ITIF | INFORMATION TECHNOLOGY & INNOVATION FOUNDATION

Memo

To: Secretary Scott Bessent, U.S. Department of the Treasury

From: Stephen Ezell, Vice President, Global Innovation Policy, ITIF
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Date: March 20, 2025

Re: President Trump's America First Trade Policy

OVERVIEW

We are writing to offer assistance as you respond to President Trump's January 20 "America First Trade Policy" memorandum.[1] The Information Technology and Innovation Foundation (ITIF) is an independent 501(c)(3) nonprofit, nonpartisan research and educational institute that is recognized as the leading think tank for science and technology policy. As part of our focus, ITIF has extensive expertise in innovation, trade, and technology policy, particularly regarding China's unfair trade practices and their impact on U.S. competitiveness.

Our research documents how China's innovation mercantilism—including industrial subsidies, IP theft, forced technology transfer, and closed markets—undermines U.S. technological leadership. The President's memorandum provides a timely opportunity to address these practices through targeted, effective policy responses.

This memo addresses specific issues enumerated in the President's January 20 memo. It provides analysis and recommendations on counterfeit products, discriminatory digital taxes, and investment controls for critical technologies. Our proposals aim to protect American innovation while promoting fair, rules-based trade principles that benefit the U.S. economy and support U.S. technological leadership.

ITIF stands ready to provide further assistance as you develop a comprehensive response to these challenges.

SECTION 2(I). COUNTERFEIT PRODUCTS AND CONTRABAND DRUGS

The rapid growth of e-commerce from overseas sellers has made it significantly easier for counterfeit goods and narcotics, such as fentanyl, to enter the United States. This trend undermines public health, consumer safety, and the competitiveness of legitimate businesses. Addressing this challenge requires both stronger public-private collaboration and the adoption of market-driven, tech-enabled solutions. China is a key front in the global effort to combat counterfeit products, as China is estimated to produce 80 percent of the world's counterfeits,

[1] The White House, "America First Trade Policy," January 20, 2025, https://www.whitehouse.gov/presidential-actions/2025/01/america-first-trade-policy/.

and together with Hong Kong, accounted for 75 percent of the value of counterfeit and pirated goods seized by U.S. Customs and Border Protection (CBP) in 2021.[2]

Recommendations

To protect U.S. tariff revenue and public health by preventing the unlawful importation of counterfeit products and contraband drugs, ITIF recommends the following measures:

Enhanced Public-Private Data Sharing and Partnerships

- **Centralized real-time data sharing:** Establish a centralized, real-time data-sharing system involving CBP, major e-commerce platforms, and brand owners. This system would track and flag illicit shipments as they approach U.S. borders.
- **Industry cooperation:** Encourage voluntary cooperation among industry stakeholders to develop common standards and best practices for anti-counterfeiting measures, ensuring a standardized public-private partnership framework.

Strengthened Customs and Law Enforcement Capabilities

- **Advanced screening technologies:** Expand CBP's use of AI and machine learning to identify high-risk shipments and sellers more effectively, reducing reliance on manual inspections.
- **Increased funding:** Increase funding for state-of-the-art screening technologies at ports of entry to better detect counterfeit goods and contraband drugs, thereby mitigating potential risks.
- **Reform de minimis exemptions:** Prevent Chinese e-commerce platforms such as Temu and Shein from exploiting the de minimis exemption, but create a carve-out allowing U.S. e-commerce platforms to continue using the exemption for reliable Chinese sellers that meet their standards.

E-Commerce Platform Accountability

- **Stricter seller verification:** Work with e-commerce platforms to enforce stricter verification protocols for high-risk third-party sellers, preventing repeat offenders from exploiting online channels.
- **Transparency and reporting:** Enable improved transparency and consumer reporting mechanisms for identifying and flagging suspicious products and sellers, empowering both platforms and consumers to act against illicit activities.

By implementing these recommendations, the United States can enhance its ability to protect public health and revenue while minimizing disruptions to legitimate e-commerce operations and fostering a more secure and competitive market environment.

SUBSECTION 2(J). DISCRIMINATORY TAXES

Digital services taxes (DSTs) enacted by multiple foreign governments impose targeted levies on a narrow set of highly digital firms—primarily large U.S. technology companies—disregarding

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[2] "How to Create a Robust Online Anti-Counterfeiting Programme," World Trademark Review, October 3, 2023, https://www.worldtrademarkreview.com/guide/anti-counterfeiting-and-online-brand-enforcement/2023/article/how-create-robust-online-anti-counterfeiting-programme/.

long-standing international tax norms. These taxes constitute a discriminatory revenue grab that violates the principles of fair taxation and trade agreements.

