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**COMMENTS OF ITIF**

to the

Office of the United States Trade Representative (USTR)

Washington, D.C.

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| In the Matter of:<br><br>Comments on Foreign Trade Barriers for the 2027 National Trade Estimate Report | ) | Docket No. USTR-2026-0498 |

October 29, 2026

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## INTRODUCTION AND SUMMARY

The Information Technology and Innovation Foundation (ITIF) is pleased to submit the following comments for the Office of the United States Trade Representative's (USTR) consideration as it prepares the 2027 National Trade Estimate (NTE) Report. ITIF is an independent, nonprofit, nonpartisan research and educational institute focusing on the intersection of technological innovation and public policy.

This filing is structured in four sections that outline recent ITIF developments to help strengthen the NTE report. First, it describes non-tariff attacks (NTAs), a useful framework for distinguishing foreign unfair trade practices that particularly harm U.S. competitiveness, advanced-technology leadership, and intensive research and development (R&D). **ITIF suggests the NTE report have a separate section outlining NTAs.** This section describes Canada's Online Streaming Act and South Korea's Food Delivery Act as examples of NTAs.

Second, this filing presents ITIF's Foreign Fines Tracker, a database documenting regulatory fines that foreign governments have levied on U.S. technology companies. The tracker details $21.7 billion in regulatory penalties against U.S. technology companies from 2018 through July 2026. These fines, often tied to global turnover, disproportionately burden American firms.

Third, ITIF builds on the 2026 and previous NTE reports' concerns about the European Union's Digital Markets Act (DMA) by documenting its discriminatory design and substantial economic costs. ITIF recommends incorporating this evidence into the 2027 report and, if negotiations fail to secure nondiscriminatory treatment, pursuing a focused Section 301 investigation with targeted remedies that preserve the broader transatlantic economic relationship.

Finally, ITIF presents new evidence suggesting that the Korea Fair Trade Commission (KFTC) imposes disproportionately high penalties on American technology companies. Between 2016 and 2025, the average corrective order surcharge penalty imposed on leading U.S. technology companies was nearly seven times the

criminal referral average for Korean chaebols, despite the latter's greater severity. These findings warrant closer scrutiny of Korea's compliance with its 2025 bilateral nondiscrimination commitments.

## NON-TARIFF ATTACKS AGAINST U.S. COMPANIES

Non-tariff attacks are foreign government measures presented as neutral domestic regulations designed to protect local industries and consumers but enforced in ways that target U.S. firms.[1] Unlike conventional non-tariff barriers (NTBs), which encompass any non-tariff measure affecting trade, NTAs constitute a narrower category whose calibrated thresholds, scope, and enforcement priorities fall almost exclusively on American firms while leaving domestic competitors largely untouched. They impose costly obligations and penalties designed to extract revenue from leading U.S. technology companies, eroding the capital available for frontier innovation and undermining these firms' competitive position.

**ITIF urges USTR to allocate a dedicated section to distinguish NTAs**. This enhanced section would map measures country by country, identify affected sectors and firms, and provide clear cost bands for (a) fines and fees, (b) compliance and localization spending, and (c) mandated product or design changes, drawing on established international restrictiveness indicators and nontariff-measure datasets. ITIF's Non-Tariff Attack Tracker, a knowledge base that systematically catalogs such laws and regulations worldwide, can be used as a source.[2] Many of these policies can weaken technology firms that serve as America's strategic assets in the techno-economic competition with China, ultimately allowing Chinese competitors to benefit from their diminished competitiveness.[3]

The examples below highlight some of the legislation ITIF tracks. The tracker is a living document, updated regularly as new developments emerge.

