I. BUILDING A FAIR AND TRANSPARENT TAXATION REGIME

USIBC is deeply encouraged by the Government of India's stated focus on improving the taxation framework to stimulate investment and economic growth in India. This includes key reforms such as the implementation of the Goods and Services Taxation Regime, and the demonetization reforms to move India to a cashless, digitally-driven economy.

A significant positive step toward improving the investment climate would be to further reduce tax uncertainty for multinational companies and institutional investors in India. In today's economic environment, scarce capital is allocated to markets offering optimal returns. Global businesses allocate investments where post-tax returns for a given risk profile are highest. When tax costs are uncertain, particularly in a foreign country, investors normally provide for them on a most conservative basis. Therefore, tax uncertainty results in an increase of risk when investing in any given project and drives investors to either withhold investments or require a higher rate of return to account for this risk, thus raising the cost of capital in the uncertain market.

The following section provides recommendations in areas where tax uncertainty can be further reduced in order to improve India's environment for job-creating foreign investment.

A. Retrospective Taxation: Resolution of Legacy Cases

USIBC welcomes and supports Prime Minister Modi's plans to transform India's economy and his efforts to promote India as a global investment destination. However, if the Government of India is to be successful in attracting the international investors it needs to create a more stable and predictable fiscal regime, it must address retrospective taxation and the legacy cases that remain open. USIBC members believe that unless resolved, the lack of clarity in the government's approach to taxation risk will undermine progress in other areas of the economy and will continue to damage India's reputation among investors. Repudiating retrospective tax laws and adopting international norms would allow the international investment community to see that the Indian Government is delivering on its pre-election promises to eradicate so-called tax terrorism.

Retrospective taxation is such highly damaging economic legislation that its existence will continue to be a major concern for international investors, including USIBC members. By rescinding the historical retrospective tax legislation; the Government of India would have an opportunity to proceed to a satisfactory resolution of legacy cases which would be beneficial to both India and the companies involved.

Such government action would send an unequivocal signal to the international investment community and eradicate ongoing uncertainty and negative sentiment towards India as an investment destination. In turn, initiatives such as '*Made in India'* would be supported more widely and deliver the potential positive economic benefits and growth during the Government's term if office. *In advance of the forthcoming Union Budget of 2018, USIBC recommends the Government of India repeal the 2012 legislation on retrospective taxation and adopt international norms or find another mechanism to resolve the outstanding legacy cases.*

B. Transfer Pricing and Advance Pricing Agreements

As indicated by the high-profile nature surrounding recent cross-border tax rulings, one of the primary frustrations of foreign multinational companies investing in India is an often-inconsistent transfer pricing regime and a lack of a predictable, efficient dispute resolution mechanism. Transfer pricing adjustments, by definition, involve taxpayers with complex business activities in multiple jurisdictions. *USIBC believes the Government of India must ensure that transfer pricing principles are applied in a fair and consistent manner for all taxpayers, as well as allow a reasonable method for determining transfer pricing comparables that support fees on services performed in India for non-Indian affiliated entities and match the nature of the company's services performed.*

As international norms dictate, transfer pricing principles should never be viewed as a selective and arbitrary mechanism for raising revenues. *Until such principles can be consistently applied in both countries, USIBC believes the Government of India and the U.S. government should consider adopting alternative dispute resolution procedures to more efficiently and expeditiously resolve tax disputes.*

As part of its domestic tax law, the Government of India has adopted a Dispute Resolution Panel (DRP) approach, which is intended to encourage the growth of foreign investment in India by providing a speedier mechanism for the resolution of disputes. This is a very important development in India, particularly if the DRP can demonstrate the ability to adjudicate transfer pricing disputes in a fair and principled manner consistent with its mission of fostering foreign investment into India. The two governments now have an opportunity to build on this positive development in India by extending and expanding the access to alternative dispute resolution processes (including binding arbitration) for resolving issues that arise with respect to domestic law or the application of the treaty.

However, based on the amendments made by Finance Act, 2016, decisions by the DRP may not be remanded back to the Assessing Officer, and taxpayers unsatisfied with the decision of the DRP must appeal directly to the Income Tax Appellate Tribunal (ITAT). Given this, there is a sense that the resolutions by the DRP would be pro-revenue in order to ensure that matter is kept alive. *USIBC recommends that suitable amendments be made such that the tax officer can be given an opportunity to be heard in the case the DRP takes a view different than the Transfer Pricing Officer so that the DRP proceedings are more judicious and not a mere step to fast track cases to ITAT.*

In addition to fostering the development of the DRP as a preferred transfer pricing dispute resolution forum and establishing alternative dispute resolution procedures, USIBC recommends that the Government of India could further remove barriers to FDI by strictly adhering to the terms of its bilateral income tax treaties. Honoring treaty obligations would go a long way towards eliminating such perceptions.

The Council was encouraged by the notification of the rollback provisions in March 2015 and the execution of unilateral advance pricing agreements (APAs) with multinational companies by the CBDT. The Finance Bill 2014 introduced roll back provisions in the Advance Pricing Agreement (APA) scheme with respect to the transfer pricing methodology and arm's length price. As per the relevant provisions, the roll-back would apply to four years immediately preceding the first year for which the APA is applicable. It has been indicated in the memorandum explaining the provisions of the Finance Bill 2014 that the roll back relief would be provided on a case to case basis and subject to certain conditions. *The CBDT's execution of APA agreements has been promising and USIBC strongly recommends that such efforts continue to resolve the number of cases still pending to aid in reducing transfer pricing litigation and increase tax predictability.*

Finally, companies are penalized in cases involving disagreements over technical tax obligations. Companies should not be penalized when making a good-faith effort to comply with tax laws. *USIBC recommends that penalties should only be imposed on exceptional cases of tax fraud, and not on regular tax disputes which involve technical interpretation of complex case law and statutory interpretation.*

Transfer Pricing Disputes

Indian Transfer Pricing litigation is one of the highest in the world and the increasing litigation in respect of Transfer Pricing [TP] issues is a cause of concern and certainly dampens the enthusiasm of the potential foreign investors in India and domestic companies investing outside India. The Safe Harbour rules notified are, in most cases, not in tune with the practical realities of the current business environment and the margins earned by various businesses. Introduction of APAs has been a game changer in the Indian Transfer Pricing scenario for both the taxpayers and the government. Through APAs, taxpayers who are either entangled in protracted litigation or foresee themselves becoming a prey of same, can achieve certainty. *USIBC supports recent revision of Safe Harbour Rules and the continued use of APA to address this aspect, more effective and demonstrable measures need to be taken to (a) reduce the TP litigation by issuing proper guidelines and instructions to the field officers to refrain from TP litigation, where the issues are settled by the tribunal/courts and revenue impact is very minimal and (b) have appropriate review mechanism in respect of disputable issues. The council also recommends that to maintain the momentum gained, APA authorities should include experts with domain knowledge in various industries in the APA team to enable better evaluation of complex issues and increase bandwidth of APA team to effectively deal with the increasing number of applications each year.*

C. General Anti-Avoidance Rule (GAAR)

USIBC recognizes the sovereign right and responsibility of the Government of India to ascertain legitimate tax planning from avoidance activities. With this stated intention the Finance Act 2012 introduced GAAR. The original rules proposed in the Finance Act 2012 presented major challenges, including a marked lack of assurance for legitimate foreign investment into India via FDI, portfolio holdings, and foreign institutional investment. The Government of India based on the recommendations of the Prime Minister's Expert Committee on GAAR, deferred the applicability of the GAAR provisions to April 1, 2017. *USIBC strongly supported the deferral and recommends the speedy resolution of questions related to applicability of key provisions, e.g. CBDT, in circular No.7 dated 27 January 2017, has clarified that GAAR will not interplay with the right of a taxpayer in selecting a method of implementing a transaction. Clarifications may be needed to understand applicability in certain transactions that are commercial driven, but implicate tax benefits and the provisions of GAAR. On-going dialogue will provide clarifications critical for all direct and institutional investment in the country, as well as verify that the concerns of global investment partners in the U.S. and beyond have been granted strong consideration.*

D. Updating the U.S.-India Bilateral Tax Treaty

The U.S. and India have a bilateral tax treaty that has not been updated in 25 years. The fundamental purpose of this agreement is to prevent double taxation on cross-border activity between the two countries. Consistent with this objective, the agreement also provides procedures through the competent authority process to resolve disputes that arise from differences in the tax laws and practices of the two countries. Many of USIBC's member companies find the existing competent authority process to be lengthy and expensive. As a consequence, taxpayers often face double taxation that hinders existing and future cross-border trade and investment. Updating the bilateral tax treaty could significantly improve the current tax climate through modernized provisions reflecting the reality of the economic relationship between the U.S. and India.

To facilitate cross-border trade and investment without the barrier of double taxation, the Government of India and the U.S. Government should reaffirm the shared commitment to improve tax dispute resolution. To that end, the two governments should work to modernize the U.S.-India Bilateral Tax Treaty to reflect the current business and investment environment.

E. Multilateral Tax Cooperation

As a leading member of the G20, India endorsed the Action Plan on Base Erosion and Profit Shifting (BEPS) which is being developed by the Organization for Economic Cooperation and Development (OECD). USIBC believes India's involvement in the BEPS project is a positive one, and holds out the promise of a broader agreement on international tax norms that would restore stability and certainty to cross-border trade and investment decisions, while also providing governments with protection against egregious tax planning. USIBC, together with BIAC (the Business and Industry Advisory Committee to the OECD), has already started to engage with the Indian Tax Authorities on this matter, and will now seek to deepen that relationship. *The Council also believes this moment offers an opportunity to re-launch the relationship between taxpayers and the Indian Tax Authorities using the model of "cooperative compliance" recommended by the Forum on Tax Administration of which India is also a leading member.*

F. Authority for Advance Ruling (AAR)

The AAR mechanism was introduced as a measure to provide upfront tax certainty to non-resident taxpayer who undertook transaction in India/ with Indian residents and the introduction of the Advance Pricing Agreement (APA) is a welcome step. The scope of APA is restricted only to international transactions. However, the speed of disposal of appeals has been discouraging. *USIBC recommends steps should be taken to reduce the time involved in executing an APA/ Government may consider making it a time bound process. There should be provisions to freeze the transfer pricing assessment for the years for which an APA is sought till the conclusion of the APA.*

G. Direct Taxation Recommendations

i. R&D Expenses

Finance Act 2016, has amended the Sec. 35(2)(AB) to accordingly scale down the claim to 150% from F.Y 2018 to F.Y 2020 and further to be restricted to 100% from F.Y 2020-2021 and onwards. R&D plays a very critical role in the success of "Make In India'. Many countries having realized the importance of R&D are extending various incentives. Such restrictions will result in driving R&D out of India and the importation of technology and know-how back by manufactures will be very costly resulting in higher manufacturing cost as compared to other countries. *USIBC recommends that the R&D claim be restored to 200%.*

ii. Income-tax Refunds

Tax refunds are quite delayed. Further, the rate of interest on the refunds is too low. Despite constant follow-ups, tax refunds due to the taxpayers are not processed / issued for years. A tax officer has an option to issue refunds post completion of scrutiny assessment which takes around 4 years in transfer pricing cases. *USIBC recommends that refunds due to a taxpayer, as per the return of income, should be granted in a year's time. Also, the rate of interest on refund due to the taxpayer should be increased from 0.5% per month to 1% per month.*

iii. Service Tax Refund on Export of Services

Service tax refund claims are rejected on grounds which are technically incorrect and not sustained at Appellate levels. Large portion of service tax refunds are denied on frivolous grounds. For example, even if the entity is engaged only in export of services, it is stated that there is no nexus of Input and output services and the refund is rejected; Technically and as per various judicial precedents, refund claims are required to be claimed within 12 months from the date of realization of invoices. However, tax officers claim that refund claim should be filed within 12 months from invoice date and they reject the refund claim on this ground. There are instances of incorrect application of refund formula. *USIBC recommends that the Government issue explicit clarification on each point to reduce unwarranted litigation and provide certainty to the tax payers for their past refund claims which have not been processed by the service tax authorities.*

iv. Thin Capitalization Rules

USIBC members have concerns with the limitation on interest deduction in instances of borrowing from non-resident AEs. The term "total interest" is not defined in the section and it could lead to ambiguity on computing disallowance under this provision. A plain reading of the aforementioned provisions suggests that "total interest" should include interest paid to AEs as well as non-AEs. From a regulatory perspective, NBFCs are on parity with banking company. However, no such exemption is granted to NBFCs from applicability of section 94B. The provisions dealing with the permissibility of carried forward interest disallowed in previous year is ambiguous. It is not clear if the amount of interest disallowed in previous year should be considered as interest paid to the AEs in the year of claim. This leads to distorted results and defeats the intent of the provision as has been described in the memorandum to Finance Bill 2017. Additionally, the manner of computation of EBITDA not defined in the provision and this creates uncertainty.

