ITIF | INFORMATION TECHNOLOGY & INNOVATION FOUNDATION

Memo

To: Ambassador Jamieson Greer, United States Trade Representative

From: Stephen Ezell, Vice President, Global Innovation Policy, ITIF
Hilal Aka, Policy Analyst, ITIF

Date: March 20, 2025

Re: President Trump's America First Trade Policy

OVERVIEW

We are writing to provide analysis and recommendations as you respond to President Trump's January 20 memorandum on advancing an "America First Trade Policy" to address challenges posed by unfair and unbalanced trade practices affecting U.S. industries, and his February 21 memorandum on "Defending American Companies and Innovators From Overseas Extortion and Unfair Fines and Penalties."[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 global trade policy, economic competitiveness, and innovation-driven growth.

ITIF has developed a Trade Imbalance Index, which evaluates 48 major economies across 11 key indicators to identify nations that inflict the greatest harm on American industries.[2] Our research highlights how certain countries systematically distort trade through mercantilist policies, restrictive regulations, intellectual property (IP) violations, and digital market barriers—practices that undermine U.S. economic interests.

This memo applies ITIF's research to address specific issues enumerated in the President's January 20 memorandum. It outlines specific concerns regarding trade imbalances, discriminatory regulations, and digital trade restrictions imposed by key offenders—including China, India, and the European Union—as well as recommendations for targeted policy responses. These measures include reciprocal tariffs, digital trade enforcement, fair pricing mechanisms, and strengthened trade agreements to ensure a level playing field for U.S.

[1] The White House, "America First Trade Policy," January 20, 2025, https://www.whitehouse.gov/presidential-actions/2025/01/america-first-trade-policy/; The White House, "Defending American Companies and Innovators From Overseas Extortion and Unfair Fines and Penalties," February 21, 2025, https://www.whitehouse.gov/presidential-actions/2025/02/defending-american-companies-and-innovators-from-overseas-extortion-and-unfair-fines-and-penalties/.

[2] 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/.

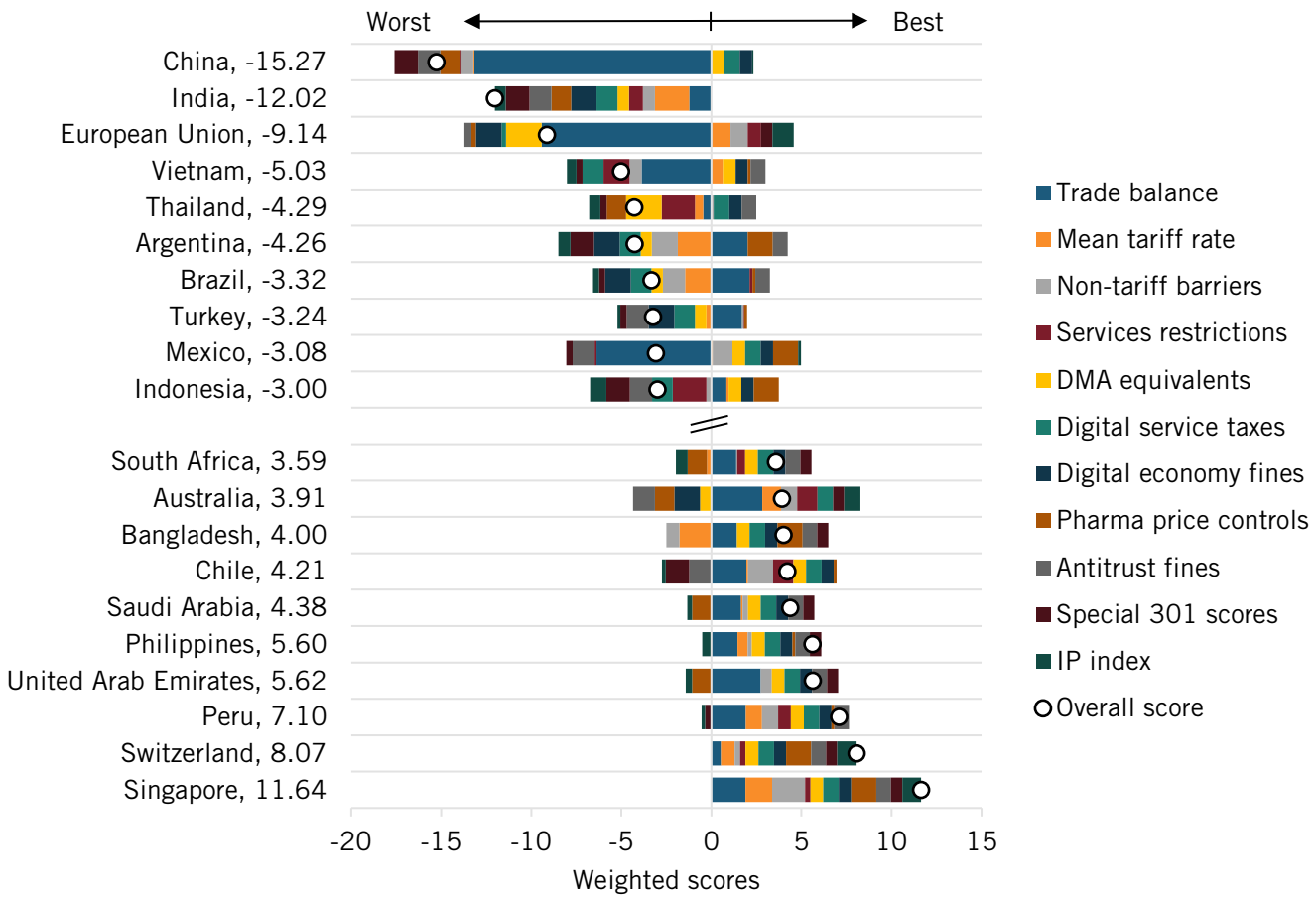
businesses. ITIF stands ready to support the Trump administration in developing and implementing strategies that protect American innovation, strengthen economic security, and uphold fair, rules-based global trade.