### Canada's Online Streaming Act

The Online Streaming Act, enacted in 2023, gives the Canadian Radio-television and Telecommunications Commission (CRTC) the power to require streaming services to fund Canadian and Indigenous content.[4] The CRTC applied this to services that earn CAD $25 million or more in Canadian revenue and are unaffiliated with a Canadian broadcaster, predominantly U.S. firms.[5] In May 2026, it raised that requirement to 15 percent of revenues in Canada—previously 5 percent—while cutting Canadian broadcasters' requirement from 30–45 percent to 25 percent, which they can largely meet through existing programming.[6]

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[1] Robert D. Atkinson and Hilal Aka, "Defending American Tech in Global Markets" (ITIF, December 2025), https://itif.org/publications/2025/12/01/defending-american-tech-in-global-markets/.
[2] Information Technology and Innovation Foundation, "Non-Tariff Attack Tracker," https://itif.org/publications/knowledge-bases/attack-tracker/.
[3] Atkinson and Aka, "Defending American Tech in Global Markets."
[4] Canadian Heritage, "Online Streaming Act," last modified August 20, 2025, https://www.canada.ca/en/canadian-heritage/services/modernization-broadcasting-act.html.
[5] Canadian Radio-television and Telecommunications Commission, "Broadcasting Regulatory Policy CRTC 2026-96," May 21, 2026, https://crtc.gc.ca/eng/archive/2026/2026-96.htm.
[6] Ibid.

That change faced backlash, largely due to pressures from U.S. stakeholders.[7] In June 2026, the government ordered the CRTC to review the decision and later pledged to replace the 5 percent with CAD $600 million in annual federal funding.[8]

A parallel discoverability framework requires platforms to prominently feature Canadian content on landing pages and in recommendations.[9] Violations of any of these rules carry penalties of up to CAD $10 million, rising to CAD $15 million for repeat violations.[10]

## Emerging Trade Barriers

The following foreign policy developments are under discussion and, if enacted, would merit inclusion in the NTE report and exploration of appropriate trade measures in response. USTR should monitor them closely and raise concerns with the relevant trading partners before they take effect.

### Brazil's Digital Markets Bill

Brazil's Digital Markets Bill, first submitted to Congress in September 2025, would amend the country's competition law to create an ex ante regulatory regime for large digital platforms.[11] It would establish a Digital Markets Superintendency within Brazil's competition authority, the Administrative Council for Economic Defense (CADE), empowered to designate firms as having "systemic relevance in digital markets." Only firms with revenue above BRL 5 billion ( $900 million) in Brazil or BRL 50 billion ($9 billion) globally would be eligible for designation. According to Brazilian government estimates, the bill would capture only 5 to 10 companies, primarily American firms, while sparing domestic ones.[12] This imposes a discriminatory burden that effectively penalizes U.S. firms for their scale.

Non-compliance carries fines of up to 20 percent of a firm's Brazilian revenue from the business area where the violation occurred.[13] The bill's revenue thresholds would capture mostly American firms while sparing

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[7] Information Technology and Innovation Foundation, "Canada's Online Streaming Act Review Is a Good Start, But More Should Be Done to End this Discriminatory Policy, Says ITIF," news release, June 8, 2026, https://itif.org/publications/2026/06/08/canadas-online-streaming-act-review-is-a-good-start/.

[8] Anja Karadeglija, "Ottawa orders CRTC review of streamer spending rules, citing consumer cost," *Global News*, June 3, 2026, https://globalnews.ca/news/11888757/crtc-online-streaming-act-rules-ottawa-review/; Canadian Heritage, "Government of Canada announces immediate support to strengthen Canadian culture and ensure Canadian content remains affordable," news release, June 3, 2026, https://www.canada.ca/en/canadian-heritage/news/2026/06/government-of-canada-announces-immediate-support-to-strengthen-canadian-culture-and-ensure-canadian-content-remains-affordable.html.

[9] Ibid.

[10] Broadcasting Act, S.C. 1991, c. 11 (Canada), https://laws-lois.justice.gc.ca/eng/acts/B-9.01/page-6.html.

[11] Projeto de Lei No. 4.675/2025, "Câmara dos Deputados," September 18, 2025, https://www.camara.leg.br/proposicoesWeb/fichadetramitacao?idProposicao=2562481.