The USIBC recommends that the language of section should be amended to clarify that the expression 'total interest' refers to the total interest paid or payable to non-resident AEs. The section should be amended so as *to exclude NBFCs from the ambit of the said provisions. The section should be suitably amended to clearly state how interest deduction should be computed in subsequent years. A circular may be issued to notify the manner of computing EBITDA stating that EBITDA should be computed on the basis of books of accounts. Further, the taxpayer should be allowed to use an average of the EBITDA for a specified number of years to reduce the short term volatility rather than linking the entity's ability to deduct interest expense to economic activity in a single year and the same would be in line with the OECD's recommendations in the BEPS Action Plan 4 on interest deduction.*

v. Onerous Requirements for Advance Tax Compliance

Companies must file half-yearly advance tax estimates accompanied by explanations for any differences with the relevant jurisdictional tax officer. This requirement has raised concerns among companies as to the accuracy of these filings and the associated compliance costs required create them. Half yearly PBT estimates are more likely to differ from actuals at year end as they are not verified and certified by auditors. Further, estimates vary on a regular basis for genuine reasons that may not be explainable or on which tax officers may not agree leading to adverse consequences on tax payers. Additionally, the assumptions made by officials that the taxpayer will earn a minimum of 90% of profit compared to the earlier year every year are unrealistic. If not, then explanations are required to be given via additional form (i.e. to be filed for a 9 month period) adding to the compliance burden. *The requirement of furnishing half yearly estimate along with explanation for shortfall is quite onerous on the taxpayer and should be withdrawn.*

vi. Compliance Burdens under GST

GST provisions mandate filing of multiple returns on a monthly basis for each registration. These compliances are irrespective of sector from which the taxpayer operates from. The compliance burden has substantially increased on service industry. The number of annual returns has increased from 2 to 49, whereas number of refund claim filings has increased from 4 to 24. The quarterly return filing option is available only for tax payer with lower turnover. *USIBC recommends that the compliance burden should be reduced on service sector by reducing the frequency of return filing. For e.g. instead of monthly returns, service sector companies should be allowed to file tax returns on a half yearly basis.*

vii. Need for Clarification Circulars and Notifications

USIBC members believe the issuance of clarificatory circulars on a time to time basis by CBDT can help in reducing ambiguities and consequently, litigation. USIBC members have noted instances where various tax officers adopt different approach on the same issue leading to unwarranted litigations. For example, CBDT's position on applicability of section 14A in case of investments in related entities is not known. Adjustments have been made by tax officers irrespective of contradicting judicial precedents. *USIBC recommends that CBDT to consider proactively issuing circulars/ notifications (in a simple and lucid language) clarifying its position on issues having industry vide impact. CBDT should also provide a platform whereby the taxpayer/ FPIs can approach for a clarification in case of common issues. Further, there should be some measures to reduce the quantum of time involved in litigation specifically at Commissioner Appeal and Tribunal level. Also, some steps should be taken to clear the backlog of cases at Commissioner Appeal and Tribunal level.*

viii. Overhauling Tax Litigation and Administrative Process

Currently, a taxpayer has to endure lengthy tax controversies – first to the commissioner, then to the tribunal and then to the courts.
Resolution on each level may take upto two years and sometimes even longer, thereby resulting in the issue being litigated for approx. 8 to 10 years. The current system of setting high revenue/tax collections targets leads to (a) aggressive tax demands; (b) issuance of incorrect tax demands; (c) tax refunds being delayed / not issued.

USIBC recommends that the Government should streamline the tax appeal procedures and make each appellate level a time bound process (similar to DRP). Maximum number of adjournments by either party should also be restricted to two. Currently, the option of approaching the DRP is available only in cases involving transfer pricing adjustments or to non-resident taxpayers. The Government should allow all taxpayers irrespective of the nature of adjustments to approach the DRP. There could be monetary thresholds, if required (for eg, in case of adjustments are over and above $1mm a tax payer can approach DRP).

Appeals at Commissioner and Tribunal levels should have a fast track option on payment of a higher fee. If required, this fee could be a multiple of the normal fees or the fee can be linked to the tax amount under litigation, subject to a cap, etc. The Government should consider increasing the number of Commissioner Appeals, benches at Tribunal and tax benches at High Court for a speedy resolution. If required, the additional cost on account of the above can be recovered by increasing the appeal filing fees, e.g. the fee for filing an appeal with the Commissioner of Appeals can be increased to INR 200,000 or the fee can be based as a % of tax amount under litigation, subject to a cap, etc.

The process of appeal by the Department, with regard to matters decided in favor of the taxpayer, needs to be looked into. The process is largely automatic (subject to a very low monetary threshold).

This should be amended to include the following: (a) monetary threshold should be increased; (b) a panel of advisors should be appointed to decide whether appeal should be filed; and their decision should be based on a report to be submitted by the jurisdictional tax officer justifying the appeal and the chances of winning.

This Panel could comprise of 3 Chief Commissioners and for issues above a monetary threshold it could even comprise of external advisors involving eminent people from tax fraternity.

The Government could consider instituting a mechanism similar to Income Tax Appellate Tribunal at Commissioner Appeal's level whereby appeals for the same taxpayer, involving identical issues in subsequent years, are combined / fast tracked.

The current incentive/performance evaluation system of tax officers needs to be relooked at. Currently, they are rewarded for aggressive tax demands etc. Instead they should be rewarded on the basis of number of cases decided in favor of Department by the Appellate authorities, increase in tax collections without significant numbers of his orders going to appeal, etc.

ix. Income tax computation standards

Income tax computation standards (ICDS) are accounting standards for computing taxable income (i.e. Business income and Income from other source) applicable w.e.f. 1 April 2015.

USIBC members believe ICDS creates too many complexities. It indirectly necessitates (a) maintenance of two different set of books of accounts - one based on the existing accounting standards prescribed under Companies Act and other based on ICDS; (b) reconciliation between the books of accounts as per Companies Act and ICDS. There is no clarity on the provisions which would prevail in case of conflict of ICDS with HC/ SC rulings or the existing provisions of the income-tax act. *USIBC recommends that the Government should amend the ICDS provisions such that they are in line with the existing accounting standards prescribed under Companies Act.*

x. Harmonizing the Range Concept in Arm's Length Price to International Standards

During the 2014 Budget speech, Hon'ble Finance Minister proposed introduction of concept of price/ margin range for determining arms' length price (ALP). CBDT has recently notified the rules which are applicable from 1 April 2014. The primary issues with these rules include the following: (1) the rules mandate to use minimum 6 comparable companies for applying the range concept. In the Indian context, due to limitation on the information available on public sources and/or databases, it has been well observed over the years that selecting 6 comparable is quite difficult. (2) arm's length range prescribed is between 35^{th} and 65^{th} percentile. An overview of the rules, as applicable in US, UK, Korea, Singapore, Australia, Singapore, and Taiwan provide international precedence on the conditions for applicability of range concept. Summary attached as **Annexure 1**. Generally, across jurisdictions there is no requirement on the minimum number of comparable companies without which range concept can be applied; arm's length range is between 25^{th} and 75^{th} percentile. *USIBC recommends that the Government should amend the rules such that they are in line with global practices. Arm's length range should be between 25^{th} and 75^{th} percentile. There should be no restriction on minimum number of comparable companies.*

II. SECTOR SPECIFIC TAX

A. FOOD AND AGRICULTURAL TAXATION

i. Corporate tax – Exemption under section 10(1) of the Income-tax Act, 1961

Section 10(1) of the Income-tax Act, 1961 provides for an exemption on the income earned from agricultural operations. Currently, there is long-drawn litigation on the eligibility of seed grower companies to claim the aforementioned exemption. Courts have taken divergent views on this issue. As a result, substantial amount of tax-payers money is getting locked up with the Government treasury with no hope of an early resolution. The key contentions of the revenue authorities in denying the claim of exemption under section 10(1) of the Act are on account of various reasons such as company not owning land, prohibition under state laws on company to own or lease land, composite payment made to farmers linked to output, no separate payment made for lease of land and other services, post-production activities lead to value addition, company has entered into agreement with farmers for purchasing seeds at fixed price etc.

Income earned from agricultural operations is eligible for exemption under section 10(1) of the Income-tax Act, 1961 ('Act'). The benefit of this exemption is claimed by agriculturists/cultivators, including those engaged in seeds and plantation activities. Further as per Explanation 3 to section 2(1A) of the Act, 'agricultural income' includes income derived from saplings and seedlings grown in nursery.

The claim of seed grower companies engaged in growing of Hyrbid Seeds stands on much better footing as compared to nursery activities as it includes undertaking basic agricultural activities such as sowing, tilling, irrigation, harvesting, etc. on land.

Since the activities undertaken by seed companies (i.e. involved in growing high yielding hybrid seeds) are similar to agricultural operations undertaken by cultivators/agriculturists, the income earned thereon should be treated as exempt from tax under section 10(1) of the Act.

The Directorate General of Income-tax (Research) ['DGIR'] conducted study on the subject in December 2002 named "Production of Hybrid Seeds – Possibility of Taxation of Non-Agricultural Income". Post consultation with various stakeholders (including Ministry of Agriculture, Department of Agriculture and Cooperation, Seeds Division,) the DGIR had recommended that a rule in line with rules 7A, 7B, and 8 for Tea, Coffee and Rubber plantation activities may be inserted in the Income-tax Rules to prescribe a certain percentage of total income which should be treated as agricultural income.

To take forward the recommendations of the DGIR, IDF (a research organization led by experts with very high credentials) had been appointed to undertake a detailed study in order to determine evidence based percentage of the income of seed companies that should be treated as exempt from tax. IDF studied the agricultural processes and business model carried on by certain private Seed Companies with the assistance of the farmers, principles as laid down in various judicial precedents and analysis of cost data obtained from public sources. Thereafter, IDF recommended a rule-based approach and inferred that 90% of the profit earned by Seed Companies from integrated activity may be considered as exempt from tax.

In order to provide certainty on taxability for companies engaged in cultivation and sale of hybrid seeds, following 2002 study conducted by the DGIR and IDF, USIBC recommends that new rule may be inserted to compute the proportion of non-agricultural income out of the total income earned by the assessees engaged in the business of hybrid seed similar to coffee and tea businesses. Further an explanation may also be inserted in the Act clarifying that income earned by the assessee's engaged in the business of cultivation of hybrid would constitute agricultural income eligible for exemption under section 10(1) of the Act. The proposed amendments relating to taxation of part of the income earned from cultivation / production of seeds as business income should apply for all open years which are pending either for assessment or for adjudication before Appellate Authorities or Courts. An expert committee may be constituted to review the studies undertaken in past and recommend an appropriate portion eligible for exemption as agricultural income under section 10(1) of the Act.

