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Hearing On “China’s Censorship Of The Internet And Social Media: The Human Toll And Trade Impact”

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Introduction

China’s censorship of the Internet and its restrictions on the free flow of information have a very significant impact on U.S. economic and trade interests. China continues to impose debilitating burdens on foreign Internet service providers through its censorship regime, its blocking of foreign websites, and its “Great Firewall” infrastructure, which inhibit or prevent all together U.S. companies’ ability to do business in China, and their ability to compete with Chinese domestic companies. China’s Internet service providers have capitalized on this discriminatory treatment of U.S. companies and have consequently experienced great success. Earlier this year, for example, RenRen (known as “China’s Facebook”) filed for a U.S. public offering, symbolizing its success to date and its plans for expansion.¹ Meanwhile, Facebook is blocked in China. These measures have been ongoing for years, and have had an overwhelming adverse impact on market share for U.S. companies – perhaps to the extent that such market share can never be recovered.

China’s blocking and filtering measures, and the fog of uncertainty surrounding what China’s censors will and will not permit, violate numerous of China’s international obligations, including provisions of the WTO General Agreement on Trade and Services (“GATS”) and China’s WTO Protocol of Accession.

The negative impact of these violations on America’s premier Internet companies is profound. There are several corporate victims of China’s exclusionary practices. Although there is public information identifying several large companies that have been blocked or restricted by the Great Firewall, including YouTube, Facebook, Twitter, Vimeo, Google, and the Huffington Post, to name a few, there are many other companies that have been blocked from access in China that I am not able to identify by name specifically because these companies fear retaliation. These companies come from various sectors, including energy, labor mediation, tourism, education, web hosting, and advertising, among others. The fact that these large, well-established companies and other fast-growing U.S. firms, so successful in every other major market in the world, are reluctant to come forward with specific information that would form the basis of a WTO complaint against the Chinese government is powerful testament to 1) the importance of the Chinese Internet market – the largest in the world – to these firms’ continued success, and 2)

¹ http://money.cnn.com/2011/04/18/technology/renren_IPO/?section=money_latest

the risk of retaliation that these firms face if they are seen as lending direct support to a trade complaint against China. Moreover, companies not yet in existence, but for which China could represent a significant business opportunity, do not even have a voice in the matter and perhaps never will.

I represent the First Amendment Coalition, an award-winning, non-profit public interest organization dedicated to advancing free speech for individuals and companies just like those denied access to China's Internet market. I have been working with them to address the issue of China's Internet restrictiveness since 2007. The issues regarding internet censorship and internet blockage are trade issues cognizable under the WTO, as well as freedom of speech issues. They are a harmful trade barrier to U.S. business which must be ended.

The First Amendment Coalition was able to persuade the Office of the U.S. Trade Representative ("USTR") to take the critical step of requesting detailed information from China on its internet restrictions under Article III:4 of GATS, which mandates transparency in a Member's application of measures affecting services. GATS Article III:4 reads as follows.

Each Member shall publish promptly and, except in emergency situations, at the latest by the time of their entry into force, all relevant measures of general application which pertain to or affect the operation of this Agreement.

USTR's request to China follows a three year effort by the First Amendment Coalition to get the U.S. government to take a tough stance to address China internet restrictions in violation of international trade rules, free speech, and human rights. The U.S. request to China under GATS Article III:4 is highly significant not only because it is the very first time any WTO Member has utilized that provision of the GATS agreement, but also because it is the first time that the U.S. government, or any country, has made a formal submission through the WTO to China to address internet censorship.

Contrary to GATS Article III:4, China's measures with respect to Internet services have not been published promptly, and in fact, the blocking and filtering measures have not been published at all.² In this regard, we have been unable to document written directives or specific governmental instructions concerning China's measures constituting the "Great Firewall," but this in effect lends support to the argument that China is not transparent in its practices related to controlling and censoring Internet content. Indeed, China has published few, if any, regulations related to Internet services. The Chinese government recently issued an official decision, currently

