

October 1, 2020
Ms. Lisa R. Barton
Secretary
U.S. International Trade Commission
500 E St. SW

Re: ITIF Pre-hearing Statement Regarding Investigation No. TPA-105-008 on the Economic Impact of Trade Agreements Implemented Under Trade Authorities Procedures

Dear Ms. Barton:

Please find below the Information Technology and Innovation Foundation's (ITIF) pre-hearing statement concerning investigations No. 105-008 into the Economic Impact of Trade Agreements Implemented Under Trade Authorities Procedures. It focuses specifically on the evolution and impact of U.S. digital trade policy, especially the moratorium on digital duties.

We look forward to delivering our full statement at the hearing on October 6, 2020. If you have any questions, please do not hesitate to contact me at (202) 626-5720 or ncory@itif.org.

Sincerely,

Nigel Cory
Associate Director, Trade Policy, The Information Technology and Innovation Foundation

**United States International Trade Commission
Investigation No. 105-008**

**ITIF Pre-hearing Statement Regarding the Economic Impact of Digital and
Ecommerce Trade Provisions in Past U.S. Trade Agreements**

**Presented by:
Nigel Cory
Associate Director, Trade Policy
The Information Technology and Innovation Foundation**

October 6, 2020

My testimony will focus on the evolution and impact of U.S. trade policy as it relates to international e-commerce and digital trade and the challenges involved in trying to analyze and quantify the value of these provisions to the U.S. economy, especially as it relates to the moratorium on enacting duties on digital products.

At its beginning, the global digital economy was open to trade by default. Data and digital goods and services flowed freely. But it didn't take long for countries to enact barriers (whether for economic, political, or social goals). Over time, an increasing number of countries came to realize that digital technologies and products are part of a fierce race for global innovation and technological advantage and they didn't want to invest the time, resources, and expertise to help their firms and workers become more competitive and innovative—so they turn to digital protectionism. Service market restrictions, forced local data residency requirements, forced local staff and office requirements, and opaque and discriminatory digital content review processes are just some of the growing range of tools in the digital protectionist toolbox. These are the targets of U.S. trade policy.

Global digital trade has grown in size and importance despite the lack of clear, predictable, and enforceable rules under the various World Trade Organization (WTO) agreements, which remains largely anchored to tariffs and 20th century trade in manufactured and agricultural goods and commodities. Yet, in agreeing to enact a moratorium on imposing customs duties on electronic transmission in 1998, WTO members showed considerable foresight in seeking to protect the (at that stage) nascent e-commerce sector by ensuring it'd remain free from tariffs. However, the moratorium needs to be renewed every two years and its opponents continue to question its true meaning. So the threat of digital duties remains.

U.S. trade policy has evolved alongside the U.S.'s emergence as a leader in the global digital economy, in some ways, to fill the increasingly obvious gaps in WTO rules. Starting shortly after the moratorium, in 2001 with the U.S.-Jordan Free Trade Agreement (FTA), U.S. trade agreements have evolved to cover a growing range of digital trade issues, in greater detail. It was necessary given how digital technology affected business models and trade, but also to counteract the protectionist barriers that trading partners started enacting to target U.S. firms and their digital goods, services, and business models.

U.S. trade policy clearly recognizes the value of the moratorium. Ever since the 2001 U.S. Jordan FTA, when both parties agreed to not impose customs duties on electronic, the United States has sought to make the moratorium clear, permanent, and enforceable as part of U.S. trade agreements. Again, this showed considerable foresight given India, Indonesia, and other countries' recent efforts to end the moratorium.

The moratorium is of enormous value as it ensures that the growing range of digital products can be traded tariff-free, whether this is movies, music, books, or software. Being able to digitize goods is tantamount to a reduction in transport costs which can be as high as 20-30 percent of overall trade costs. The OECD estimates that if all goods that good be digitized were digitally transmitted today, consumer welfare would increase by \$940 million, outweighing costs associated with revenue loss by \$73 million.

The value of the moratorium, in part, differs due to the level of digitalization in different segments. Gaining access to the digital distribution (even if aggregated by region or sector) of this content via major U.S. platforms would certainly provide a clearer picture as to global trade in this digital content and the potential cost of digital duties. On a historical basis, it'd also provide a better idea of growth in global markets, which would be useful in analyzing the potential impact of duties on trade given price elasticities and changes in demand. However, the impact of digital duties would likely be larger if it encompassed other intangible

products like software, which is much harder to target and measure given how it is distributed and used (such as software-as-a-service).

But the value of the moratorium is much broader. The long-term, dynamic impact of spreading digital protectionism, such as digital duties, is the likely cascading effect as developing countries follow the first mover (such as India or Indonesia) in the misguided pursuit of a digital industrial development policy and digital tariff revenue. For example, countries enact tit-for-tat digital duties against each other, which would reduce trade and global economic productivity. U.S. firms and their products would be directly affected as their products cost more. But they and firms in other sectors (such as agricultural and manufacturing) would be indirectly affected as it'd inevitably affect the data flows and digital products and services they rely on to engage in foreign markets and trade, which would reduce trade and firm competitiveness and innovation.

While digital protectionism is a relatively recent phenomenon, we know enough that countries don't tend to enact just one barrier. Indonesia and India are leading supporters of ending the moratorium, but its no surprise that they also have enacted or considered local data storage and other restrictions targeting U.S. firms and their products. China provides them with a masterclass in how to enact a broad and changing array of rules and regulations that disadvantage foreign firms and their digital goods and services.

This is where identifying and assessing the impact of digital duties merges with a broader assessment. The intangible and dynamic nature of digital goods, services, and data-driven innovation makes it difficult to quantify the true value of U.S. digital trade provisions. It is also hard to differentiate between domestic and international economic activity as the flow and use of data can be applied to central products services that are offered on a largely seamless, global basis. There can be little to no distinction in terms of identifying was is and isn't trade-related.

It's also difficult to quantify the counterfactual in terms of the value of market access in countries which never had barriers in place, but through trade agreements, they are prohibited from ever introducing. Furthermore, the value U.S. firms derive from data-driven innovation—which greatly benefits from the free flow of data from around the world—is hard to see and often far removed from the traditional statistical and accounting measures that capture imports and exports. Yet, the value U.S. firms derive from data (in terms of the insights from the aggregation and analysis of data) to offer more and better digital goods and services is central to the U.S. economy and its leadership position in the global digital economy.

At the macro level, the indirect value that digital free trade provides to global economic productivity is much broader. The Information Technology Agreement (ITA) provides an analogue case study as it involves information communication technologies (ICTs) that play a similarly major and dynamic role as data and digital goods and services in spurring productivity and innovation in the global economy. The ITA requires members to cut tariffs, thereby lowering the prices for, and expanding consumption of, productivity-enhancing ICTs. Giving domestic businesses and households access to cheaper and better ICTs leads to faster economic growth and higher standards of living.

The U.S. International Trade Commission (USITC) should be commended for the valuable work it has already done to describe and quantify the value of digital trade to the U.S. economy. It knows better than most just how difficult this is. The value of the moratorium and U.S. digital free trade policies may be hard to specifically identify and quantify, but it impacts—both direct and indirect— the U.S. economy’s ability to innovate, compete, and trade. Hopefully the USITC’s report provides new analysis as to the value of U.S. digital trade policies. Even if qualitative, new analysis would be of enormous value in advocating for more detailed discussions about next steps. This is to argue that the difficult in identifying and quantifying the value of specific trade law provisions, as well as its aggregate value, should not dissuade U.S. policymakers from pushing ahead with new and better rules and cooperation to support digital trade.