B. ENERGY SECTOR TAXATION

i. Clarification on exemption from Custom Duty

Goods imported in relation to E&P activities are exempt from the levy of customs duty vide customs Notification no. 12/20129 (Sl. No 357A). This exemption is available to goods specified under List 13/14 but an exhaustive list is not provided. In other words, there are only few line items describing the specified goods which would be exempt from levy of customs duty and may be subject to different interpretation. The List 13/14 should be an illustrative list, granting specific exemption to all goods / equipment imported in relation to E&P (DGH, at the time of issuing the Essentiality Certificate, is anyway verifying the purpose of use of goods for petroleum operation). *USIBC recommends that a residuary clause be inserted in the list as below:*

- *List-13: (25) all goods other than those mentioned above imported for use in relation to petroleum Operation.*
- *List-14: (20) all goods other than those mentioned above imported for use in relation to CBM operation.*

iv. Renewable energy exemption from Section 56(2)(viib) of the Income Tax Act, 1961

Holding Companies incorporated in India often receive funding from multiple foreign institutional investors and invests in its subsidiary companies engaged in the generation of electricity through renewable sources. The Holding Companies may have several subsidiaries and each of its subsidiaries is incorporated to carry out different projects under its supervision. The complex structure is required on account of PPA related conditions, lender conditions or the land acquisition related laws. Holding Companies subscribe to the shares of the subsidiary at a premium. The subscription prices paid by the Holding Companies are based on the projected cash flows of the company as certified by a Chartered Accountant. However, due to subscription of shares at a premium, the provisions of section 56(2) (viib) of the Income Tax Act, 1961 ('Act') are triggered and the share price is questioned by the tax authorities seeking to treat the premium as income of the Subsidiary and taxing the same. This treatment causes investors to get apprehensive that their investment may not get fully utilized by the investee company and becomes an impediment in seeking further investment. *USIBC recommends that it is in the larger interest of the nation to encourage unfettered investment into this critically important sector. The Council believes that excluding renewable energy investments from the rigors of section 56(2) (viib) will help achieve this objective.*

C. MANUFACTURING SECTOR TAXATION

i. Inverted Duty Structure

An inverted duty structure refers to a situation where manufacturers have to pay a higher duty on raw material while the resultant finished product attracts lower duty. In the absence of a duty refund mechanism, this coupled with service tax credit, which a manufacturer is entitled to as a service receiver, results in accumulation of credits over a sustained period of time. This is more acute where the manufacturer sources most of his raw materials from abroad and value addition on finished product is not very high. For example, on import of intermediate raw materials, a Company claims 17.74% credit on Customs Duty while the corresponding finished product is charged to 12.36% duty. This means that to fully utilize the credit, Company has to have a value addition of at least 45%. After taking into account the service tax credit, the accumulation gets even higher with no corresponding liability to set-off. This results in significant blockage of working capital funds and therefore entails higher interest cost to carry on business in India.

USIBC recommends the creation of a legal provision to refund such unutilized credit at the end of every financial year, which will bring relief to all such manufacturers and will act as a catalyst for encouraging Investments in setting up manufacturing facilities in India.

D. FINANCIAL SERVICES SECTOR TAXATION

Industry is very pleased to see the significant progress in capital market reforms made over the past several years by the Ministry of Finance and others. However, continued lack of predictability in some tax policy stands as a major deterrent to Indian markets for global capital, dampening the effects of any policy and regulatory reforms made to encourage this capital.

i. Grandfathering Benefits for Shares Received Pursuant to Corporate Actions

Under the amended India-Mauritius Treaty and India-Singapore Treaty, grandfathering benefits are available only for shares 'acquired' before 1 April 2017. There is lack of clarity and certainty on whether the grandfathering benefit would be available in respect of shares that come into existence on or after 1st April 2017 as a consequence of corporate events on investment made by the investor on or before 31 March 2017. While some of the corporate actions have been grandfathered from the GAAR perspective, there is no corresponding benefit under the treaty that has created uncertainty. *USIBC recommends clarification on whether shares received pursuant to corporate events such as bonus, stock split, conversion of CCPS into equity shares or other corporate reorganization like merger / demerger, etc. should be grandfathered and not subject to capital gains tax under India-Mauritius and India-Singapore treaty.*

ii. Expanding the Scope of Safe Harbour Provisions

Safe harbour provisions were introduced in FY 2012-13. These provisions are steps in the right direction to provide certainty to taxpayer and avoid litigation. However, currently, very few safe harbour applications are filed and it is not feasible for many tax payers to avail. As per the recent amendment, turnover threshold has been prescribed for safe harbour. These thresholds are on a lower end and large corporate houses will not be able to avail the benefits of safe harbour provisions. Additionally, the scope of safe harbour provisions is limited to few categories of transactions (including software development, ITes, KPO, corporate guarantee, inter-corporate loans R&D services, and manufacturing and export of auto components). The existing margin prescribed under safe harbour provisions is quite high. For example – Operating margin for Knowledge Process Outsourcing (KPO) services is stipulated as 25%. The prescribed rates are quite high which can also be demonstrated from the fact that Advance Pricing Agreements for similar services are being entered into by the Government with lower margins. *USIBC recommends that the turnover threshold should be increased such that large tax payer can also opt for safe harbour benefits. The tax authorities have been executing the APAs with the mark-up in the range of 15% to 18%. Given this, the safe harbour mark-up should be aligned with APA mark-up agreed with the taxpayers. Finally, the operating margins prescribed for KPO, ITeS and software development should be reduced and the scope of safe harbour provisions should be increased.*

iii. Service Tax brokerage charged to Foreign Investors

Service tax was not applicable on stock/ derivative commission charged to Foreign Investors for the period 1 July 2012 to 30 Sep 2014. The law was amended w.e.f 1 Oct 2014 to levy service tax on stock/ derivative commission charged to foreign investors. However, tax officers started challenging the service tax applicability for the period 1 July 2012 to 30 Sep 2014, leading to unwarranted litigation. *USIBC recommends that the Government should issue a clarification that the brokerage/commission charged to foreign investors will not be subject to service tax for the period 1 July 2012 to 30 Sep 2014.*

iv. Reporting by Financial Institutions (FATCA related reporting)

Indian Government has signed an Inter- Governmental Agreement with US to share details of Financial Institutions (FIs) with them. Based on the above, FIs are required to file returns and submit relevant details. Rules prescribed by the Government requires a designated director to login into "personal" income tax account and then sign, verify and furnish the report for the concerned entity using his own digital signature. This could be interpreted to mean that the director is personally liable for the details filed. *USIBC recommends that the Government amend the rules whereby the FIs can file the return using its own login account rather than the* *personal login / account of the director.*

v. Taxation of Fund Managers in India

The current section 9A of the Income-tax Act, 1961 is extremely prescriptive with 13 conditions that need to be fulfilled by the offshore fund, and 4 conditions that need to be fulfilled by the India-based Fund Manager, for the offshore fund to qualify for exemption from a business connection risk and the risk of having a Permanent Establishment (PE) under the Act. The important conditions were oftentimes difficult to fulfil or are open to interpretation. Thus, USIBC is appreciative of the changes in CBDT vide Notification No.77/2017 dated August 3, 2017 that eliminated the requirements for minimum non-connected persons, limitations of 10% ownership by members and connected persons, and limitation on ownership interest to less than 50% by 10 persons. *USIBC recommends additional reforms to encourage foreign funds to establish in India*

Sr. No.	*Condition*	*Recommendation*
1	*Direct and indirect holding by Indian resident along with connected persons to be less than 5% of the corpus of the fund*	*Inclusion of a prospective prohibition in the prospectus of a fund on sale / distribution of the fund units/shares to Indian Resident investors should be sufficient to satisfy this requirement*
2	*No business connection of the offshore fund in India and no person acting on it's behalf*	*Suitable clarification/ amendment may be provided that* • *Outsourcing a part of the back office / support functions of the fund manager (such as fund administration, fund accounting etc.), to an outsourcing entity in India (which is a group entity of the fund manager), or* • *Appointment of banker, custodian or broker in India by the fund or fund manager would not result in non-fulfilment of this condition*
3	*Remuneration paid to fund manager is* . *Not less than the arm's length price*	ii. *It should be clarified that the remuneration would be deemed to be at an arm's length price as long as the fees to be paid by the fund are detailed in the publicly disclosed prospectus* iii. *The condition of maximum 20% of profits should not be required and*

	. *Restricted to maximum of 20% of profits of the fund*	*should be deleted as it may be contrary to the arm's length price and can mandate the fund manager not to charge any fee in case of loss to the fund*

Separately, the provisions of the current section 9A of the Act, seem to address only FIIs and Sovereign Wealth Funds (SWFs), and not to other types of foreign portfolio investors, such as Private Equity Funds and Pension Funds. *USIBC recommends the tax law be designed in a manner that is more spirit-based than prescription-based, and should be uniform across all types of foreign portfolio investors (be it FIIs, SWFs, Private Equity Funds, and Pension Funds).*

vi. Non-Bank Financial Company (NBFC) Taxation

Under the Income Tax Act (ITA), banks receive a tax deduction on nonperforming loans. Further, interest in relation to certain categories of bad and doubtful debts of banks is taxed in the year of credit within the books or receipt, whichever comes earlier. For NBFCs, a segment which continues to develop, there are no similar provisions for allowance of non-performing loans deduction or taxation of interest from certain bad debts. Given the Reserve Bank of India (RBI)'s current efforts toward a more harmonized and stringent NBFC regulatory regime, *USIBC strongly recommends that equal provisions should be introduced under the ITA for a deduction allowance for non-performing debts of NBFCs.*

vii. Service Tax Refunds on Export of Services

Service tax refund claims are rejected on grounds which are technically incorrect and not sustained at Appellate levels. Large portion of service tax refunds are denied on frivolous grounds. For example, even if the entity is engaged only in export of services, it is stated that there is no nexus of Input and output services and the refund is rejected; Technically and as per various judicial precedents, refund claims are required to be claimed within 12 months from the date of realization of invoices. However, tax officers claim that refund claim should be filed within 12 months from invoice date and they reject the refund claim on this ground. There are instances of incorrect application of refund formula. *USIBC recommends that the Government issue explicit clarification on each point to reduce unwarranted litigation and provide certainty to the tax payers for their past refund claims which have not been processed by the service tax authorities.*

viii. Issue and Transfer of Shares to Unrelated Third Parties

Government had introduced section 56 of the Income tax Act (Act) to enable issue and transfer of shares at fair market value which needs to be computed based on prescribed valuation method. Application of valuation methods while transacting with third parties creates artificial boundaries and is against the international tax practices. *USIBC recommends that the Government should exempt transactions involving issue / transfer of shares to unrelated third parties from the provisions of section 56 of the Act.*

ix. Buyback of Unlisted Securities by Domestic Companies

In 2013, Government introduced a new provision levying tax on buy back of shares by closely held domestic entities. Buy back tax results in overriding certain tax treaties. And is very unfair to those companies which undertake buy back purely for commercial reasons. In case of buy back from few shareholders, the cost of tax liability of the company will be borne by shareholders other than those who may have exited. *USIB recommends that the Government should consider the following: This provision should be made applicable only to those transactions entered into with intent to avoid tax and not to all transactions of buy back of unlisted shares. Alternatively, income should be categorized in the nature of dividend as per section 2(22) of the Act which should be limited to the accumulated profits of the Company and subject to lower withholding on such dividend income at 10%.*

x. Taxation of income from Securitisation Trusts

As per the Explanation in Chapter XII-EA, CBDT is supposed to prescribe the eligibility conditions for a trust to qualify as a Securitisation Trust. The requirement was originally introduced in 2013/14 and CBDT is yet to prescribe the conditions. This leaves ambiguity about the tax treatment to Securitization Trusts already formed under RBI guidelines as CBDT may prescribe conditions with retrospective effect. Taxation of Securitisation Trusts is currently in dispute. Given the stand taken by the Tax department in previous cases about the nature of a Securitisation Trust, it is important for investors to know the conditions to be fulfilled by a Securitisation Trust to claim benefits of chapter XII-EA of the Income Tax Act 1961.