[12] Luís Osvaldo Grossmann, "Projeto de Lei dá poderes ao CADE para impor regras especiais às Big Techs. Veja o texto." Convergência Digital, September 18, 2025, https://convergenciadigital.com.br/governo/projeto-de-lei-da-poderes-ao-cade-para-impor-regras-especiais-as-big-techs-veja-o-texto/.

[13] Projeto de Lei No. 4.675/2025.

domestic ones, imposing a discriminatory burden that penalizes firms seeking to achieve global scale in their operations.

### Indonesian Copyright Law

In May 2026, Indonesia's Ministry of Law released a draft revision of its Copyright Law (Law No. 28 of 2014) that primarily aims to bring artificial intelligence (AI) under copyright regulation.[14] If enacted, it would impose significant obligations on digital platforms, predominantly U.S. tech firms, requiring them to license and pay for copyrighted works used to train AI models and to disclose AI use in content. As of October 2026, Indonesia's parliament is still deliberating the bill.

### South Korea's Delivery Platform Price Control Bills

The Food Delivery Platform Service Fees Act—currently under discussion in South Korea's National Assembly—would require covered platforms to offer preferential service fees to small merchants and prohibit practices such as forcing restaurants to use a particular delivery method or shifting the costs of preferential rates onto delivery workers.[15] This proposal would let the KFTC set detailed fee requirements, investigate suspected violations, and issue corrective orders, including adjustments to service fees and delivery charges. The KFTC could fine platforms that break the rules up to 10 percent of their related Korean sales, and platforms that ignore corrective orders could face criminal penalties.[16] Lawmakers are now pushing for a combined review, along with two other similar proposals, following an October 2026 parliamentary audit.[17] These bills would fall hardest on U.S. firms, which lead Korea's food delivery market.[18]

## MANY COUNTRIES ARE IMPOSING FINES AGAINST U.S. COMPANIES BASED ON UNFAIR TRADE PRACTICES

ITIF's Foreign Fines Tracker is a database documenting regulatory fines that foreign governments have levied on U.S. technology companies.[19] It quantifies the financial burden on some of America's most innovative firms, diverting capital that could otherwise strengthen research and development to meet complex, cumbersome compliance requirements. The European Union and its member states issue these fines most frequently, though the practice is now spreading globally as more countries adopt similarly excessive

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[14] Law No. 28 of 2014 on Copyright (Indonesia), https://www.wipo.int/wipolex/en/legislation/details/15600.

[15] Ko Dong-hwan, "Delivery fee cap risks shifting costs to riders, consumers," *The Korea Times*, October 13, 2026, https://www.koreatimes.co.kr/business/companies/20261013/delivery-fee-cap-risks-shifting-costs-to-riders-consumers.

[16] Byun Sang-geun, "배달업계, 수수료 상한제 추진에 '라이더 임금도 지급 못해'" [Delivery industry warns proposed fee caps could leave it unable to pay riders' wages], *ETNews*, October 19, 2026, https://www.etnews.com/20261019000268.

[17] Chae Heesun, "Legislative Push for Delivery App Fee Caps Gathers Steam Amid Cost-Shift Concerns," *SBS News*, October 11, 2026, https://news.sbs.co.kr/english/article.do?news_id=N1008791682.