AMERICA FIRST TRADE POLICY, SECTION 2(C): UNFAIR TRADE PRACTICES BY OTHER COUNTRIES

By analyzing trade balances, tariff and non-tariff barriers, regulatory policies, IP violations, and digital market restrictions, ITIF's Trade Imbalance Index pinpoints the countries that warrant the greatest policy attention from the U.S. government. The study emphasizes that rather than imposing broad tariffs indiscriminately, the United States should focus its countermeasures on nations that aggressively engage in mercantilist policies, restrict market access for American firms, and fail to uphold fair competition.

As shown in figure 1, China, India, and the European Union (EU) rank as the trading partners that merit the greatest attention from the Trump administration due to their extensive trade imbalances, discriminatory regulations, and targeted restrictions on U.S. businesses. Other countries such as Vietnam, Thailand, Argentina, Brazil, Turkey, Mexico, and Indonesia also employ policies that distort trade and disadvantage American firms.

Figure 1: Overall scores of the worst- and best-performing nations in ITIF's Trade Imbalance Index



This memo applies ITIF's research to offer a policy guide for the administration to respond strategically to these unfair trade practices. The United States can better rebalance trade relationships, protect domestic industries, and ensure fair competition in global markets by targeting enforcement efforts on the most egregious trade violators.

Countries Inflicting the Most Significant Damage on the United States Through Unfair Trade Practices

China

China ranks as the worst offender in unfair trade practices against the United States due to a combination of trade imbalances, restrictions, and regulatory policies that favor domestic industries at the expense of foreign companies.

- **Trade Balance:** China has accrued a cumulative goods trade surplus of $3.5 trillion over the past decade, with a U.S. goods trade deficit of $295 billion in 2024.
- **Trade Restrictions:** High tariffs (6.5%) and extensive non-tariff barriers; limits on cross-border data flows; forced technology transfers.
- **Regulations & Taxes:** Discriminatory investigations against U.S. firms (e.g., Google, NVIDIA); preferential procurement for domestic companies; plans to eliminate foreign tech from core infrastructure; calls to remove U.S. semiconductors from Chinese electric vehicles (EV), etc.
- **Intellectual Property:** Systematic IP theft, costing the U.S. up to $600 billion annually; world's largest source of counterfeit goods.

India

India ranks second due to its high tariffs, digital regulations, and IP restrictions.

- **Trade Balance:** $45.7 billion trade surplus with the U.S. in 2024.
- **Trade Restrictions:** High average tariff rate of 14.3%; services trade restrictions in IT and pharmaceuticals.
- **Regulations & Taxes:** Digital Services Tax (DST) on foreign firms; competition law targeting U.S. tech companies (e.g., fines on Google, Meta).
- **Intellectual Property:** On USTR's Priority Watch List due to weak IP enforcement, including excessive patent restrictions and piracy issues.

European Union

The EU's policies largely target U.S. digital firms, making it the third-biggest offender in ITIF's study.

- **Trade Balance:** $208.7 billion trade surplus with the United States in 2023.
- **Trade Restrictions:** Various protectionist policies that favor EU firms over U.S. competitors.
- **Regulations & Taxes:** Digital Markets Act (DMA) and Digital Services Act (DSA) heavily regulate U.S. tech companies (Google, Apple, Meta).
- **Pharmaceutical Policies:** Drug price controls lower revenue for U.S. biopharma firms.

Vietnam

Vietnam has rapidly increased its trade imbalance with the United States and imposes a wide range of protectionist policies.

- **Trade Balance:** $104.5 billion trade surplus with the United States.
- **Trade Restrictions:** High non-tariff barriers, including complex licensing requirements.
- **Regulations & Taxes:** Some restrictions on foreign digital firms.

Thailand

Thailand ranks poorly due to restrictive trade policies and targeted regulations.

- **Trade Balance:** $40.6 billion trade surplus with the United States.
- **Trade Restrictions:** Extensive services trade restrictions, particularly in finance and telecom.
- **Regulations & Taxes:** Has adopted DMA-like regulations that impact U.S. digital services.

Argentina

Argentina's heavy-handed trade barriers and economic policies make it a leading trade offender.

- **Trade Balance:** $5.3 billion surplus with the United States.
- **Trade Restrictions:** One of the highest tariff rates (14.1%).
- **Regulations & Taxes:** Extensive non-tariff barriers, licensing requirements, and a DST.

Brazil

Brazil's trade policies limit U.S. exports while favoring local industries.

- **Trade Balance:** $7.1 billion surplus with the United States.
- **Trade Restrictions:** High tariff rate (12.4%).
- **Regulations & Taxes:** Digital Services Tax and extensive local procurement requirements.

Turkey

Turkey imposes significant restrictions on foreign businesses.