Further, section 115TCA introduced by the Finance Act, 2016 specifies the provisions on the taxation treatment of investors in a Securitization Trust to increase penetration in the securitization market. However, this cannot be achieved as the current tax provisions lack clarity on the eligibility of a Securitisation Trust to qualify to claim benefits of chapter XII-EA of the Income Tax Act 1961. *USIBC recommends that CBDT should prescribe eligibility conditions for a trust to be qualified as a Securitization Trust or alternately, that this sentence about conditions being prescribed be deleted from the relevant sections of the Income Tax Act.*

ix. Reduction of Dividend Distribution Tax

The Dividend Distribution Tax which is currently set at 20.3% is very punitive given India's already high corporate income tax rate and the the fact that DDT is paid on after-tax earnings (i.e., earnings that have already been subject to India's 34% corporate income tax rate) that get distributed as dividends to shareholders. (DDT is the liability of the paying Indian company). DDT coupled with India's current / high corporate income tax rate, yields a very high / punitive effective tax rate on the earnings distributed as dividends by Indian companies equal to approximately 48%. *USIBC recommends a 50% reduction in India's DDT from its current 20.3% rate to 10%.*

E. DEFENSE SECTOR TAXATION

i. Introduction of the 'Intermediary clause' under service tax

The definition of the intermediary clause is wide enough to cover services of primary and basic facilitation into its ambit. The intent of laws was never to tax services that are business auxiliary and preparatory in nature. The generic nature of the definition makes the tax authorities challenge every support function as an intermediary function and hence levy tax. *USIBC recommends that the definition of "intermediary" should be made applicable to only those functions that are directly related and impact the revenue generating activities; and to not to tax support or preparatory functions.*

i. Withholding tax on reimbursement of assignee charges

The issue around withholding tax on reimbursements of assignee charges to the overseas entity has been a subject of debate for many years. The tax authorities have contended that the reimbursement constitutes a fee for technical services and hence should be subject to withholding tax. There have been recent judgments professing the same. *USIBC strongly recommends that since these charges are purely in the nature of costs of the employee benefits paid by the overseas entities these should not be taxable.* The employment of assignees has transferred to India through the Secondment Agreement and it cannot be said that the overseas entity is providing services to the Indian entity through the assignees. These should be treated as cost-to-cost reimbursement and hence should not be subject to withholding.

Indirect Taxation: The above issue also has repercussions in services tax, since the tax authorities content that these assignees should be treated as providing intermediary services and therefore subject the reimbursement to a further service tax. It *The Council recommend that since the employees have been seconded and they now become the employees of the Indian company as against the overseas company, service tax should not be levied. Furthermore, USIBC recommends that clarity is given on this issue and such arrangements are kept outside the ambit of service tax. The Service tax* will negatively impact India as a preferred destination for high skilled activities such as R&D, engineering, precision manufacturing etc, thereby creating impediments for the Government's "Make in India" objective, particularly from design & development viewpoint.

ii. Reducing Taxes on Defense Development

USIBC recommends *reducing services tax and CST on all development projects for defense applications will help Indian companies play the role of a system Integrator.* This will help reduction in cost on large development projects.

iii. Corporate Tax Concessions for Technological Innovation

On the issue of direct taxes, the government must consider exemption/ concession on 'corporate tax' for companies working towards innovative, smart & sustainable technologies which are important from nation's *point of view.* This is important because smart & sustainable technologies have large impact on the nation's energy scenario and have considerable impact on fossil fuel consumption.

iv. Tax Exemption on Fee for Technical Services (FTS)/ Royalty Income

Currently, Indian Income Tax Law (section 10(6C)) grants tax exemption (subject to issuance of a notification by GOI) to a foreign company on FTS/ royalty income earned pursuant to an agreement with GOI in relation to projects connected with the security of India. As such, the exemption is subject to issuance of a notification by GOI and there is no prescribed timelines under the law for same. As a result, foreign companies risk tax litigation in India for exemption of FTS/ royalty income during the tax audit proceedings in the absence of the timely issuance of such notification. Accordingly, *USIBC recommends that the Government of India prescribe timelines in the law to process such exemption requests (either accept and issue the notification or reject the application) post submission of application by the foreign company. Further, USIBC also recommends that available tax exemption should also be extended to Tier 2/3 vendors as well [Tier 2/3 vendors are an integral part of a contract and are in most cases the real owners of the IPR against which such royalty/FTS considerations arise].*

v. Specific investment-linked Tax Incentives for Make-in India Projects

The defense sector is similar to the infrastructure sector in that it requires a high level of initial capital investment that often has a delayed return on investments. The Government of India has not established any investment-linked tax incentives for Defense sector in India to counteract this concern and make defense manufacturing more attractive to USIBC members. *As a part of Prime Minister Modi's 'Make in India' campaign and to attract foreign OEMs to venture into manufacturing in India, USIBC recommends specific investment-linked tax incentive benefits should be provided to defense sector specifically for critical projects that are connected with security of India.*

F. Life Sciences Sector Taxation

i. Customs duty

Guidewires, Dilatation catheters and Vessel Closure are used for the treatment of heart disease. Lancets of glucose monitoring machines are used every day by diabetic patients for testing of their sugar levels. These medical devices are at the basic customs duty of 7.5% whereas most of the medical devices attract custom duty of 5%. *USIBC recommends a reduction in the basic custom duty on medical devices listed below to be reduced to 5%.*

Medical Devices	*Classification*	*Current BCD*	*Recommended BCD*
Lancets	*90103990*	*7.5%*	*5%*
Guidewires	*90183990*	*7.5%*	*5%*
Dilatation catheters	*90183920*	*7.5%*	*5%*
Vessel Closure	*90189019*	*7.5%*	*5%*

Presently central excise & customs exemptions are provided to scientific and research institutions only on specified items. *USIBC recommends this exemption be extended to all the items used in R&D based on self-certification and approved by DSIR.*

ii. Special Additional Duty (SAD)

In January 2016, the government withdrew the SAD exemption granted to several Medical Devices, which means they now attract 4% additional customs duty. *USIBC recommends a 0% SAD on Medical devices falling under headings 9018, 9019, 9020, 9021 or 9022.*

iii. Inverted duty structure

At present, excise duty at 12.50% is levied on inputs (Active Pharmaceutical Ingredients or API) whereas the output is taxed at 6%. Given the inverted duty structure (credit of Excise duty paid on procurement of API used in manufacture of finished formulations) has typically resulted in accumulation of the Cenvat credit which is a cost to the manufacturing entities. In case of VAT, typically the State VAT Acts provide for refunds of accumulated credits at the end of the assessment year. *USIBC recommends that in the proposed GST regime, the said anomaly should be rectified at the inception of the law itself, by having the same rate structure for APIs as like of finished formulations to address the issue of credit accumulation. If, however, GST implementation is postponed, input duties on API should be brought down to 6%.*

iv. Benefits of IGCR (Import of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 2016) should be liberalised

Pursuant to the changes made by Notification No. 32/2016-Cus(NT) effective 1.3.2016 which superseded the erstwhile Customs Rules, 1996 has restricted the benefit of IGCR Rules only to the importer who are manufacturers. The aforesaid notification contains the wording “"importer, being a manufacturer,". This has created the limitation on manufacturers who do not own the manufacturing facility. *USIBC recommends liberalising the benefits even to the importers who get the manufacturing done through Loan Licensee operations and through job-workers.*

v. Amend Rule on Technical Testing

Presently technical testing and analysis services (relating to drugs) provided to overseas customers are not treated as export of services and are subject to tax as the place of provision of such services is deemed to be in India. Since services are provided to a foreign company and foreign exchange is earned on this transaction, *USIBC recommends this should be treated as export only and hence the Rule should be suitably amended to treat such transactions as export of services.*

vi. Notification of amendments to Customs Act

In the Finance Act 2016, the Customs Act was amended to provide for differed payment of customs duty and other charges. Notification/Rules are yet to be issued on the same. *USIBC recommends that the government should notify the eligible importers and the rules regarding the same.*

vii. Spent Solvents

Spent solvents which are cleared form EOU units manufacturing API (Active pharmaceutical ingredients) as waste or remnants are being subject to full rate of Excise duties treating them as by products and concessional duty is not being allowed under notification No 23/2003-CE. *Under Foreign Trade policy, Waste can be cleared in Domestic tariff area at concessional rate of duties. USIBC recommends that clarification should be given by the government to confirm the availability of the concessional duty benefit to Spent solvents which are a waste product and cannot be further used in the API manufacturing.*

G. INFORMATION & COMMUNICATIONS TECHNOLOGY (ICT) SECTOR TAXATION

The ICT sector is central to the Prime Minister's *Digital India* vision, and thus, India's ICT tax regime must/should promote and stimulate innovation, investment, skills development, manufacturing, and global supply chains of both goods and services. However, taxes, tariffs and duties on a number of ICT-related products and services have increased, which raises the cost and complexities of conducting research and develop (R&D), manufacturing, and the export of ICT products and services from India. Recent moves that increase some tariffs covered by the World Trade Organization (WTO) Information Technology Agreement (ITA), to which India is a signatory, further increase investment uncertainty and increase the prospect of future trade disputes and retaliation. *To ensure India's continued global ICT leadership, USIBC recommends that the Government of India should move to lower the costs of both intermediate and finished ICT goods and services, and enact measures that enhance the ease of doing business within the sector.*

i. Increased Tariffs on ICT Products

The Budget 2016-2017 significantly raised tariffs on a number of ICT products, which for the most part remain in force. These tariff increase include, but are not limited to, e-readers, computer and cell phone peripherals, specified telecommunication equipment such as soft switches and voice over internet protocol (VoIP) equipment, media gateways products, silica for manufacture of telecom- grade optical fibre and cables, printed circuit board (PCB) for the manufacture of personal computers, automatic data processing (ADP) machines, video graphics array cards, *et al.* These tariffs not only increase prices of electronics and digital services for Indian consumers and businesses, they increase India's manufacturing cost, which reduces Make-in-India investments and exports. In addition, ICT tariffs distory the market, type, quality, and sophistication of ICT products that are available, which has an indirect and negative impact on India's overall competitiveness and ease of doing business – not to mention consumer choice. *USIBC urges the GOI to remove the ICT tariff increases from the 2016—2017 budget, unequivicably comply with its ITA I commitments, and consider taking a digital leadership position by reconsidering support for the ITA II agreement.*

ii. Equalisation Levy (Online Advertising Tax)

The "Equalisation Levy" imposes a a 6% surcharge on any Indian person or company who pays a foreign e-commerce company to place an advertisement on that foreign e-commerce company's website for placements above 100,000 INR per year. The levy is problematic because it targets innovative services that advertise exclusively online, and thus, undermines *Start-Up India* given that small start-up companies are more likely to advertise online than in traditional mediums. *USIBC urges GOI to amend the Finance Act, 2016, by striking the chapter on this levy.*

iii. Special Economic Zones (SEZ)

The GOI set up SEZs to attract manufacturing facilities focused on export markets. However, some of these factories also sell into the Indian market. For some telecom products under Harmonize System Code 8517, factories within SEZs pay a basic custom duty (BCD) while factories outside do not, which create a competitive disadvantage across the industry. *For domestic sales of equipment manufactured in SEZ, the GOI should eliminate the 10% Basic Customs Duty (BCD) so that these factories are not at a competitive disadvantage vis-à-vis domestic manufacturers located outside the SEZ, which currently do not pay the BCD on domestic equipment sales. This would encourage investment in manufacturing facilities in SEZs and create parity among all factories selling to the domestic Indian market.*

