

January 11, 2024

The Honorable Katherine Tai  
United States Trade Representative  
Executive Office of the President  
600 17th Street, NW  
Washington, D.C. 20508

Dear Ambassador Tai:

On behalf of the Alliance for Trade Enforcement (AFTE), a coalition of trade associations and business groups that advocates for the end of unfair trade practices that harm U.S. companies and workers from every sector of the economy, we are grateful for your work to resolve several longstanding irritants in our trade relationship with India, including in the lead up to the Trade Policy Forum (TPF). We write to highlight many of the challenges AFTE members face in India and, due to the ever-growing scope of challenges facing our members there, add to the urgency of the upcoming TPF and reauthorizing the Generalized System of Preferences (GSP) Program. We ask that you secure concrete market access deliverables at the TPF in intellectual property and other areas where bilateral momentum has been building, and concurrently work with Congress urgently to reauthorize GSP to enable bilateral negotiations to restore India's GSP eligibility and resolve specific U.S. market access concerns.

Steady and forthright engagement by the Office of the United States Trade Representative (USTR) has created more opportunities to make progress on specific concerns, but India continues to implement regulations, policies, and tariffs that discriminate against our products and harm our workers. Since the GSP Program lapsed in December 2020, India has continued to add discriminatory policies related to local testing, import licenses, compulsory licenses, quality control orders, indigenous standards, data localization, and tariffs that drive up the cost of many U.S. goods and services in India, or block them altogether. Negotiations to restore India's eligibility will build on recent momentum by empowering you to resolve many discriminatory practices against American workers, which in turn will unlock further potential for our trading relationship.

To illustrate the scale of obstacles our members face in India, we would like to highlight a sample of the sectoral and cross-sectoral barriers that limit the ability of businesses in the United States to operate in India.

### **I. Intellectual Property**

We urge USTR to use the upcoming TPF to secure resolution to several intellectual property concerns that have been prioritized under the TPF framework. Specifically, we ask that India finalize the recently released Draft Patents (Amendment) Rules, 2023. The Draft Rules address some longstanding concerns with India's intellectual property regime, and, if finalized, would represent a concrete deliverable under the TPF. Specifically, changes outlined in the Draft

Rules pertaining to patent application disclosure requirements, pre-grant opposition proceedings, and working statements will provide innovators with the certainty and predictability needed to facilitate innovation in India. Indeed, updating punitive patent application disclosure requirements, reforming the pre-grant opposition process to address issues with serial oppositions and oppositions filed by persons with no discernible interest or connection to the subject matter of the patent application, and simplifying the working statement will help advance India's goals of developing an innovative biopharmaceutical sector.

Moreover, the time is ripe to leverage the renewed interest in India's intellectual property regime to see through more substantive reforms. For example, implementing regulatory data protection would support India's goal to develop an innovative biopharmaceutical sector by providing critical incentives for investment in new treatments and cures in India. Also, improving the transparency and coordination of regulatory approvals would provide the certainty and predictability biopharmaceutical innovators need to securely launch products in India. Finally, eliminating restrictive patentability criteria will allow innovators to launch new and improved treatments in India.

## **II. Technical Barriers to Trade**

India continues to expand local testing and certification requirements in multiple sectors, including toys, food and health care that deviate from global norms and raise significant concerns and costs for U.S. manufacturers. For example, food manufacturers face an array of regulatory barriers including restrictions on genetically modified organisms, unclear testing and certification requirements, including a health certificate for certain products that is only valid for 30 days, new front of pack labeling requirements, and a new filter tool that suggests domestic alternatives under the draft Consumer Protection (E-Commerce) Rules 2021.

India's clinical trial requirements impose mandatory standards that apply burdensome testing and certification requirements on foreign companies that are more restrictive than those applied to domestic producers. Furthermore, the granting of waivers of the local clinical trial requirements is subjective and unpredictable.

In addition, India's Quality Control Orders, regulatory measures designed to ensure products meet quality, safety and performance standards before they can be manufactured, imported or sold in the country, have created challenges, uncertainty and delays. In the chemical sector, QCOs have been announced with short notice and no opportunity for private sector input. Facility audits by the Bureau of Indian Standards are a challenge to schedule, and we support USTR raising this issue through the TPF and exploring a process for having certifications or accreditation for labs in the United States.

### **III. Tariffs**

India continues to apply import duties on a range of manufactured products, including automobiles, textiles, toys, distilled spirits, pharmaceuticals, and rubber, as well as processed food products. Moreover, India regularly uses, and adjusts, tariffs as an industrial policy tool to protect domestic companies in selected industries, such as information technology products, pharmaceuticals and medical devices. Over the last three years, India's applied tariffs on non-agricultural goods jumped from 12% in 2021 to 15% in 2023, and tariffs on toys went from 20% in 2020 to 70% in 2023. As a result of these high tariffs, U.S. manufacturers exported fewer goods to India (worth approximately \$26.5 billion in 2022) than to far smaller economies. India's Ministry of Finance continues to use the annual budget to announce sudden tariff changes, with the 2023-2024 budget including targeted tariff increases for gold, silver, platinum, and certain rubber products.