The Discriminatory Nature of DSTs

There are three main ways digital service taxes are discriminatory:

1. **Targeting U.S. companies:**
    a. DSTs disproportionately apply to U.S. digital firms while exempting domestic competitors. For example, France's 3 percent tax on digital revenues applies mainly to U.S. firms like Google and Facebook but excludes comparable services provided by French companies.
    b. Revenue thresholds are designed to capture large U.S. firms while letting smaller domestic firms avoid taxation (e.g., Canada's CA$20 million threshold penalizes firms for expanding).
2. **Violation of international tax principles:**
    a. Under established tax treaties, corporate profits are taxed where value is created. DSTs unilaterally redefine "value creation" to include user engagement, distorting economic reality.
    b. The OECD itself has stated that digitalization affects all sectors, making ring-fencing digital companies for taxation arbitrary and unfair.
3. **Double taxation and trade agreement violations:**
    a. DSTs function as an ad valorem tariff on U.S. services, likely violating World Trade Organization and GATS national treatment rules.
    b. U.S. firms already pay corporate taxes in their home jurisdiction; imposing additional levies in foreign markets undermines tax reciprocity and reduces U.S. tax revenues.

Recommendations

ITIF recently published a report, "The Trade Imbalance Index: Where the Trump Administration Should Take Action to Address Trade Distortions," which examined multiple indicators of unfair trade practices, including digital services taxes.[3] Based on our findings, the Trump administration should focus on the following countries:[4]

- **Argentina:** Imposes a 5–15 percent DST on online gambling revenues.

[3] Stephen Ezell, Trelysa Long and Robert D. Atkinson, "The Trade Imbalance Index: Where the Trump Administration Should Take Action to Address Trade Distortions" (ITIF, March 2025), https://itif.org/publications/2025/03/10/the-trade-imbalance-index-where-the-trump-administration-should-take-action/.

[4] Cristina Enache, Digital Taxation Around the World (Tax Foundation, April 30, 2024), https://taxfoundation.org/research/all/global/digital-taxation/.

- **Brazil:** Multiple DST proposals, ranging from 1–10 percent on digital advertising, platform services, media, and user data, with various revenue thresholds.
- **Canada:** Imposes a 3 percent DST on advertising, online marketplaces, social media, and user data sales, with a CAD 20 million domestic revenue threshold and €750 million global threshold (policy adopted but not yet implemented).
- **Colombia:** Imposes a 3 percent DST on revenues from advertising, streaming media, and e-learning services, with a significant economic presence test.
- **European Union:** Paused a proposal for a 3 percent DST on revenues from marketplaces and digital advertising, with thresholds of €50 million in EU revenues and €750 million globally.
- **India:** Has imposed a 6 percent equalization levy on online ads since 2016, expanded in 2020 to a 2 percent levy on e-commerce revenues from foreign businesses.
- **Indonesia:** Proposed a DST on e-commerce services; details yet to be finalized.
- **Israel:** Proposed a 3–5 percent DST on digital interfaces, advertising, and user data services.
- **Malaysia:** No DST, but applies a 6 percent digital services VAT to foreign digital service providers.
- **Nigeria:** Imposes a 6 percent DST on revenues from content, customer data, goods & services, and intermediary services, with an NGN 25 million threshold.
- **Pakistan:** Imposes a 2 percent withholding tax on revenues from online marketplaces, applying to both B2B and B2C digital transactions.
- **Taiwan:** Imposes a 5 percent withholding tax on payments to foreign providers for online advertising and digital services.
- **Vietnam:** Imposes a 1.5 percent e-commerce withholding tax on digital transactions.
- **Turkey:** Imposes a 7.5 percent DST on revenues from advertising, digital content, and social media services, with thresholds of TRY 20 million in Turkish revenues and €750 million globally.
- **United Kingdom:** Imposes a 2 percent DST on revenues from social media platforms, search engines, and online marketplaces, applying to companies with UK revenues over £25 million and global revenues over £500 million.

SECTION 4(E). U.S. INVESTMENTS IN CRITICAL TECHNOLOGIES IN COUNTRIES OF CONCERN

The Treasury Department's review of Executive Order 14105 and its implementing regulations should:

- **Incorporate public investment scrutiny:** Evidence indicates that public investment practices—including state and local subsidies that benefit Chinese companies operating in the United States—may inadvertently contribute to the advancement of technologies that undermine U.S. competitiveness. As documented in ITIF's 2022 report "State and

Local Governments Need to Stop Subsidizing Chinese Companies," these government-funded incentives often flow to firms benefiting from unfair trade practices.

- **Refine technology coverage:** Rather than broad sectoral restrictions, adopt a more precise approach focused on specific technologies with clear military applications. This approach aligns with ITIF's research on how China targets U.S. technology through multiple channels beyond direct investment.
- **Establish objective criteria:** Develop clearer, objective standards for what constitutes unfair market-distorting practices as a basis for investment controls, similar to ITIF's proposed reforms to Section 337. These criteria should address both direct investments and technology transfers occurring through joint ventures.
- **Coordinate allied response:** Strengthen formal coordination with allies, implementing similar investment screening mechanisms and creating a multilateral approach similar to ITIF's proposed "DATO for Trade" concept.
- **Balance security and competitiveness:** Ensure any modifications maintain U.S. companies' ability to compete globally while protecting against genuine national security risks posed by Chinese innovation mercantilism.