", *techUK*, September 2018, https://www.techuk.org/insights/reports/item/13919-an-immigration-system-that-supports-the-uk-tech-sector

[2] "techUK-NASSCOM Joint Position Paper on Apprenticeship Levy", *techUK,* January 2020,

https://www.techuk.org/resource/techuk-nasscom-joint-position-paper-on-apprenticeship-levy.html

2) Are you facing challenges or constraints when attempting to trade or invest in India, and if so, how significant is this on your business activity?

Regulations and standards

One of the key challenges faced by UK business when trading or investing in India is the lack of regulatory and standards alignment between state and national level and international level regulations and standards. An inability to show compliance with regulations and the use of relevant recognised standards is a significant hurdle for companies wanting to 'Make in India' and export to other markets. Harmonising standards across countries is a major catalyst for trade, allowing companies to sell their products and services without the need for adaptations across multiple markets. We encourage the Government to explore opportunities for harmonising standards and enabling businesses to sell their products and services across markets without the need for multiple compliance mechanisms.

Clarity on Policy Interpretation and Laws

Clarity on policy interpretations is an important element for the growth of tech collaborations and cross-border activities. The main issues techUK members have cited are local employment laws, data flows, ICT tariffs and telecoms law, which are very outdated and have a lack of clear interpretive guidance creating significant variations of policy and interpretations of definition and scope of the legislation. This is very challenging for businesses to navigate. Lack of clarity on how legislation applies is potentially damaging to business and UK businesses would welcome support on making the case for interpretive guidance, particularly in telecoms.