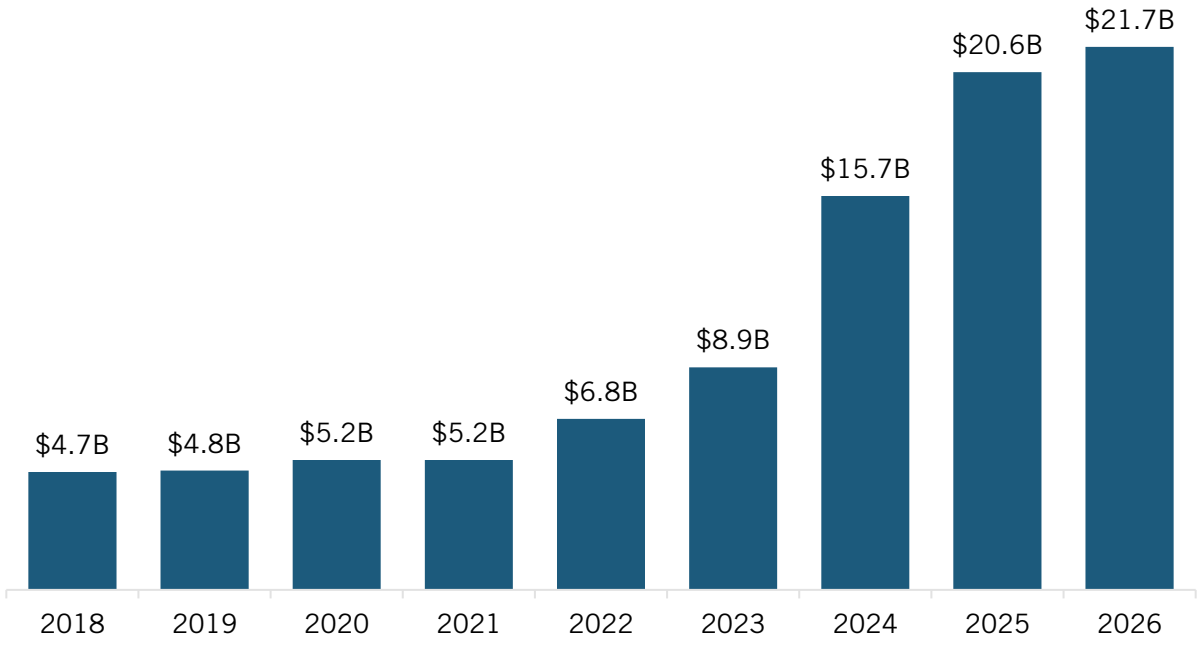
[18] Kim Kyung-taek, "Baemin, Coupang Eats Near 90% Combined Share in Korea Food Delivery," *Seoul Economic Daily*, May 21, 2026, https://en.sedaily.com/finance/2026/05/21/top-two-delivery-apps-hold-90-percent-share-ubers-baemin.

[19] Tanya Nagrath, "Foreign Fines Tracker: Governments Have Extracted $21.7 Billion (and Counting) From US Tech Firms," ITIF, August 17, 2026, https://itif.org/publications/2026/08/17/foreign-fines-tracker/.

penalties.[20] Because these fines are typically calculated on a firm's global turnover rather than the revenue earned in the imposing jurisdiction, they disproportionately penalize U.S. companies with a large international presence.[21]

The scale of these fines has grown rapidly. The cumulative total has risen from $4.7 billion in 2018 to $21.7 billion as of July 2026, with nearly 60 percent imposed since 2024, as shown in figure 1. Had this capital remained in the innovation economy, it could have covered the training costs of 274 frontier AI models, the flight costs of five Artemis IV missions, or three years of the National Science Foundation's budget. Redirected to domestic priorities, it could have paid the salaries of 290,732 teachers, provided a year of nutrition assistance to 9.6 million SNAP recipients, or funded 137 new hospitals. The EU and its member states handed down the five largest fines by value, led by a staggering $4.7 billion penalty against Google in 2018.[22]

**Figure 1: Cumulative foreign government fines imposed on U.S. technology firms from January 2018 to July 2026 (in current US$ billion)**




The tracker covers all fines greater than $1 million issued since 2018, spanning a range of policy areas including competition policy, data transfer and protection, platform regulation, interoperability, and market access. The database draws on primary sources, including official government announcements and enforcement records, as well as secondary sources such as news reports. Each fine is recorded in its original currency and converted to U.S. dollars using the historical exchange rate on the date it was announced. To