III. USIBC BUDGET RECOMMENDATIONS FOR FDI POLICY

A. CIVIL AVIATION

i. Establishment of FDI Policy

We applaud your efforts to develop and institute India's first, comprehensive Civil Aviation Policy. This new policy will not only drive consistency of purpose and direction for the industry that can yield enormous results, but also will establish a foundation and baseline for follow-on industry reforms in the future. *In future versions of the policy, USIBC recommends the Ministry to encompass the interests and needs of the business aviation community; to further reduce and streamline taxes on aviation turbine fuel and MROs; to assure proper implementation of the regional connectivity scheme, which can induce inclusive economic growth; to create an independent, technocratic aviation regulatory body; and to adopt digital solutions that improve the efficiency across the entire aviation ecosystem.*

B. DEFENSE

ii. Clarifying Foreign Direct Investment Limits for Defense Sector

FDI in excess of 49% requires government approval where the investment is likely to result in "access to modern technology in the country or for other reason to be recorded." Ambiguity exists regarding the phrase "modern technology" and "for other reasons to be recorded" which creates uncertainty for companies applying for approval. *USIBC recommends that certain guidance on application of these conditions should be prescribed that can bring certainty (or at least indicative guidelines) for foreign defense companies proposing for FDI in India beyond 49%.*

iii. Defense Procurement Policy

USIBC welcomes the Government of India's recent revisions of the Defense Offset Guidelines, which will allow foreign manufacturers to forge closer partnerships with a broader range of Indian partners with flexibility in selection of Indian Offset Partners (IOPs). *The definition of offsets has evolved over the past several years toward international norms and the USIBC recommends that the Government of India must carefully consider how development of various ancillary sectors can help bolster India's indigenous defense manufacturing capability.*

iv. Offset Policy

Defense offset policy, which has been a part of successive DPPs has the potential to accelerate 'Make in India' if a few relatively simple adjustments can be considered. Recently MoD offered flexibility in selecting and managing India Offset Partners and removed Services in Abeyance notice with a 20% cap on Services. These are welcome steps but there remain administrative changes that may make offsets a more potent tool for Make in India.

The process for awards of offset credits is not well defined or implemented, as can be witnessed from an examination of accumulating offset obligations and actual credits awarded over the last few years. American companies have received penalty notices for Offset claims that were submitted 24-36 months prior to the notice date, which didn't provide the OEMs adequate (any) opportunity to present their case to rectify the error (if any). This uncertainty puts a foreign vendor at huge risk of offsets being rejected after the execution of obligations. Furthermore, offset management by the DOMW is often viewed as a grueling exercise by vendors, requiring 8 documents for each offset claim with signature and seal on each page. It is anticipated that the DOMW has a significant pileup of un-adjudicated claims. Rather than streamlining its internal adjudication and audit process, the DOMW often does not accept claims unless each and every piece of paper is hand checked and rejects the entire claim if one/two pages from thousands of pages of submission need rectification. *USIBC recommends that the offset processes be reviewed in line with the GOI's focus on the Ease of Doing Business and Digital India.*

While the offset policy allows for offset banking, its implementation has been discouraging. Offset banking should be a mechanism to encourage investment ahead of a program and allow the banked credits to be applied to future programs. Instead, there have been cases where investments made and production achieved have not been acknowledged or recognized. *USIBC recommends better utilization of offset banking.*

To grow complex, high technology projects, rather than low value projects, USIBC recommends extension of the period of performance to 10-12 years. Extending the offset period of performance will enable the global OEMs to place more advanced defense work packages with International Offset Partners without being constrained by the period of the main procurement contract. The Civil Aviation Ministry has recognized the benefits of longer period of performance and their offset policy allows the OEMs to discharge offsets for 12.5 years after the completion the last aircraft delivery.

The current Value Addition policy incentivizes OEMs to source low technology commodities in India rather than higher complexity items. Qualified aerospace-grade raw material suppliers are not currently established in India due to the limited size of the market. Aerospace-grade raw materials could represent up to 60 percent of the cost of complex aerospace products, and under the current policy this value would be excluded from the offset credit value for manufacture of such products. A more pragmatic, market-based approach to the India value Addition (IVA) requirement would be to include the imported raw material value in the offset credit amount. This would incentivize sourcing of higher complexity work packages, thus increasing aerospace manufacturing volumes, and creating the conditions for raw material suppliers to invest in facilities in India. Alternatively, India could establish thresholds for value addition, similar to Turkey, above which the OEM would receive full offset credit in the amount of the total invoice value, e.g., greater than 40 percent India value addition would result in offset credit amounting to 100 percent of the invoice value. *USIBC recommends allowing a practical definition of the India value addition to grow sourcing of sophisticated components such as aircraft engine parts for which raw materials are not yet available in India.*

Companies world over make investment decisions based on return on capital vis-à-vis their cost of capital. Following a basic cash flow model for a business investment - investments in equity and capital for plant, machinery, tooling, quality systems and training should be given a multiplier equivalent to 1/(Weighted Average Cost of Capital or WACC). *As WACC for most global companies is between 8% and 12%, USIBC recommends taking an average of 10%, thereby allowing 1/10% that is 10x multiplier for such equity and capital investment either by the IOP or in a Joint*

Venture of OEMs. USIBC believes that such a multiplier will offer incentive to OEMs to make FDI in India leading to significant capability and job creation.

To develop globally competitive A&D enterprises that are integrated in the global supply chain, it is essential that A&D manufacturing skills in India are at par with the global standards. Companies can leverage offset obligations to enhance the skills of the existing A&D workforce by bringing global OEM's skills development and training curriculum to India. *USIBC recommends that "skill development" should be eligible for defense offset credits for all current and future offset contracts with valuation for such projects based on value of the Intellectual Property of OEMs to create that program.*

Where there is no specific clause to prevent group companies supporting contracts or investments made into India, there has been a general reluctance to acknowledge or accept their contribution to contract performance. This has led to investments not being recognized or where a group company can better contribute to fulfilling an offset obligation for example, then that project is being denied. *USIBC recommends that since MNCs generally operate as multiple contracting entities across their businesses – it would be of benefit to building up India's defense industrial base if the whole breadth of a corporation can be leveraged rather than one contracting entity that has provided a service or product.* This will also facilitate an appetite for broader investments because intellectual properties often reside in group companies and subsidiaries of OEMs.

Sub-tier suppliers play an important part in the Aerospace & Defense industry, supplying anywhere from 60-80 percent of the cost of the final product, and they also own the Intellectual Property Rights for technology in areas such as aircraft engines, avionics, landing gear, hydraulic actuators, machining, and sheet metal components. Limiting use of sub-tier suppliers to discharge offset obligations equivalent to their work share will only discourage these suppliers from exploring additional sourcing from India, thereby restricting potential opportunities for Indian industry. *USIBC recommends allowing Sub-tier suppliers to discharge offset obligations on behalf of the foreign OEM for all offset contracts currently under execution.*

Space and Defense aviation have significant synergies in terms of processes, procedures and regulations for manufacturing and usage. Including space as an eligible avenue for discharge of Offsets will provide incentives for OEMs to partner with Indian companies (in the space industry) to co-develop and co-manufacture products and services for space applications. This will provide increased opportunities for Indian companies to get embedded in global space-related supply chains along with the required impetus for advancement of Indian space technology. *In order to take full advantage of the multiple billions of dollars of offset commitments on the balance sheets of several global corporations, USIBC recommends the Government of India, on a case-by-case basis, to allow for the retroactive application of revised offset guidelines to meet the requirements of contracts that fall under previous iterations of the Defense Procurement Policy.*

C. ENERGY & ENVIRONMENT

i. Safe Harbor allowances for LNG import prices under Transfer Pricing

In India, specifically, as the reliance on imported LNG increases, there is bound to be intercompany trade. With this trade comes a need to determine prices which adhere to relevant transfer pricing legislation, which normally reflects arms-length pricing. Increasingly, long term pricing for LNG is being replaced by spot prices which are largely determined by a number of instantaneous factors. Nearly 25% of LNG globally is now traded on the spot market. Functions here often involve the identification of potential spot purchasers, agreement with potential counterparties, and range of intermediary logistic services. Further the challenges of accommodation of re-gasification and trading prices, wherein determining safe harbor ad hoc can be extremely challenging. *USIBC recommends that safe harbor allowances for LNG import prices under Transfer Pricing should be based on the actual dispersion of custom import prices for the year and not on ad-hoc basis.*

ii. Valuation of taxable services for naturally evaporating products like LNG

Naturally volatile and evaporating products like gasoline or LNG are susceptible to continuous erosion of quantity in their natural state. LNG is liquefied natural gas compressed by 600 times and remaining in liquid form only at temperatures of -160 degrees centigrade. Exposed to ambient conditions the entire product evaporates on its own. The usable form of LNG is its regassified state as natural gas. Shortfalls and excess of actual losses over pre-agreed norms are compensated by the service provider or taken as part of stock and disposed of as per provisions of Generally Accepted Accounting Principles (GAAP), VAT and Income Tax laws. However, due to misunderstanding of the process there are claims on taxability of the tolerance norms and any quantities of the product lying in excess over the loss tolerance quantities by both VAT and Service Tax. The same value should not be taxable under two separate indirect taxes.

USIBC recommends that the charges for the delivered quantity of a volatile product (after taking into account the losses during regasification) shall be taxable as services in order to avoid double taxation. The value of product lost or consumed during the process of regasification shall be deemed includible in the charge levied for processing as it is intrinsic to the process itself.

iii. Import duty exemption on LNG should be extended to all sectors & not just power, similar to crude petroleum

Import of LNG presently attracts Basic Customs Duty of 5.15% ad valorem which adds to the cost of supply to end-users. Until June 25, 2011, this was the same rate, import of crude petroleum attracted until it was brought down to zero. Hence it is no longer at parity with crude. Liquefied Natural Gas (LNG) and Natural Gas (NG) imported for generation of power has been exempted from Customs Duty vide Notification No. 12/2012 dated 17.03.2012 (Sr.No 139). However, this exemption is applicable only to the power sector and that too in case of imports for supply to a power generating company only. This exemption is not applicable to other sectors like fertilizer and petrochemicals, which results in additional costs for use of LNG and also currently leads to preferential treatment for imported crude, without justification i.e. cleaner fuel i.e. natural gas imports is discriminated with crude oil imports.

USIBC recommends the import duty of LNG be made at par with the import duty of crude petroleum, which is presently zero. Moreover, the Council recommends that the custom duty exemption to LNG/Natural Gas be granted on imports made by any person boosting development of competitive gas *markets in India and such should be extended beyond the power sector to 'end-use' for other sectors as well, to ensure parity with imported crude.*

ENVIRONMENT

iv. Improve Rules for Plastic Waste Management.

The Ministry of Environment, Forests and Climate Change (MOEFCC) notified the Plastic Waste Management Rules, 2016 (PWM Rules) on 18 March 2016. One of the key issues faced by industry under the PWM Rules viz. the obligation on manufacturers under the Extended Producers Responsibilty (EPR) to collect, segregate and dispose of or recycle all plastic waste wherever in the country these may occur. For any producer to collect every bit of waste from wherever such waste might occur across the length and breadth of this country is impractical. These obligations in the PWM Rules 2016 have key procedural / implementation bottlenecks making it impossible for manufacturers to meet the obligations. *USIBC members appreciate the industry consultation that MOEFCC has conducted recently on this issue. We respectfully submit that the concept of EPR under the PWM rules be amended so as to make it practical to implement and until such time, defer implementation of the EPR rules.*

D. FOOD & AGRICULTURE

i. Harmonize place of supply rules for services related to immovable properties and restaurant services.