- **Trade Balance:** Moderate trade surplus with the United States.
- **Trade Restrictions:** Tariffs and regulatory barriers that favor local industries.
- **Regulations & Taxes:** Digital services restrictions and government-controlled sectors.

Mexico

Mexico benefits from a considerable trade surplus with the United States while maintaining some restrictive practices.

- **Trade Balance:** $151 billion goods and information services trade surplus with the United States.
- **Trade Restrictions:** Some tariff and non-tariff barriers in agriculture and manufacturing.
- **Regulations & Taxes:** Competition policies that sometimes target foreign firms.

Indonesia

Indonesia's high trade barriers and digital regulations impact U.S. firms.

- **Trade Balance:** $16.8 billion surplus with the United States.
- **Trade Restrictions:** Extensive services trade restrictions.
- **Regulations & Taxes:** Digital economy laws that disproportionately affect U.S. companies.

Recommendations

Targeted Tariffs

Adopt a targeted, reciprocal approach to tariffs rather than implementing universal, blanket tariffs: This means that tariffs should be imposed selectively on trading partners that engage in unfair trade practices rather than applying broad-based duties across entire sectors or technologies. This will ensure that tariff measures are precisely tailored to offset specific trade distortions rather than cause widespread economic harm.

Additionally, when partner nations take steps to address U.S. concerns—for example, by enhancing border enforcement—the tariff threats (or application) should be removed, reinforcing a system of reciprocal tariff relations, especially when those tariff levels have already been negotiated in good faith by free trade agreement (FTA) partners, such as Canada and Mexico.

Ultimately, the goal is to foster an environment where both tariffs and behind-the-border trade restrictions are mutually balanced, ideally leading to zero tariffs among trading partners, thereby promoting fair and equitable trade relationships that benefit all parties involved.

Mirror Taxes on Extraterritorial Digital Taxes

Impose mirror taxes on countries that levy extraterritorial digital taxes on U.S. firms: Instead of simply accepting these discriminatory taxes, the United States should counterbalance them by taxing the global revenues of those foreign companies in a similar manner. This approach ensures that the tax burden is shared more equitably and helps protect U.S. businesses from competitive disadvantages.

Furthermore, these mirror taxes should be structured to expire once international tax rules are agreed upon or when foreign digital taxes are repealed, promoting a fair and reciprocal digital trading environment. Ultimately the goal should be to achieve the elimination of these types of digital services taxes, not their continued imposition.

Expand Trade Agreements

Expand existing trade agreements to cover more sectors and eliminate tariffs, thereby creating a more balanced and innovation-friendly trading environment: This could involve broadening the scope of the Information Technology Agreement (ITA) to include a wider array of information and communications technology products and more countries. It could also include an expansion of the "zero-for-zero initiative" removing tariffs among participating nations on pharmaceutical products (i.e., expanding the Pharmaceutical Goods Agreement).

One could even conceptualize creating an "Innovation Technology Agreement" that rolls up the ITA, Pharmaceutical Goods Agreement, and proposed Environmental Goods Agreement, thus eliminating tariffs on a wide variety of high-tech goods and their components across participating nations.

By doing so, the U.S. can help ensure that trade relations are reciprocal and that tariffs do not distort market competition, ultimately fostering a more level playing field for domestic industries and supporting global innovation.

Further, the United States should be aggressively pursing new FTAs with willing and ready like-minded nations, such as the United Kingdom, India, and Kenya.

Fair Pricing for Innovative Medicines

Ensure that other nations pay their fair share for innovative medicines: This measure aims to prevent price controls that enable foreign buyers to pay significantly less than U.S. consumers for innovative medicines, which in turn undermines the profitability of and incentives for pursuing breakthrough U.S. biopharmaceutical innovation.

By advocating for fair pricing at international negotiations—or, if necessary, filing a World Trade Organization (WTO) case on the grounds that such controls violate intellectual property rights and enable parallel trading—the U.S. can help create a level playing field.

This approach would support continued investment in research and development while ensuring that the benefits of innovation are not eroded by discriminatory pricing policies abroad.

China-Specific Trade Remedies

Develop China-specific trade remedies to counteract the wide range of unfair practices that China employs: This includes charging the USTR with preparing a comprehensive "China Bill of Particulars" report that documents the nation's extensive catalog of mercantilist policies, such as massive industrial subsidies, forced technology transfers, and intellectual property theft.

By pinpointing these specific issues, the U.S. can tailor its countermeasures—whether through targeted tariffs, sanctions, or other legal mechanisms—to address the distortions caused by China's practices directly.

Ultimately, these measures aim to protect U.S. industries, promote fair competition, and encourage China to adopt market-based policies that benefit all trading partners.

Digital Trade Enforcement

Enhance digital trade enforcement by revising existing legal frameworks to better address digital trade barriers: This would involve amending Section 301 of the Trade Act of 1974 to explicitly target discriminatory digital regulations—such as the EU's Digital Markets Act—that impose unfair restrictions on U.S. tech companies.

The objective is to ensure that retaliatory measures, including tariffs, taxes, or other restrictions, can be swiftly applied to foreign digital service providers whose practices disrupt American enterprises' fair market access.

By enforcing robust digital trade rules, the United States can protect its domestic digital economy and promote a balanced, competitive global digital market.

Conditional U.S. Foreign Aid

Make U.S. foreign aid conditional on recipient countries refraining from engaging in digital protectionism, intellectual property theft, or other unfair trade practices undermining U.S. techno-

economic interests: By tying aid to compliance with these principles, U.S. policymakers can ensure taxpayer dollars do not inadvertently support regimes or policies distorting global markets.