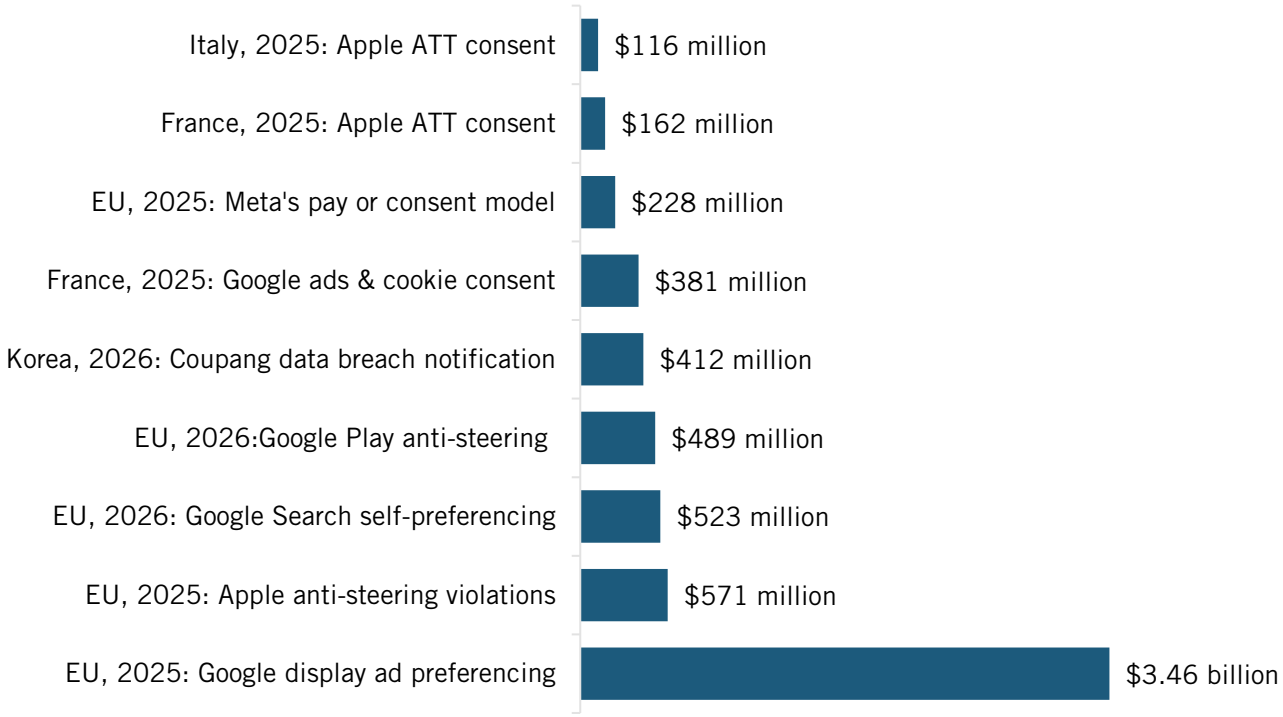
[20] Ibid.

[21] Tanya Nagrath, "The EU's Fine Regime Is a Costly Policy Problem Washington Cannot Afford to Ignore," ITIF, May 28, 2026, https://itif.org/publications/2026/05/28/the-eus-fine-regime-costly-policy-problem-washington-cannot-afford-to-ignore/.

[22] ITIF, "Foreign Fines Tracker."

ensure accuracy, the database reflects legal outcomes: fines overturned on appeal are removed, and reduced fines are recorded at their revised amounts. The tracker is updated regularly, with current figures reflecting fines assessed through July 2026. (See figure 2.)