As per place of supply rules under section 12(3) & (4) of IGST Act, Service Providers giving services related immovable property like lodging, stay-in, or restaurant or catering services, the place of supply is where the immovable property is located or where the catering service was performed. Service providers are required to issue invoice with CGST and SGST of the respective state. Many taxpayers/employees travel across India for business purposes and get the invoices for lodging or restaurant services wherein the service provider chargest CGST and SGST of the respective state. If tax payer does not have a business plan in that State then he loses the credit of CGST and SGST. *In vieiw of the seamless flow of GST credit in B2B transactions, IGST invoicing should be allowed if the assessee is a registered person and service providers should be allowed to issue invoices on registered addresses with IGST. The place of supply rules for services should be amended suitably for service recipients registed under GST.*

ii. Avoid discriminatory taxation on High Fat, Salt & Sugar (HFSS) Content Food.

There is an increasing concern in the packaged food industry about the government of India levying a higher rate of tax on food items high in fat, salt and sugar content (HFSS food). USIBC and our member companies believe that an increase in prices may not act as a sufficient disincentive for the consumption of these supposedly unhealthy food items. *USIBC members respectfully submit that the government, along with industry, should work towards developing a consumer awareness drive that may help consumers make informed choices and promote a healthier lifestyle changes such as regular exercise, portion control, and consumption of hygienic and nutritional food.*

iii. Remove 12% Compensation Cess on Aerated Beverages.

USIBC members are concerned that the principle of maintaining same or near same tax incidence was not upheld when GST tariffs were rollout on 1st July 2017.

Below summary indicates that All India Weighted Average Tax incidence on the Aerated Beverages category witnessed an increase of 53% in 3.5 Years:

1st March 2014 : ~ 26% (Excise Duty + VAT + Local Body Taxes + Sugar Cess)

1st March 2015 : ~ 31% (Excise Duty + VAT + Local Body Taxes + Sugar Cess)

1st March 2016 : ~ 33% (Excise Duty + VAT + Local Body Taxes + Sugar Cess)

1st July 2017: 40% gets implemented (GST @28% + Compensation Cess @12%)

GST tax + cess incidence as it stands today for Aerated Beverages is a staggering absolute increase of 7% if we take end of FY 2016 as the reference. As per earlier announced principles of fixing GST tariffs, FY 2015-16 was the base year and businesses were assured that there will be minimal changes in the effective tax incidence in the GST regime. While in reality it's a steep 20-21% rise in tax for the category which is already taxed at a high threshold. And it is also pertinent to point out that prior to FY 2015-16, several states intentionally increased VAT in the period 2014-15 to expand their revenue base in light of the upcoming GST regime. *Hence the true effective tax incidence base for consideration for the aerated beverages industry is ~26% in the GST regime. USIBC respectfully requests that the 12% compensation cess on aerated beverages is removed.*

iv. Agriculture Produce Market Committee (APMC)

The APMC Acts of various states from 1960s prohibited any transaction between farmer and the farm produce buyer outside the Mandi. This restricted the relationship between the farmers and the agri-business enterprises to a transactional mode, and was not conducive to the kind of linkage envisaged in the preamble. Thus the Model APMC Act was recommended by the Central Government in 2003. The Model APMC Act that permits direct marketing and contract farming is not adopted by many States. Where adopted, the States placed a number of restrictions, making the changes ineffective.

USIBC recommends that the Government de-list fruits, vegetables, & other perishables like fisheries from the ambit of APMC. Give farmers the freedom to sell directly to private buyers beyond market yards, facilitate alternate models such as contract/direct farming, cooperatives, and farmer producer organizations, rationalize market related fees, taxes & commission fees to improve the efficiency gains for the buyers & sellers. APMC should be consolidated atleast within respective states, requiring the buyer to deal with one APMC office rather than deal with multiple APMCs of the area. APMC compliance should also be made online, ensure transparent and simple system of registration of market functionaries. Leverage technology to bring in efficiency in functioning of markets, develop a national unified market for agricultural commodities by removing existing barriers of licensing, movement and storage restrictions and multitude of taxes and fees.

v. Warehousing/ Storage of Agricultural Produce

The following services relating to agriculture or agricultural produce are specified in the negative list: Loading, unloading, packing, storage and warehousing of agricultural produce. Currently, in warehouses where agricultural produce is being stored, packing materials which are used for packing of bulk purchases and repacking of bagged purchases where required are also stored. The negative list exemption does not specifically refer to loading, unloading, packing, storage and warehousing of packing materials for agricultural produce as being exempt from service tax. Given that the storage facilities for agricultural produce and such packing materials are common, it would be extremely difficult to allow for a bifurcation of aforementioned services as exempt (for agricultural produce) and taxable (for packing materials for agricultural produce). *USIBC recommends that the scope of negative list be expanded to include packing and allied materials used for agricultural produce.*

vi. Development of Agriculture exports

Indian Grains exports should be at par with other exporting nations in ASEAN region and have a consistent export/import policy with a view to provide markets for our farmer's produce and augment supply during the bearish global markets to help the consumers will encourage investments into Agri Infrastructure at ports and upcountry. *USIBC also recommends enhanced investments in creation of agri infrastructure for export especially for fruits, vegetables, meat, fisheries. In addition to the current focus on cold chain in India, the Government should consider creating infrastructure for agri export at ports and airports, allow financing against warehouse depository receipts, allow for the ambit of PSL lending to be increased to facilitate exports. Finally, horticulture exports need to also understand the global norms and safety aspects while doing business with EU or ASEAN.*

vii. Land consolidation

Fragmentation of land holding in the country is a serious problem facing the agriculture sector. This has serious impact on the scale of operation, crop diversification and scope of aggregation of farm produce leading to low-income levels of farmers, arising out of low rural enterprises and market connectivity. *USIBC recommends that the Government allow individuals / cooperatives / private sector to consolidate sizeable farm lands (say 50 – 100 acres or more) by way of leasing. The permissible leasing period should not be less than 10 to 15 years to enable the lessee to invest in technology viz., soil improvement, mechanisation, irrigation systems, post-harvest marketing set up etc. Ensure a per acre annual lease rental payable with a high interest rate payable on delayed payments to ensure an assured annual income to the farmer. Ensure that by this policy / legislation, the farmer is fully protected against any possible loss of his land to the tenant. This will accelerate the pace of agricultural development by permitting land consolidation; reduce small / marginal farm poverty and scale-up agricultural operations. This in turn will contribute to higher productivity and optimum utilization of the farm land.*

USIBC recommends that legalizing the leasing of agricultural land will improve occupational mobility of people as well as accessibility of land to poor people. It will also discourage land being kept fallow and will result in better utilization of land, fuller utilization of labour and increased farm output.

viii. Fertilizers

The policy agenda for fertilizers has been all along directed towards improving the availability of the same to boost productivity of crops. As a result, one of the key issues that has emerged is agricultural productivity and balanced fertilization. From a low base, use of fertilizers has helped augment productivity over time but this has also necessitated the need to promote balanced use of fertilizers.

Other issues are indigenous production and overall supply of fertilizers and fertilizer subsidy. Ensuring timely availability of fertilizers to the farmers is critical which require prior demand assessment at the state, district and block levels. Supply of fertilizers depends on both domestic production and imports. Thus opportunities to boost domestic production of fertilizers in a financially sustainable and energy efficient manner need to be explored.

USIBC recommends bringing Urea under Nutrient Based Subsidy (NBS) scheme to promote balanced use of fertilizers that determine soil health and fertility which in turn impact agricultural productivity, rationalizing fertilizer subsidies by promoting balanced use of fertilizer, moving towards Direct Transfer of Subsidy in a phased manner. USIBC also recommends that the Government reduce dependency of the industry on the existing regime and transfer the benefits directly to the farmers, and create conducive policy environment to encourage investments in nitrogenous sector by incentivizing alternative feedstock based production and also by committing part of future discoveries of gas to new investments.

ix. Seed and Biotechnology

Availability of quality seed at the right time forms basis for success of agriculture operations. Today, the seed sector is constrained by unclear legal mechanism, absence of clear laws, and limited investment in R&D. On biotechnology front, overlapping responsibilities, unclear mandates, lack of transparency and unclear procedures have resulted in regulatory delays. The existing policy & regulatory environment is less appreciative of the importance of science based solutions and lack of coordination between various functionaries is resulting in delays in approval. The uncertain policy environment is also deterring private sector participation & investment in research and development.
USIBC recommends that the Government put in place transparent, time bound and predictable clearances of regulatory issues, implement the Seed Bill 2004 with amendments that encourage private sector participation & investments, strengthen PPV&FR (Protection of Plant Varieties & Farmers' Rights) ACT, and establish Biotechnology Regulatory Authority of India (BRAI) to bring multi ministerial functions in regulating biotechnology to a single window system.

x. Mechanization

Increasing commercialization of Indian agriculture coupled with rising cost of agricultural labor has paved the way for mechanization of farm operations. There is a huge opportunity for customized equipment that caters to Indian conditions, without compromising on precision, speed and efficiency. However, adoption of modern agricultural practices and use of technology is constrained by shrinking and scattered holding size (average size being about 1 hectare). Issues related to feasibility of such technology and affordability pose serious hindrances to rapid adoption. Also, mechanization in agriculture comes under different ministries which involves a lot of coordination and hence impacts the process of operation.

USIBC recommends promoting adaptability and customization based on local needs. Ensure availability of related services (after sales) as part of the custom hiring (renting) of farm machines & implements models, ensuring grants/financial assistances reach intended entrepreneur / customer directly. NABARD as a link to be explored, ensuring uniform taxation across states, and road transport rules for equipment and implements must allow free movement – "Green plate" concept.

xi. Food Processing

Crude Palm Oil and RBD Palmolein: There is an increasing duty difference between 'Crude Palm Oil' (Crude Oil) and 'RBD Palmolein' (Refined Oil) Exporting countries like Malaysia and Indonesia, in order to support their own refining industry, have deliberately and intentionally made the RBD Palmolein cheap in order to close the Indian refining industry and allow them to own prices in the market. The surge in imports of cheap Palm Oil has resulted in a loss of revenue for Oil Palm plantation farmers in Andhra Pradesh, Tamil Nadu and Karnataka due to the cheap imports of palm oil. Currently no refiner can afford to increase the margins, which would make edible oil costlier and further depress domestic sales. *An increase in custom duty difference to 15% would be a win-win situation as a more competitive market will encourage domestic to take up oilseed farming.*

Edible Oils: The Government of India banned export of edible oils since 17th of March, 2008. However, the Government has allowed the export of castor oil and coconut oil. Simultaneously, edible oils manufactured from minor oils of forest origin and organic edible oils have been exempted from the list of export prohibited items. While it is a welcome step that the Government has recently removed the quantity restrictions, export of edible oils has been permitted in branded consumer packs of up to 5 kg. The oilseed processing industry is unable to take advantage of substantial export potential of other premium edible oils such as groundnut oil, mustard oil and sesame oil. It may be noted that oilseeds and oil meals are freely exportable, as such there is no justification or logic to restrict export of edible oils. *USIBC suggests that the government should remove the MEP stipulation, which restricts exports since the exporters have to incur packing cost also in addition to freight charges. USIBC also suggests that the Government should consider allowing export of all edible oils without any type of restrictions to ensure that the 'Make in India' program will achieve the desired results. By permitting the export of these oils, farmers will benefit from higher prices for their goods, which will in turn encourage them to bring more farmland under cultivation for oilseeds, increasing production and productivity.*

Essential Commodities Act:_Various notifications have been promulgated by the respective State Governments under the Essential Commodities Act imposing stock limits on the storage of the essential commodities items. However, most of the state notifications fail to identify a manufacturer's depot or Clearing and Forwarding Agents (CFA) as a separate and independent category operating as an extended arm of manufacturers and instead are treated at par with wholesalers and distributors. The failure of enforcement agencies to distinguish CFA defeats the very intent of the stock limit orders which are otherwise issued to ensure continuous supply and availability of the essential commodities in the market.