This approach would leverage American financial influence—through institutions such as the InterAmerican Development Bank or the World Bank—to promote reforms that foster fair, competitive, and innovation-driven trade practices, thereby protecting domestic industries while advancing broader geopolitical and economic objectives.

AMERICA FIRST TRADE POLICY, SECTION 2(D): USMCA IMPACT ASSESSMENT AND RECOMMENDATIONS

The USMCA has delivered significant benefits for American economic stakeholders while modernizing key provisions of NAFTA. However, implementation challenges remain that require attention to fully realize the agreement's potential:

The agreement's digital trade provisions represent a major advancement by prohibiting data localization requirements and ensuring cross-border data flows.

However, Mexico has enacted troubling financial data localization measures that directly contradict these provisions, using vague "national security" justifications that mirror problematic approaches from countries such as Russia.[3] This requires immediate enforcement action to protect American digital service providers.

Canada's provincial governments in Quebec and Alberta have enacted de facto data localization measures through privacy laws requiring firms to notify individuals when their personal data is transferred outside the province. This creates the misconception that data transferred outside these provinces is less secure and potentially undermines USMCA's data flow provisions.

The agreement successfully addressed longstanding issues with Canada's dairy market, creating new export opportunities for American farmers, though ongoing monitoring is necessary to ensure full compliance.

While the agreement contains strong IP protections that benefit U.S. innovation industries and their workers, the removal of provisions providing 10 years of data exclusivity for biopharmaceuticals during negotiations was disappointing and should not be a precedent for future agreements.[4]

The enhanced labor provisions have created important new enforcement mechanisms, though continued vigilance is needed to ensure Mexico fully implements its commitments to protect worker rights.

The digital "kill switch" mechanism in Mexico's tax enforcement system—allowing authorities to block access to digital services from companies deemed non-compliant with tax laws—likely

[3] Nigel Cory, "USMCA Data and Digital Trade Provisions: Status Check," November 19, 2021, https://itif.org/publications/2021/11/19/usmca-data-and-digital-trade-provisions-status-check/.

[4] Stephen Ezell, "Removing USMCA IP Protections Will Harm Drug Innovation," ITIF press release, December 10, 2019, https://itif.org/publications/2019/12/10/removing-usmca-ip-protections-will-harm-drug-innovation-says-leading-tech/.

violates multiple USMCA provisions and creates a concerning precedent that requires immediate attention.[5]

Recommendations

To maximize USMCA's benefits for American workers and businesses, we recommend the following:

- **Rigorously enforce digital trade provisions,** particularly addressing Mexico's financial data localization requirements.
- **Utilize the USMCA's Committee on Financial Services** to address regulatory barriers.
- **Strengthen cooperation on emerging digital issues** while protecting against misuse of "national security" exceptions.
- **Ensure continued compliance with labor provisions.**
- **Urge Mexico to join the Information Technology Agreement** in any update to the USMCA.
- **Strengthen Rules of Origin terms to limit Chinese firms' ability to use Mexico as a production base for exporting goods to the United States.**

A robust approach to USMCA implementation will help sustain and grow the high-wage jobs in IP-intensive and digital sectors that are critical to American economic competitiveness.

AMERICA FIRST TRADE POLICY, SECTION 3(A): TRADE AGREEMENT VIOLATIONS BY CHINA

ITIF strongly supports the direction to review China's compliance with its WTO, U.S. Phase One, and other trade agreements and to recommend appropriate measures based on this evaluation. Our research indicates that China continues to fall short of the commitments it has made in multiple trade agreements.

Findings and Recommendations

China has failed to fully implement its Phase One Agreement commitments, continuing to undermine intellectual property protections, enforce forced technology transfers, and use industrial policies that distort market competition.[6] It continues to engage in harmful innovation mercantilist practices that undermine U.S. technological competitiveness.

The administration should take the following actions:

- **Establish precise metrics** to evaluate China's compliance across all commitments in the Phase One agreement, not just purchase targets.

---

[5] Nigel Cory, "USMCA Data and Digital Trade Provisions: Status Check," ITIF Innovation Files commentary, November 19, 2021, https://itif.org/publications/2021/11/19/usmca-data-and-digital-trade-provisions-status-check/.

[6] Stephen Ezell, "False Promises II: The Continuing Gap Between China's WTO Commitments and Its Practices (ITIF, July 2021), https://itif.org/publications/2021/07/26/false-promises-ii-continuing-gap-between-chinas-wto-commitments-and-its/.

- **Develop a comprehensive enforcement strategy** that includes both targeted tariffs on strategic industries and coordinated action with allies.
- **Create a regular monitoring and reporting mechanism** that publicly documents compliance failures.
- **Ensure any new tariffs are strategically designed to minimize harm to U.S. supply chains** while maximizing pressure on Chinese government policies.

Most importantly, the administration should recognize that the ultimate goal is not simply to secure Chinese purchases of U.S. goods, but to address the underlying structural policies that consistently disadvantage U.S. firms. ITIF's research shows that China's state-led model continues to harm U.S. innovation through forced technology transfer, massive industrial subsidies, and preferential treatment for Chinese firms.