**Figure 2: Foreign fines on U.S. tech companies over US$100 million between January 2025 and July 2026 (in current US$ million)**




## EUROPEAN'S UNION UNFAIR TRADE PRACTICES MERIT A SECTION 301 INVESTIGATION

The 2026 NTE report correctly identifies the Digital Markets Act (DMA) as a barrier to U.S. competitiveness, highlighting its disproportionate application to American firms and potentially substantial financial penalties.[23] To further this evidence, a June 2026 ITIF report builds on these concerns by examining discriminatory design, economic costs, and options for securing changes through trade enforcement.[24] It concludes that the USTR has a strong case to examine the DMA under Section 301 of the Trade Act of 1974. The report documents the legislative history indicating that the DMA's thresholds were calibrated to capture U.S. firms while shielding European competitors and cites industry estimates of approximately $200 million in annual compliance costs per American gatekeeper. It also warns that other countries adopting similar regulations could multiply these commercial burdens.

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[23] Office of the United States Trade Representative, *2026 National Trade Estimate Report on Foreign Trade Barriers* (Washington, DC: USTR, March 2026), https://ustr.gov/sites/default/files/files/Press/Releases/2026/National%20Trade%20Estimate%20Report%202026.pdf.

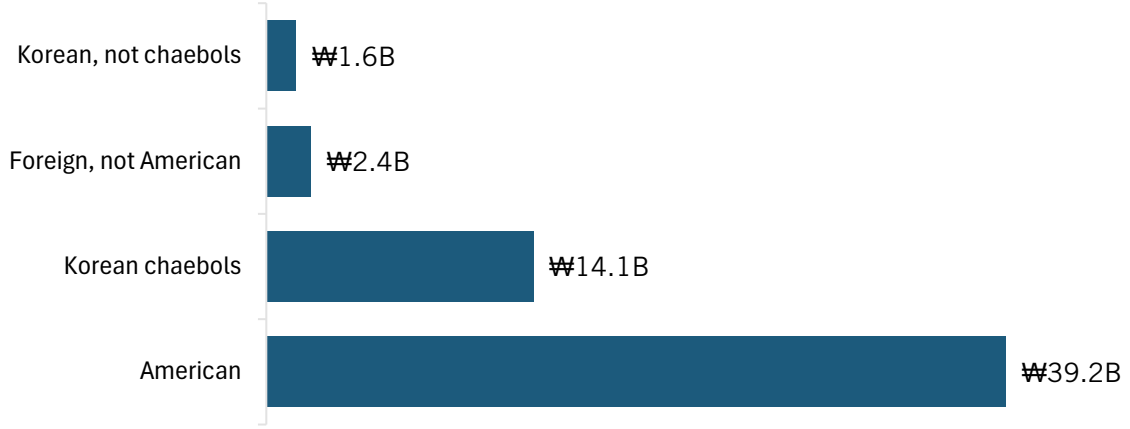
[24] Meredith Broadbent et al., "The Case for Using Section 301 to Retaliate Against Discriminatory EU Policies" (ITIF, June 2026), https://itif.org/publications/2026/06/10/the-case-for-using-section-301-to-retaliate-against-discriminatory-eu-policies/.

For the 2027 NTE, USTR should incorporate this evidence and assess the DMA's restrictions on innovation, product design, and commercial opportunities. If negotiations fail, USTR should pursue a focused Section 301 investigation and consider targeted remedies to secure nondiscriminatory treatment while preserving the broader transatlantic economic relationship.

## KOREAN FAIR TRADE COMMISSION HAS A BIAS AGAINST U.S. COMPANIES

In October 2026, ITIF released a report analyzing fines issued by the KFTC between 2016–2025, suggesting a de facto bias in targeting and imposing exorbitant penalties on leading American technology companies.[25] First, the average American surcharge penalty is markedly higher than Korean or foreign penalties. Korean chaebols faced an average surcharge penalty of ₩14 billion, Korean non-chaebols faced ₩1.6 billion, and non-American foreign firms faced ₩2.4 billion. In contrast, American firms faced an average surcharge penalty of ₩39 billion, making the average American surcharge penalty 24.8 times greater than for Korean non-chaebols, 2.8 times greater than for Korean chaebols, 21 times greater than the overall Korean average of nearly ₩1.9 billion, and 16.6 times greater than for non-American foreign firms. (See figure 3.)