USIBC believes there is a need for the Ministry of Consumer Affairs, Food and Public Distribution to issue a clarification to the concerned state departments highlighting the difference between the CFA and wholesale dealers and distributors. USIBC also suggests that the stock limits applicable for the manufacturer should be applied for the CFA's for the reasons mentioned above. If necessary, few restrictions may be imposed on the CFA's based on their quarterly/annual turnover. Finally, manufacturers with a manufacturing facility in one state should be treated as manufacturer across all states and Union Territories in India.

E. RETAIL TRADE

i. Single Brand Retail

USIBC has been pleased to see growth in the single-brand retail sector following the lifting of the cap on FDI and welcomes the recent announcement for 100% automatic approval. USIBC is also encouraged by the Government of India's announcement of waiving the mandatory sourcing requirement for certain products that are "state of the art" and "cutting edge technology". *However, the Council is eagerly awaiting the Government of India's plans to define those types of products.*

Despite these successes, the current guidance from the Government of India contains provisions which continue to keep many foreign single-brand retailers from entering the market. Specifically, the mandatory 30% sourcing requirement of products sold from small & medium enterprises continues to be a key barrier to full investment by many international retailers. *USIBC believes that the reduction or elimination of this requirement would lead the single-brand market to the growth of which it is capable.*

ii. Multi Brand Retail

Welcoming foreign investment into the modern retail sector will help connect farmers directly to markets and remove intermediaries from the supply chain. Experience has shown that farmers receive increased prices for their products and consumers will see their choices expand in a growing market, and supply chains (including crucial cold chains) will be developed throughout the country. USIBC appreciates the Government of India not reversing the current policy of FDI in Multi-Brand retail. *However, the mandatory 30% sourcing requirement from small & medium enterprises continues to be a source of contention for investors. The Council believes that a timely resolution to this issue will be the final key to bringing foreign multi-brand retailers to India.*

iii. Regulation of Direct Selling under the Consumer Protection Bill

USIBC welcomes the Direct Selling Guideline 2016 issued by the Department of Consumer Affairs, Ministry of Consumer Affairs and Public Distribution, Government of India on 9th September 2016. While this is a significant step in distinguishing the Direct Selling Industry from Pyramid Schemes and Money Circulation Schemes, the advisory issued by the Department to the State Governments does not specify an Act under which these guidelines is to be issued nor does not it indicate any power of the State which would enable to enforce these guidelines.

The Parliamentary Standing Committee on Food, Consumer Affairs and Public Distribution's report on Consumer Protection Bill, 2015 (submitted in April 2016) recommends the regulation of Direct Selling as below:
"The Committee note that E-Commerce, Direct selling and Multi-level marketing are on the rise and consumer complaints are also on the rise. At present there is a vacuum in the area of

regulation in these sectors. Since Department of Consumer Affairs is concerned with 'Internal Trade', the Committee desire that the Department may be vested with the powers to make regulations on these subjects also. The Committee further feel that CCPA may be vested with the necessary powers to make regulations for its functioning in an effective manner." *USIBC agrees with this recommendation of the Parliamentary Standing Committee on Food, Consumer Affairs and Public Distribution. It also suggests that the Department of Consumer Affairs issue these guidelines as a regulation under the Bill once it is enacted.*

iv. Prize Chits and Money Circulation Schemes (Banning) Act, 1978

Many companies propose to work with the informal retail sector by engaging individuals to provide them with sales and marketing services. India's laws are silent on the manner in which this should be done. However, some states have used banking laws – specifically the Prize Chits and Money Circulation Schemes (Banning) Act, 1978 – to attack schemes that appear to abuse the participants. However, that Act does not distinguish between an illegitimate scheme and one that offers economic benefit to the participants and the nation. An illegitimate scheme charges new recruits to join and pays others for recruiting those participants. Legitimate sales programs pay commissions and bonuses only when products are sold.

USIBC recommends the Government of India to implement of the legislative changes recommended by the High-Level Inter-Ministerial Group (IMG) formed under the Department of Economic Affairs, Ministry of Finance to "identify regulatory gaps in the existing regulatory framework for deposit taking activities and to suggest administrative / legislative measures including the formulation of new law to cover all relevant aspect of "Deposit taking".

F. MANUFACTURING

i. Adopting an Export-Oriented Strategy

India is emerging as a leading manufacturing hub and its cost competitiveness in labor is a key advantage. To reach its full potential and fully leverage its manufacturing scale India should proceed to embrace an export orientation. No country has achieved double digit growth for its manufacturing sector – a stated goal of Make in India and essential to reaching its overall employment and growth goals – without recording double-digit expansion in its exports. For manufacturers, many of the world's customers are outside of India. A greater focus on Make-In-India for the world is essential to higher capacity utilization and to connecting India with global supply chains. This is a critical element of the business case for US manufacturers to invest in India. Developing a world class industry and its associated economic benefits requires international engagement. *USIBC recommends India pursue a high level of ambition with respect to expanding export markets through new free trade partners. Council Members recommend India expand its export markets through concluding high-ambition free trade agreements with economies such as Australia, Canada, and the European Union.*

G. Financial Services

i. Insurance FDI

USIBC welcomed the passage of the Insurance Act, which raised the foreign direct investment (FDI) limit from 26% to 49%. However, the Insurance Regulatory and Development Authority of India's (IRDAI) subsequent reforms have raised serious concerns. The first of these was the October 2015 release of new guidelines clarifying "ownership and control" under the Insurance Act has raised serious concerns for foreign insurance companies operating in India. The IRDAI's strict guidelines required many companies to re-write their existing JV agreements and it applied to all insurance companies, including those who had no intention of raising their investment stakes and already had existing JV arrangements in place. *USIBC recommends the repeal of these guidelines and reforms to allow foreign companies commensurate control with their ownership.*

ii. Insolvency and Bankruptcy Code

Clear mechanisms for the resolution of distressed companies and their obligations to customers, lenders, and shareholders are critical to creating a predictable and attractive environment for long-term foreign investment. USIBC is pleased to note the passage of the Insolvency and Bankruptcy Code that would create a single system for resolution of insolvency issues with a company. The Code creates a new institutional framework, consisting of a regulator, insolvency professionals, information utilities and adjudicatory mechanisms, that will facilitate a formal and time bound insolvency resolution process and liquidation. *USIBC recommends the implementation of the provisions of the Bankruptcy Code that would establish the framework for speedy, efficient, and consistent resolution of insolvency issues.*

iii. Moving Demonetization Forward by Further Dis-incentivizing Cash Payments

The demonetization reforms were a critical first step in realizing Prime Minister's vision of digital payments in India. USIBC encourages the Government of India to continue its reforms to ensure consumers fully move to a digital payments culture and do not remain cash-centric in their preferences. Specifically, reforms that limit cash withdrawals from ATMs, impose higher tax surcharges on consumer cash payments, and improve merchant card acceptance rates are required to reap the benefits of demonetization by helping shift consumers away from established cash preferences and towards the use of digital payments. *USIBC recommends a tax structure that imposes surcharges to inhibit the excessive use of cash. These measures should be supplemented with requirements that small merchants, as defined as those with 2.5 lakh or more revenue, have at least one digital payment option at the Point-of-Sale available for consumers. Finally, the Government of India should lead by example through the establishment of an open loop payment infrastructure for all person-to-Government merchant categories, such as Transit and Railways.*

Cash withdrawal limit from ATMs

The current limits for cash withdrawals should be further tightened as consumers adapt to a digital payments infrastructure and modify their cash transactions accordingly.

- *Current ATM withdrawal limit is in between INR 40,000 and INR 2,00,000 per day -- Minimum withdrawal limit of cash from ATM is recommended as INR 1,000 up to INR 5,000 per card per day applicable in a district with over 10,00,000 population; excess cash withdrawal to be surcharged at INR 500 as service fee*
- *Cash withdrawal limit from saving bank accounts (SBA) -- Current cash withdrawal limit from SBA is in between INR 50,000 and INR 2,00,000 per day --Minimum withdrawal limit of cash from SBA is recommended as INR 15,000 up to INR 25,000 per day in a district with over 10,00,000 population with a fee levied at INR 500*
- *Cash deposit, Annual Maintenance Charges (AMC) -- Current AMC range is in between INR 100 and INR 300 plus tax. Minimum fee levied on cash deposit is recommended as INR 500 for every INR 10,000 deposited in a district with over 10,00,000 population*

Taxes on consumer cash payments

Cash payments for consumer transactions should be capped with surcharges for transactions that exceed established limits.

- *Retail/wholesale cash payments --Accepting cash in aggregate for one or more events capped at INR 2,00,000. Cash transaction limit recommended as INR 1,00,000 in a district with over 10,00,000 population; excess of INR 1,00,000 as cash transaction to be surcharged INR 1,000 as service fee*
- *Cash transaction limit capped at INR 20,000 for receiving or repaying transfer of an immovable property*
- *Cash transaction limit recommended as INR 5,000 in a district with over 10,00,000 population; excess of INR 5,000 to be surcharged INR 1,000 as service fee.*
- *Cash transaction related to expenditure of a business or profession capped at INR 10,000 -- Cash transaction limit recommended as INR 5,000 in a district with over 10,00,000 population; excess of INR 5,000 to be surcharged INR 750 as service fee*
- *Cash transaction over and above to sale at POS -- Cash transaction limit recommended at INR 5,000 in a district with over 10,00,000 population; excess of INR 5,000 to be surcharged INR 750 as service fee*

Merchant card acceptance

Smaller merchants need to be incentivized to accept digital payments and the Government of India should lead by example by expanding its own digital payment options.

- *Small merchant acceptance of electronic payments-- All outlets with annual sales equal or more than INR 2,50,000 should be required to accept at least one digital means of payments preferably POS.*
- *Person to Government (P2G) payments -- All touch points for P2G payments in excess of INR 500 per month per household to have one mandatory digital payments option.*
- *Mandate installing open loop payment infrastructure across all P2G merchant categories for e.g. Transit and Railways.*

iv. PrePaid Instruments and Recent Reforms: Burdensome Requirements and High Compliance Costs

Pre-paid Instruments (PPIs) are a critical area where the Government of India and its financial regulators, SEBI and RBI, have been developing a regulatory framework that promotes growth, but ensures consumer protection to meet the expanding digital payments markets. Their reforms efforts for PPI providers have raised concerns about the compliance burdens and the viability of businesses under these new requirements. Specifically, industry stakeholders view the proposed Know Your Customer requirements requiring product providers to undertake due diligence on the users as particularly burdensome and costly, but also in certain circumstances impossible to achieve given the mobile characteristics of the products. Stakeholders argue the KYC requirements treat PPI providers more like banks, and fail to understand the unique characteristics of the products they provide and the circumstances under which customers use them. In doing so, the government has stifled growth and innovation.

On October 11, 2017, the RBI issued a revised set of Master Directions governing pre-paid instruments and wallets (PPI). The Directions impose full KYC requirements on mobile wallets by either 12/31/2017 or for those under INR10,000 within the next 12 months and raise capital requirements from one crore to five crore to fifteen crore by 2020. One positive change is that the Directions now envision wallet-wallet interoperability and also wallet-bank account interoperability via the UPI infrastructure. The Directions have raised serious concerns among the digital payments community. USIBC commented on these requirements when initially proposed by the RBI in March 2017. At that time, the Council argued against the imposition of the full KYC requirements, and the higher capital requirements for their chilling effect on the continued operation of existing PPI operators and on the attractiveness of the market for new entrants.