Rather than relying solely on tariffs as an enforcement mechanism, the administration should consider complementary tools, such as using Section 337 of the Tariff Act to deny market access to Chinese firms that benefit from unfair trade practices, as this approach would more directly target the beneficiaries of China's innovation mercantilism.[7]

AMERICA FIRST TRADE POLICY, SECTION 3(B): TARIFFS ON CHINA

Our analysis reveals that China's industrial supply chain strategies systematically circumvent existing trade remedies through:

- complex transnational manufacturing networks;
- state-guided technology transfer mechanisms; and
- strategic geographic redirection of production.

Economic Impact Estimation

ITIF estimates that Chinese innovation mercantilism imposes hundreds of billions in annual economic costs to the United States, primarily through:

- intellectual property theft;
- subsidized market competition;
- forced technology transfers; and
- strategic market access restrictions.

Recommended Mitigation Strategies

ITIF recommends the following policy actions:

Enhanced Supply Chain Tracking

- Implement more rigorous origin verification mechanisms.
- Develop advanced traceability protocols for high-technology sectors.

[7] Robert D. Atkinson, "How to Mitigate the Damage From China's Unfair Trade Practices by Giving USITC Power to Make Them Less Profitable" (ITIF, November 2022), https://itif.org/publications/2022/11/21/how-to-mitigate-the-damage-from-chinas-unfair-trade-practices/.

- Create interagency coordination to identify circumvention patterns.

Targeted Sectoral Interventions

- Focus on strategic industries, such as semiconductors, telecommunications, and artificial intelligence.
- Develop multilateral frameworks to limit technology transfer.
- Establish more comprehensive exclusionary mechanisms.

Legislation

- Expand Section 337 authority to address non-market economy practices.
- Create more flexible trade defense instruments.
- Develop cooperative mechanisms with allied nations to counter circumvention strategies.

Effective mitigation requires a comprehensive, forward-looking approach that goes beyond traditional tariff mechanisms to address the systemic nature of China's innovation mercantilism.

AMERICA FIRST TRADE POLICY, SECTION 3(C): CHINESE UNREASONABLE AND DISCRIMINATORY PRACTICES BURDENING U.S. COMMERCE

Based on extensive ITIF research, China employs a comprehensive array of innovation mercantilist policies that systematically disadvantage U.S. firms. These practices go far beyond conventional trade barriers and constitute a coordinated, state-led campaign that contravenes China's WTO commitments and fundamentally distorts global markets:

- **Systematic rejection of market orientation:** Despite committing upon WTO accession that "the Government of China would not influence, directly or indirectly, commercial decisions on the part of state-owned or state-invested enterprises," China's government exercises effective control over all domestic firms under Article 19 of China's Company Law, which requires Chinese Communist Party cells within all enterprises. China fundamentally rejects the market-based system underpinning WTO principles, instead pursuing absolute advantage across virtually all advanced industries rather than comparative advantage.
- **Forced technology transfer and IP theft:** China routinely forces foreign companies to transfer technology as a condition of market access, despite explicit WTO commitments prohibiting such practices. For example, China pressures foreign biopharmaceutical companies to form joint ventures to qualify for drug reimbursement lists, requires foreign cloud computing firms to partner with Chinese companies, and mandates 100% Chinese-owned technology in rail procurement contracts. The Commission on the Theft of American Intellectual Property estimates China's IP theft costs the U.S. economy as much as $600 billion annually. By 2019, a CNBC Global CFO Council report found one in five North American corporations had their IP stolen in China within the previous year. China has also long imposed inequitable technology licensing agreement requirements.
- **Massive industrial subsidization:** Chinese government subsidies have financed approximately 20% of China's manufacturing capacity annually since its WTO accession. China has supported its EV sector with at least $230 billion in industrial subsidies and contributed $42 billion in subsidies to its solar panel industry across the years 2012 and

2013 alone. The country has supported its semiconductor industry with at least $170 billion in industrial subsidies (and likely far more). State subsidies accounted for over 40% of SMIC's revenues from 2014 to 2018, 30% of Tsinghua Unigroup's, and 22% of Hua Hong's. Huawei received approximately $75 billion in government support over 25 years. These subsidies create artificial competitive advantages for Chinese firms and contribute to global overcapacity, displacing more innovative foreign firms.

- **Discriminatory regulatory practices:** China manipulates regulatory processes to disadvantage foreign firms, including through selective enforcement of antitrust laws, discriminatory technology standards, exclusionary government procurement, and targeted administrative actions. For instance, in 2015, China fined Qualcomm $975 million through antitrust actions to extract below-market patent licensing terms, despite contrary findings by EU, Japanese, and U.S. authorities.
- **Digital market restrictions:** China maintains extensive restrictions on foreign cloud service providers, digital services, and data flows. The country imposes joint venture requirements on foreign cloud providers, enforces data localization policies, and blocks numerous foreign digital services, effectively creating a closed digital ecosystem while Chinese firms enjoy unfettered access to U.S. and other foreign markets.
- **Non-transparent subsidies and market barriers:** China systematically fails to notify the WTO of industrial subsidies as required. From 2011 to 2017, the United States made formal counter-notifications regarding over 350 unreported Chinese subsidy measures with no comprehensive response from China. Additionally, China continues to maintain an opaque regulatory system that fails to provide adequate periods for public comment on new trade-related laws and regulations.
- **Retaliatory use of market access:** China systematically threatens and retaliates against foreign firms and countries that challenge its unfair trade practices or pursue trade remedies. This has created a climate of fear that prevents many U.S. companies from seeking redress through WTO dispute settlement or domestic trade remedy laws, effectively undermining the rules-based trading system.