### **IV. Government Procurement**

Local content requirements of 20 or 50 percent domestic content, depending on the size of the contractor, for government procurement of both goods and services projects poses a significant compliance challenge in particular to foreign software and cloud service providers (CSPs) to demonstrate local value add. This model does not consider the investments and other contributions made by foreign CSPs that enable the Indian Tech ecosystem and their global competitiveness. The Indian government is considering revisions to the order and increasing the minimum local content requirement by a further 10 percent.

### **V. Custom and Trade Facilitation**

India's timeline for granting advanced customs classification rulings is unpredictable, sometimes taking years, and sometimes rulings are not issued at all. The WTO Trade Facilitation Agreement calls for advance rulings to be provided within a "reasonable, time-bound manner," and India's own law requires rulings within 3 months.

India lacks a digital document management system and continues to require "wet signatures" by authorized signatory for filing appeals at various appellate levels for customs litigation, duty drawback claim applications upon re-export, etc. This is time-consuming, adds to administrative complexity, and runs counter to ease of doing business.

AFTE encourages India to allow manufacturers to determine all applicable duty rates and customs procedures, utilize improved pre-arrival processing, and use time-definite, single-document customs clearance procedures. India should also provide a commercially meaningful *de minimis* threshold that is applicable to commercial shipments.

In addition, the Indian Central Board of Indirect Taxes and Customs Circular 15 mandates submission of information for several chemical related products, which was previously a voluntary declaration. The circular now requires the declaration of the CAS number for imports

of certain chemical products in the customs portal. By asking for the declaration of every CAS number, India is receiving the full recipe for how to make the product. This creates clear business confidentiality issues.

## **VI. Digital Trade**

In recent years, India has imposed and proposed an expanding series of policies that discriminate in favor of local companies. India has long expressed a desire to become self-reliant in line with Prime Minister Modi's Atmanirbhar Bharat Abhiyan doctrine for information technology, and especially regarding hardware manufacturing. Given the national security importance of telecommunications technology, as well as India's ambition to increase its role in international ICT supply chains, a collaborative approach to digital trade by the U.S. and India would expand opportunities for small businesses and entrepreneurs across sectors and in both countries to grow, add jobs, and participate in the global economy, so India's actions undermine our bilateral relationship.

- Costly and frequently changing duties on many ICT products since 2014 in contravention of its commitments to provide duty-free treatment for many of these products under the Information Technology Agreement (ITA), including on switches and base stations, telecommunications parts, mobile phones, and parts and accessories of test equipment.
- Proposed measures in India's upcoming Digital India Act, which will include measures to remove long-standing safe harbor protections, reshape advertising and content monetization models, and leave substantial regulatory details to secondary legislation, potentially causing uncertainty for businesses.
- Import license for laptops, tablets, servers, and other items, effective November 1, 2023, and may impose an annual quota on these products that would start in 2024.
- Costly screening, testing, and certification of foreign telecommunications products under multiple programs.
- Measures that allow the Indian government to restrict cross-border data transfers or that impose data localization requirements on foreign companies, such as the Reserve Bank of India's Guidelines create market restrictions for U.S. service providers, harm businesses that operate globally, and impede operations of companies that rely on cloud services based outside India.
- Guidelines on geospatial data and services limit cross-border data transfers and are obstructing foreign firms, including U.S. companies, from forming partnerships and pursuing technology development in India.

- Invasive regulations for cloud and VPN service providers in India that mandate extensive personal data collection and logging of customer activities, with an obligation to share data with authorities.
- Potential measures in India’s forthcoming Competition Bill that take a similar approach to the EU’s Digital Markets Act by targeting U.S. firms and potentially damaging the security of digital services.
- Requirements under RBI’s Payment Vision that could give domestic EPS provider UPI a regulatory advantage, including a new national payments gateway to link all card networks and Point of Sale terminals in India.
- Dueling agency and legislative proposals to regulate Over-the-Top (OTT) communication services through a telecommunications license together limit input from stakeholders on the legislative process and create an unpredictable environment for streaming services.
- Opposition by India of the World Trade Organization’s moratorium on customs duties on electronic transmissions, which if ended would likely lead to new duties by India that would badly restrict the operations of American companies in India’s digital economy.

## **VII. Tax**

Globally, the general practice is to have parity for corporate tax rate across all companies, a practice followed by all BRICS countries, Singapore and most OECD countries provide parity for corporate tax rates across companies. India, unfortunately, applies a 22 percent corporate tax rate for companies incorporated in India, but a 40 percent rate for foreign branches. This significantly disadvantages U.S.-based financial institutions. Foreign bank branches are regulated on par with Indian banks for nearly all other matters, and Indian firms are treated equally in the U.S. India should apply the 22 percent corporate tax rate equally for all firms (without any specified deductions/exemptions).

## **VIII. CONCLUSION**

At the 13th ministerial meeting of the TPF in 2023, you and Minister Goyal noted that U.S.-India trade is growing but is far from achieving its full potential and expressed an intention to further enhance engagement with the goal of increasing and diversifying bilateral trade. The upcoming TPF should be guided by, take stock of, and build on the initiatives and objectives recently agreed between the two governments and produce concrete deliverables, a task made more important by challenging geopolitical circumstances. Upon your return from the TPF, we also hope that you will push in parallel and vigorously in Congress for GSP



renewal, which will open a path to resolution for many costly and longstanding barriers to U.S. goods and services in the Indian market.

Sincerely,

Brian Pomper  
Executive Director  
Alliance for Trade Enforcement