**Figure 3: Average surcharge penalty, 2016–2025, by nationality and size (2025 KRW)[26]**

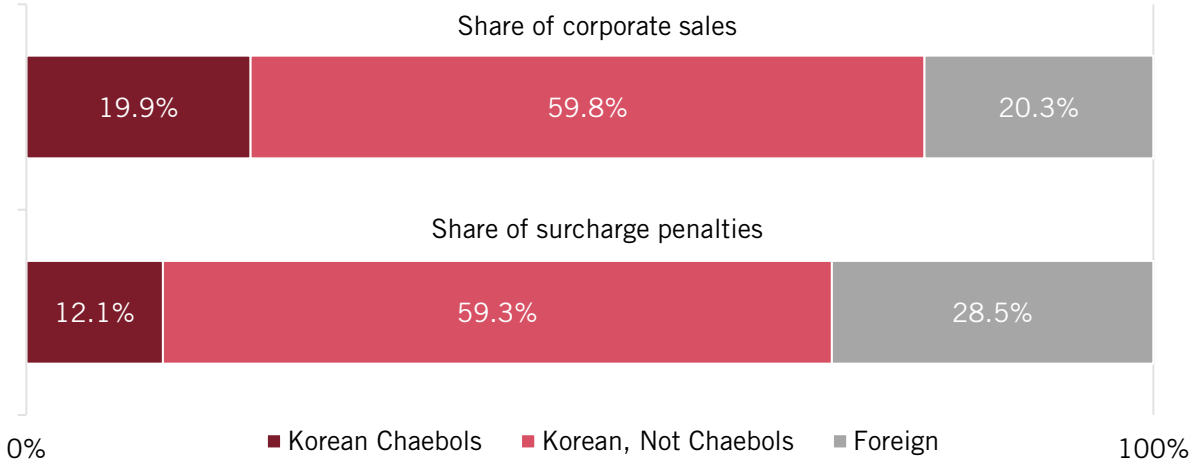



Second, foreign firms account for a larger share of KFTC fines than their share of South Korean corporate revenues. Although China is South Korea's main trading partner, Chinese firms accounted for less than 1 percent of foreign surcharge penalties. U.S. firms, meanwhile, accounted for over 81 percent of foreign surcharge penalties despite having lower total trade in goods with South Korea each year of the decade ending in 2025. (See figure 4.)

[25] Jack Nicastro, Rodrigo Balbontin, and Sejin Kim, "South Korea's Antitrust Regime Burdens American Innovators" (ITIF, October 2026), https://itif.org/publications/2026/10/19/south-koreas-antitrust-regime-burdens-american-innovators/.

[26] Ibid.

**Figure 4: Estimated shares of surcharge penalties and corporate sales by nationality and size[27]**




Finally, the disparity is concentrated among leading American technology companies. Even excluding abuse-of-dominance cases, the average penalty on U.S. firms remains three times the average for Koreans.[28] Moreover, these firms' average penalty in cases involving corrective orders exceeds the Korean chaebol average for criminal referrals by a factor of nearly seven, raising further questions about whether enforcement is proportionate and evenhanded.

## CONCLUSION

In this document, ITIF provides evidence to strengthen the 2027 NTE report. The NTE report is most valuable when it provides a clear basis for negotiations that remove foreign barriers to U.S. firms investing overseas. By documenting discriminatory practices and their costs, USTR can strengthen its negotiating position and direct enforcement toward changes that preserve U.S. innovation and competitiveness.

ITIF urges USTR to continue to use the NTE report to hold trading partners accountable. The ultimate goal should be to change other countries' unfair behavior and expand opportunities for U.S. firms. Any enforcement response should serve that objective while keeping the U.S. economy open to trade, investment, and competition.

Thank you for your consideration.

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[27] Ibid.

[28] Ibid.