These unreasonable and discriminatory practices constitute a coherent strategy designed to achieve dominance in advanced technology industries at the expense of the United States and other foreign competitors through means that violate both the letter and spirit of China's international commitments.

Recommendations

USTR should adopt a comprehensive, multilateral, and targeted approach to investigating and responding to China's innovation mercantilist policies. In addition to the tariffs the Trump administration has already imposed on China, USTR should take the following actions:

- **Develop a comprehensive "bill of particulars"** with like-minded allies that enumerates the vast extent of Chinese innovation-mercantilist policies.
- **Pursue a Section 301 investigation** specifically targeting China's digital trade barriers, cloud computing restrictions, and forced technology transfers.

- **Reform and more aggressively utilize Section 337 of the Tariff Act** to deny Chinese firms that benefit from unfair trade practices access to U.S. markets.
- **Self-initiate more WTO cases** where China's policies explicitly violate its commitments.
- **Collaborate with democratic allies** to document and share information on Chinese unfair trade practices and coordinate responses to limit the profitability of such practices.
- **Target remedies at specific Chinese firms and industries** that benefit from unfair policies rather than imposing across-the-board tariffs.
- **Create an "Assistant Secretary for Non-market Economy Analysis" within the Department of Commerce** to thoroughly document China's unfair practices at the industry and firm level.
- **Prioritize limiting China's ability to profit from industrial predation** rather than seeking to change its practices, which has proven ineffective.

The goal should be to make China's unfair trade practices less profitable by sending a clear message: Chinese firms that significantly benefit from policies violating global rules and norms will not have access to U.S. and allied markets. China has been in clear, consistent, and continuing violation of its WTO trade commitments and its economic predation has inflicted tremendous harm on the U.S. economy. This is a situation where broad-based tariffs are sensible so long as China's innovation mercantilist policies persist.

DEFENDING AMERICAN COMPANIES AND INNOVATORS, SECTION 3(C): DIGITAL POLICIES DISPROPORTIONATELY IMPACTING U.S. TECH COMPANIES

Governments worldwide are increasingly using digital regulations as tools for economic protectionism. While they claim these measures level the playing field, these policies disproportionately impact American tech companies.[8]

Limiting Cross-Border Data Flows

Restricting data transfers forces U.S. tech companies to duplicate infrastructure abroad, raising operational costs significantly and diminishing their global competitive advantage in data-driven services.

- **China:** Most data-restrictive globally; mandates local data storage.
- **Indonesia, Russia, South Africa:** Significant localization measures.
- **Vietnam:** Decree 72 mandates local storage for websites, social networks, and online games.

[8] Hearings on Protecting American Innovation by Establishing and Enforcing Strong Digital Trade Rules, Before the U.S. House Ways and Means Comm. Subcommittee on Trade 118th Cong. (2024) (statement of Robert Atkinson, President of ITIF); Hilal Aka "The Global Spread of Protectionist Policies That Squeeze American Tech Companies," March 7, 2025, https://itif.org/publications/2025/03/07/the-global-spread-of-protectionist-policies-that-squeeze-american-tech-companies/.

- **Bangladesh:** Similar restrictive localization policies.
- **European Union:** Through GDPR, restricts data flows to the United States citing surveillance concerns; allows data flows internally despite similar surveillance practices.
- **Turkey:** Enforces localization for certain sensitive personal data and financial information.

Government-Driven Import Substitution

Restricting data transfers forces U.S. tech companies to duplicate infrastructure abroad, raising operational costs significantly and diminishing their global competitive advantage in data-driven services.

- **EU:** GAIA-X and the European Cloud Initiative explicitly aim to replace American cloud providers.
- **France:** The French government is actively promoting national cloud providers like Dassault Systemes and OVH to challenge U.S. market dominance.
- **Germany:** Germany backs domestic platforms (such as Qwant) even when these alternatives lag in performance as part of a broader strategy for tech self-reliance.

Data Localization

Laws requiring data to be stored within national borders disproportionately burden U.S. cloud providers with operational burdens, forcing costly infrastructure localization or joint ventures.

- **France:** SecNumCloud cybersecurity regulations effectively block foreign cloud providers by demanding data storage and ownership within the EU, harming foreign companies' market access.
- **China:** Its cybersecurity law mandates that data involving Chinese citizens must be stored domestically, compelling foreign cloud providers to build local data centers or partner with local firms.
- **Russia:** Russian data localization laws require that the personal data of its citizens remain on servers within the country, affecting both local and foreign cloud service operators.

Mandated Payments to Domestic Internet Service Providers

Requiring U.S. content platforms to pay local ISPs (as seen in South Korea) raises costs and disrupts competitive market dynamics, disproportionately penalizing American streaming services.

- **South Korea:** Enacted a policy that caused increased broadband costs, higher latency, and decreased content availability.
- **EU, Brazil:** Considering similar "fair share" mandates, targeting mainly U.S. tech firms,

Digital Standards Manipulation

Replacing internationally agreed technical standards with local alternatives to favor domestic companies restricts American tech companies' market access and gives domestic firms an undue advantage.

- **EU:** Uses "common specifications" to override international standards, notably in AI, cybersecurity, and data interoperability, protecting EU companies at the expense of global firms.

Digital Service Taxes

These taxes specifically target large, predominantly American tech firms, extracting revenues from them disproportionately and disadvantaging them against local companies.