USIBC and its members ask that the RBI open a dialogue with industry stakeholders to identify a more reasonable balance between consumer protection and allowing industry growth. Companies will naturally seek to comply with the requirements, but believe that such burdensome requirements will have a chilling effect on growth in the industry.

v. Parity for Non-Banking Financial Companies (NBFC) with Banks

USIBC recognizes that NBFCs are an integral part of the India's growth story and supports parity in treatment with banks and other financial institutions on matters related to taxation, refinancing, and recovery proceedings. Section 43D of the Income Tax Act recognizes the principle of taxing income on non-performing assets only in the year in which they are received. This provision is only applicable to scheduled banks, public financial institutions, and housing finance companies and not NBFCs. Similarly, banks and insurance companies are exempt from requirements shifting profits through excessive interest payments resulting from high levels of debt in a company. Systemically Important Non-Deposit Taking

NBCFs' should be given parity with banks and other companies allowed the exemption. Recovery procedures available to banks under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest (SARFAESI) Act are based on a minimum ticket size of lending at Rs. 1 Crore, thus effectively stopping NBFCs from availing themselves of these provisions as their ticket lending size is typically much smaller. *USIBC requests the Government of India to review the provisions for NBFCs and implement parity in treatment with banks and other financial institutions.*

vi. Regulatory Framework for Launching Alternative Investment Fund Schemes

USIBC invites your attention to the Foreign Exchange Management (Transfer or Issue of Security by a Person Resident outside India) (Second Amendment) Regulations, 2016 and the provisions regarding investment in an AIF scheme (Investment Vehicle) mentioned therein. As per schedule 11 of the above Regulation, downstream investment by an Investment Vehicle shall be regarded as foreign investment if either the Sponsor or the Manager or the Investment Manager is not Indian 'owned and controlled'. The extent of foreign investment in the corpus of the Investment Vehicle will not be a factor to determine whether downstream investment of the Investment Vehicle concerned is foreign investment or not.

The above RBI notification has an adverse effect on competition and freedom of consumers to select an investment manager of their choice as it by design creates impediments for investment managers with foreign ownership and control participating in the AIF market. While, Indian owned and controlled Asset Management Companies (Investment Managers) have the freedom to launch AIF schemes without restrictions, by virtue of the above regulatory requirement, an AIF scheme launched by an Asset Management Company with foreign ownership shall have to conform to the sectoral caps and conditions / restrictions as per the FDI Policy. This disparity leads to serious impediments in freedom of trade especially when the universe of customers for both types of AMCs are the same.

In view of the above, USIBC suggests the following changes in the applicable regulations:

USIBC recommends reconsideration of a resident foreign-owned Investment Managers (AMCs) as different from a non-resident foreign owned Investment Managers and as equivalent to an India owned and controlled Investment Manager. It is encouraging to see that the government has already initiated some steps in this direction by amending the Foreign Contribution Regulation Act to exempt the contribution made by a foreign owned Indian company from the definition of foreign source. USIBC requests the Government to exempt AIF schemes launched in India by an existing SEBI registered resident Intermediary (incorporated in India) from the applicability of FDI policy conditions irrespective of the foreign ownership of the respective

AMC/Sponsor. Such AIF schemes may be considered a domestic AIF and the investments made by such AIF may be considered as domestic investments for the purpose of downstream investment conditions mentioned in FDI policy.

USIBC recommends that he Foreign Exchange Management (Transfer or Issue of Security by a Person Resident outside India) Regulations should be suitably modified to reflect the above change.

vii. Capital Markets Reforms

USIBC supports initiatives to modernize India's capital markets, including development of a corporate debt market, long-term rupee-denominated government securities, risk management trading mechanisms, and an updated external commercial borrowing regime. A level playing field is necessary for global participants in India's financial markets with clear, nationality-neutral regulations across all asset classes. SEBI's Foreign Portfolio Investor (FPI) regime is a step in the right direction for streamlining the foreign investment process, including registration, clearance, and administration of portfolio investments. *Current and future FPI implementation rules should be clear enough to add certainty and predictability.*

USIBC also recommends that the Reserve Bank of India continue to liberalize capital flows allowing foreign and domestic companies to further manage risk. Capital convertibility should remain the goal commensurate with India's capital requirements, global standards, and consumer needs.

H. LEGAL SERVICES

Unfettered access to the best legal, accounting, and economic minds the United States and India possess is the engine that will support large, increasingly complex, multinational transactions while buttressing investor confidence and attracting investors to India. USIBC recommends the opening of India's legal services sector. It remains essential that foreign lawyers are allowed to "fly-in and fly out" to advise on issues of non-Indian law. *USIBC recommends the Government of India to allow Indian lawyers to advertise, at a minimum through websites that would provide information on their law firms, detailing the skills of their lawyers and highlighting their practice areas. Permitting Indian lawyers to create and maintain websites makes them competitive internationally.*

I. LIFE SCIENCES

i. Increased Expenditure by Government of India on Healthcare

USIBC recommends the Government of India to dedicate additional resources to increased healthcare access and improving the ability of citizens to afford their healthcare. While the Council applaud the Central Government's recent agreement to restore some funding to health programs, particularly in HIV/AIDS, more should be done. Increasing access to health insurance, whether provided through the public sector or the private sector, is a key concern to Council members, as it is the surest means for enabling families to afford their healthcare. Furthermore, greater healthcare financing will also attract new investment in the health sector, including both infrastructure building and innovation in new products. Healthcare is just as much about the availability of doctors and hospitals and health insurance as much as it is about access to new medicines and cutting edge technology. *USIBC recommends that the Government of India (GoI) achieve its goal of contributing 2.5 percent of the country's GDP to healthcare.*

ii. Protection of Intellectual Property to Enable Innovation the Biopharmaceutical Sector

The Indian pharmaceutical industry not only supplies domestically but also globally, and budget measures should support Make in India as well as promote exports from India. FDI and global collaboration in life sciences is essential for a thriving, robust Indian healthcare sector. Industry is encouraged by the efforts taken by the Government of India to engage all stakeholders in the policymaking process. USIBC has been encouraged by the Government's efforts to engage in a constructive dialogue on intellectual property, and the introduction of the new IPR policy. *Much work remains to be done and USIBC recommends the Government remain diligent on the protection and enforcement of intellectual property.*

iii. Predictable Framework on Price Controls

Medical device investors are concerned about the issue of price controls. The recent issue of price controls being considered on coronary stents was not an encouraging development. USIBC believes that simply reducing maximum retail prices from the medical device manufacturers does not take into account: (1) the impact on the final price to the patient for a given procedure as the device is a part of procedure package; (2), Indian customers that can afford to pay the higher price for innovative products; (3), the mark-ups by others in the supply chain, who increase the cost to the patient regardless of the manufacturers reduce the price; (4), the increased access to hospitals and doctors that are trained to offer healthcare service by using the implant/devices; and, (5) the broad scope of those who have access to some form of health insurance so that the cost may be shared by society-at-large, rather than individual families. If, after the concerns mentioned above, GoI still implements price controls on medical devices, then *USIBC recommends that GoI work with all stakeholders to provide a predictable and transparent framework for any price controls placed on pharmaceuticals, medical devices, biologics, or other healthcare products.*

iv. Separate Regulatory Framework for Medical Devices

Medical devices are currently regulated under the same statute as pharmaceuticals, which have led to inefficiencies within the regulatory process and uncertainty for investors. We hope that the Government of India introduces a new Drugs & Cosmetics Bill (Amendment) bill in the winter session of Parliament this year and enact rules that will create a framework for medical devices separate from pharmaceuticals. Until new legislation clears Parliament, medical devices are regulated under the same law as pharmaceuticals leading to unnecessary regulation. *USIBC recommends a separate regulatory framework for medical devices and greater industry dialogue with regard to the regulation of such devices.*

J. Digital Economy

i. E-Commerce

The GOI restricts FDI in business-to-consumer e-commerce (inventory model), despite U.S. companies' large investment and employment in the e-commerce sector. As the government of India considers this important liberalization move, *USIBC recommends that it provide a level playing field to e-commerce, allowing at least 51 percent FDI so that U.S. and Indian companies could partner to provide world class solutions to merchants and customers.* FDI in e-commerce benefits the Indian consumers, local businesses, including manufacturers while decreasing fiscal and trade deficits. Removing the restrictions on e-commerce will help India attract new investments in the form of warehouses, supply chain management, and logistics services. Indeed, the reform would help develop India's domestic manufacturing sector and the resulting infrastructure developments will further generate local employment. *Given the immense growth opportunity for India, USIBC recommends that the Government of India allow FDI in business-to-consumer e-commerce.*

K. Media and Entertainment

According to the December 19, 2017 Telecom Regulatory Authority of India (TRAI) Consultation Paper on Issues Relating to Uplinking and Downlinking of Television Channels in India, "The Television Broadcasting sector presents a vibrant picture with more than 880 permitted satellite TV channels, around 80 Teleports, 7 DTH operators, 1500 Multi-system operators and large number of Cable TV operators. The total revenue of TV Industry is INR 58,800 Crore as per the industry estimates with CAGR of more than 15%. There are approximately 183 million TV households." Film and television are also significant employment generators for the Indian economy and enhance India's image among external audiences from a socio-cultural perspective.

USIBC congratulates the MIB on its recent launch of its online module allowing some applications via the MIB web portal. But to further stimulate and innovate this market segment, *USIBC recommends that policies leading to stronger copyright enforcement and reduction of piracy, ease of licensing for new channels, and further relaxation of restrictions on vertical integration would all positively impact the landscape.*

i. Harmonization of Uplinking & Downlinking Guidelines with TRAI Regulations

The TRAI Consultation Paper on Issues Relating to Uplinking and Downlinking of Television Channels in India represents an opportunity for the government to improve the satcom licensing and regulations. In fact, as early as 2011, TRAI issued a series of recommendation[1] that would stimulate investment and consumer choice with the satellite broadcast marketplace. In 2014 and 2017, TRAI issued additional recommendations[2] focused on improving the ease of doing business in the broadcast sector. Overall, only a

[1] http://www.trai.gov.in/sites/default/files/23feb11_0.pdf
[2] http://www.trai.gov.in/sites/default/files/Recommendation%3D24112014.pdf

very few of these recommendations have been implemented. *USIBC, therefore, recommends that the GOI revisit its satcom policy, cutting across TRAI, the Ministry of Information and Broadcasting (MIB), and the Ministry of Space, to unleash the opportunity for connectivity and broadcasting based on an "Open Skies" policy as outlined in previous TRAI recommendations.*

Annex I

Transfer pricing regulations on Range Concept in various jurisdictions

Country	Whether applicable to CUP method	Restriction on use on number of comparables	How is range computed
OECD	Yes	No restriction	3 years weighted average of the comparables is calculated and any point in the entire range can be used.
United States of America	Yes	No restriction	3 years weighted average of the comparables is calculated and any point between 25th to 75th percentiles (i.e. Interquartile) can be used.
United Kingdom	Yes	No restriction	3 years weighted average of the comparables is calculated and any point in the entire range can be used.
Korea	Yes	No restriction	Nothing specific has been stated under the Korean transfer pricing regulations. However, interquartile range is typically used.
Singapore	Yes	No restriction	Interquartile range is used.
Australia	Yes	No restriction	Broadly in lines with OECD with few variations.
Taiwan	Yes	No restriction	3 years weighted average of the comparables is calculated and then any point in the entire range can be used.
China	Yes	No restriction	Nothing specific has been stated under the Chinese transfer pricing regulations. However, their transfer pricing rules are broadly in line with OECD.