The following jurisdictions have implemented DSTs targeting American tech firms.

- **Europe:** Austria, France, Hungary, Italy, Poland, Spain, Turkey, UK.
- **Americas:** Argentina, Brazil, Canada, Colombia.
- **Asia:** India, Indonesia, Israel, Malaysia, Pakistan, Taiwan, Vietnam.
- **Other countries considering DSTs:** Belgium, Czech Republic, Latvia, Norway, Slovakia, and Slovenia.

Aggressive Tech Antitrust

The EU's DMA and DSA specifically target large U.S. digital companies through selective criteria, disproportionately burdening them with compliance obligations and fines while benefiting their local competitors.

- **EU:** The Digital Markets Act (DMA) explicitly targets large U.S. tech companies (Google, Apple, Amazon, Meta, Microsoft) with selective criteria that protect European firms.
- **Norway, Thailand, UK:** Implemented DMA-like antitrust regulations targeting mainly U.S. tech companies.
- **Argentina, Australia, Brazil, India, Israel, South Korea, Japan, Turkey:** Adopting or considering DMA-like antitrust regulations targeting mainly U.S. tech companies.

Extractive Fines

Massive fines from antitrust and privacy enforcement primarily affect large U.S. companies, significantly affecting their profitability and competitiveness compared to local rivals. Governments are leveraging digital regulations to extract enormous penalties from major tech companies, up to 10 percent of a company's global revenue, for a single violation.

- **The EU has imposed fines totaling tens of billions of dollars on American companies.**[9] To name a few: Google was fined over $9 billion for violations in search, Android, and AdSense; Apple faced $14.3 billion in back taxes plus additional antitrust fines; and Meta and Amazon received massive GDPR privacy fines of $1.3 billion and $877 million, respectively.[10]

[9] Sean Heather, "Europe's Cash Grab: Arbitrary Fines Harm American Companies and Workers," U.S. Chamber of Commerce, August 29, 2024, https://www.uschamber.com/international/europes-cash-grab/.

[10] Ezell, Long, and Atkinson, "The Trade Imbalance Index."

- Other countries with antitrust and digital fines disproportionately affecting American tech companies include **Australia, several European Union nations, India, South Korea,** and the **United Kingdom**.
- For a complete list of countries, see ITIF's Trade Imbalance Index.[11]

Taxing Streaming Platforms to Subsidize Local Content

Policies like Canada's Online Streaming Act compel primarily American streaming services to subsidize local content financially, placing disproportionate financial burdens and regulatory complexity on these foreign companies.

- **Australia:** Proposed similar regulations to subsidize Australian content creators via taxes on foreign platforms.
- **Canada:** Online Streaming Act mandates foreign services (e.g., Netflix, YouTube, Spotify) to promote and financially subsidize Canadian content.

Arbitrary Privacy Enforcement

Selective enforcement of privacy laws, especially against U.S. firms, imposes unpredictable legal risks and compliance costs that disproportionately affect American tech companies and hinder their ability to operate efficiently.

- **EU (Austria, France, Germany):** Selective actions against U.S. firms (e.g., Google Analytics, Google Fonts), claiming insufficient protection against U.S. surveillance while ignoring Chinese and Russian surveillance practices entirely.

Recommendations to Counter Digital Protectionism

Amend and Strengthen Section 301

- Update Section 301 of the Trade Act of 1974 to explicitly address digital trade barriers.
- Develop mechanisms to target discriminatory digital practices through retaliatory measures, including reciprocal joint venture requirements for foreign firms.

Pursue a Section 301 Investigation of the EU's DMA

- Initiate investigations into the EU's DMA and other discriminatory digital initiatives, potentially leading to targeted tariffs or other restrictions on EU firms.

Use ICT Service Reviews Against EU Firms

- Leverage the Department of Commerce ICT service rules to scrutinize and restrict transactions involving EU companies that use ICT goods/services tied to adversaries (e.g., China, Russia).

Impose Mirror Taxes on Countries Implementing Digital Service Taxes

- Amend the Internal Revenue Code to enact retaliatory taxes on companies from countries imposing DSTs targeting U.S. tech firms, utilizing the authority under Section 891.

[11] Ibid.

Allow U.S. Firms to Sue for EU DMA-Mandated Disclosure of Trade Secrets

- Create a legal mechanism for U.S. firms to seek damages in U.S. courts against EU companies acquiring trade secrets and sensitive data under DMA regulations.

Limit U.S. Citizens' Data Transfers to Countries Restricting Data Flows

- Impose reciprocal data-transfer limitations against countries enforcing restrictive data localization requirements.

Expand the Information Technology Agreement (ITA)

- Advocate for a new round of ITA negotiations ("ITA-3") to eliminate tariffs on a broader range of ICT products, significantly benefiting the U.S. economy.[12]

Maintain and Extend WTO Moratorium on Customs Duties on Electronic Transmissions

- Continue advocating for the moratorium preventing customs duties on electronic transmissions to support global digital trade growth.

Limit U.S. Aid to Countries Engaging in Digital Protectionism

- Condition U.S. foreign aid (including through multilateral institutions) on recipient countries refraining from digital protectionist practices such as data localization, forced technology transfers, and IP theft.

Increase State Department Engagement and Digital Education

- Expand funding for the State Department and Department of Commerce to educate developing nations on pro-innovation digital policies and counter EU and Chinese influence.

Strengthen and Expand the Digital Attachés Program in U.S. Embassies Globally.

- Develop and promote a global narrative emphasizing the benefits of America's pro-innovation digital policy approach as a viable alternative to EU regulatory frameworks and Chinese authoritarianism.

DEFENDING AMERICAN COMPANIES AND INNOVATORS, SECTION 3(D): EU AND UK REGULATIONS UNDERMINING FREE SPEECH AND INNOVATION

European Union

The European Union has implemented several regulatory frameworks that require or incentivize U.S. companies to moderate content in ways that undermine freedom of speech and political engagement. These regulations have extraterritorial impact that extends well beyond EU borders, effectively imposing European content standards globally on U.S. companies and users.

Digital Services Act (DSA)

The Digital Services Act imposes significant content moderation requirements on online platforms that harm freedom of expression. The DSA requires online services to counter illegal content, which creates a risk of over-moderation as platforms attempt to avoid penalties. The

[12] Stephen Ezell and Trelysa Long, "How Expanding the Information Technology Agreement to an 'ITA-3' Would Bolster Nations' Economic Growth," (ITIF, September 2023), https://itif.org/publications/2023/09/11/how-expanding-the-information-technology-agreement-to-an-ita-3-would-bolster-nations-economic-growth/.

regulation disproportionately targets American companies, with 15 of the 19 platforms designated as "very large online platforms" being U.S.-based businesses.

General Data Protection Regulation (GDPR) and "Right to Be Forgotten"

The GDPR's "Right to Be Forgotten" provisions enable content removal that directly infringes on free speech and access to factual information:

- European data authorities can compel U.S. companies to remove factually accurate content from search results globally, not just within European domains.
- These removal requirements lack transparency, discouraging platforms from notifying users and site operators when content has been delisted, eliminating the possibility of appealing removals.
- The implementation extends European content standards beyond EU borders, undermining the ability of other nations, including the United States, to set their own policies.
- European data authorities have also ordered U.S. companies to delete data about European subjects even when that data is publicly available, restricting how U.S. companies manage legally obtained information.

Children's Online Protection Measures

The EU's proposed legislation to address child sexual abuse material would require age verification for all private messaging services and app stores. These measures would do the following:

- Force U.S. companies to implement invasive age verification systems that compromise user privacy and security.
- Create barriers to anonymous speech, which courts have recognized as a core element of free speech.
- Potentially undermine encryption and privacy features that protect all users, including children.

Extraterritorial Impact and Regulatory Imperialism

The EU's regulatory approach represents a form of "regulatory imperialism" with significant consequences:

- European data authorities have ordered U.S. companies to delete data about European subjects even when that data is publicly available on the open Internet, effectively limiting what U.S. companies can do with legal personal data they download.
- These orders have been issued unilaterally without consideration of their extraterritorial impact on U.S. businesses, consumers, and public safety.
- The EU's regulatory approach exports its precautionary principles outside its borders through the "Brussels effect," influencing laws in other jurisdictions, including some U.S. states, such as California.

United Kingdom

The United Kingdom has implemented several regulatory frameworks that require U.S. companies to moderate content and limit encrypted communications in ways that undermine freedom of speech and privacy.

Investigatory Powers Act ("Snooper's Charter")

The Investigatory Powers Act, commonly known as the "Snooper's Charter," poses several threats to digital privacy and security:

- It requires pre-notification to the UK government before implementing security features like end-to-end encryption and grants authorities the power to delay such changes indefinitely.
- It expands jurisdiction to companies based outside the UK but serving UK users, effectively imposing UK surveillance requirements globally.
- It has prompted Apple to indicate it would remove services like FaceTime and iMessage from the UK market rather than compromise their security features.
- It has reportedly led to the UK government issuing orders compelling Apple to provide backdoor access to encrypted data, representing a dangerous overreach that threatens the security and privacy of individuals and businesses worldwide.

Online Safety Act

The Online Safety Act creates significant content moderation requirements that harm freedom of expression:

- It creates a risk of over-moderation of legal content through potential penalties if platforms fail to remove content later deemed illegal by regulators.
- It discourages beneficial security features like end-to-end encryption by designating them as "risk factors" that online services must consider when conducting risk assessments.
- It poses implementation challenges for decentralized services that lack centralized governance structures.

GDPR and "Right to Be Forgotten"—UK Implementation

The UK's approach to GDPR principles, particularly the "Right to Be Forgotten," presents similar challenges to those seen in the EU.

Recommendations

Based on the evidence of EU and UK regulatory actions that compel U.S. companies to moderate content in ways that undermine freedom of speech, we recommend the following:

- **The administration should investigate how EU and UK regulations collectively compel U.S. companies to undermine freedom of speech and political engagement** through content moderation requirements that extend beyond their borders.
- **The United States should push back against digital policies that disproportionately target U.S. firms** in current and future trade discussions with both the EU and UK, particularly focusing on the DSA, DMA, Online Safety Act, and Investigatory Powers Act.

- **The administration should develop coordinated responses with like-minded countries to counter regulatory overreach,** particularly provisions that claim global jurisdiction over content moderation decisions.
- **The administration should consider creating reciprocal policies and appropriate countermeasures under applicable trade authorities** if the EU and UK persist in restricting U.S. firms from processing data about their citizens or compelling weakened encryption.
- **The United States should promote a pro-innovation approach to digital policy globally** that balances consumer protection with free expression and innovation while countering the "Brussels effect" of regulatory imperialism.