² A panel has previously interpreted the term "publish" in the WTO Agreements as more than "making publicly available." In *Chile-Price Band System and Safeguard Measures Relating to Certain Agricultural Products*, the panel held that the requirements to publish a report in the Agreement on Safeguards meant "to make generally available through an appropriate medium." Appellate Body Report, *Chile-Price Band System and Safeguard Measures Relating to Certain Agricultural Products*, WT/DS207/AB/R (adopted 23 October 2002), para. 7.128. Further, "[t]he obligation is of an absolute character and due diligence obliges WTO members to publish more, rather than less, because of the terms 'relevant' and 'affecting' invite a wide reading." Mitsuo Matsushita, Thomas J. Schoenbaum, & Petros C. Mavroidis, *The World Trade Organization, Law, Practice, and Policy* (2003).

available only in Chinese, which appears not to contain “any new concrete policies but it does set the stage for future moves to rein in parts of the Internet at the possible expense of the commercial Internet companies.”³

The historic action taken by USTR is also a significant and important step because, in addition to promoting transparency and free speech, it may result in China providing information in response to U.S. questions that will assist small and medium-sized U.S. businesses in entering the Chinese market, which they currently are unable to do given the lack of certain vital information involving use of the Internet. As USTR indicated in its press release,

[a]n Internet website that can be accessed in China is increasingly a critical element for service suppliers aiming to reach Chinese consumers, and a number of U.S. businesses, especially small- and medium-sized enterprises, have expressed concerns regarding the adverse business impacts from periodic disruptions to the availability of their websites in China.

Small and medium-sized U.S. businesses are particularly disadvantaged by China’s Great Firewall because, unlike bigger U.S. companies, they do not have the resources to physically set up shop in China so they are simply excluded from the Chinese market.

Some of the information requested from China by USTR included the following:

- With respect to China’s rules governing website blocking: Who is responsible for determining when a website should be blocked? What are the criteria for blocking access? Where are the guidelines published? Who does the actual blocking? How can a service supplier know if their website has been blocked? Are decisions to block appealable? Is the process used to prevent access the same or different for foreign and domestic content?
- With respect to the State Internet Information Office (“SIIO”) established by the State Council: What are the responsibilities and authorities of SIIO? Will SIIO handle licenses, approval processes, and questions on filtering and other laws?
- With respect to inadvertent blocking where one site is blocked when it shares an IP address with a website China has deemed harmful: How does it occur? Can it be avoided? Will Chinese authorities notify the owner of the web hosting service so that it may ensure other sites are not inadvertently blocked? How can companies resolve inadvertent blocking?

³ See “6th Plenum Report Suggests China Will Strengthen Internet Management,” Digicha Internet and Digital Media in China, October 26, 2011, citing from the “Central Committee Decision Concerning the Major Issue of Deepening Cultural System Reforms, Promoting the Great Development and Prosperity of Socialist Culture” from the 6th Plenum of the 17th Communist Party Congress (currently available only in Chinese), available at <http://digicha.com/index.php/2011/10/6th-plenum-report-suggests-china-will-strengthen-internet-management/>.

- With respect to the broad nature of the eleven categories of content which Internet service providers may not disseminate:⁴ Are there any criteria to determine when content falls within the eleven categories? Are government requests to filter specific terms communicated directly to Internet information service providers? Are the same terms subject to filtering made available to Internet information service providers inside and outside of China?
- With respect to the prevention of “illegal information” as that term is used in the White Paper on the Internet in China: How is illegal information defined? Is a written government order required for a private corporation or relevant authority to block the transmission of illegal information? What types of technical measures are service suppliers expected to use to prevent transmission of the illegal information? Are the technical measures to block illegal information applied automatically to domestic and foreign traffic? If not, how are they applied? Does Internet content from outside of China go through a separate monitoring process for illegal information than Internet content created inside of China? If so, how do they differ?

We hope and expect that the Government of China will answer these questions fully and promptly, fulfilling its obligations under the WTO to maintain an open internet and not discriminate against U.S. business.

The remainder of this submission will review in greater detail the Internet restrictions in China, the adverse trade impact caused by those restrictions, and how those restrictions would appear to violate China’s international trade obligations.

I. China’s Internet Restrictions

U.S. and foreign Internet companies have faced a long history of discriminatory treatment in China, to their disadvantage and to the advantage of their Chinese competitors. China has for many years maintained a policy, popularly known as the “Great Firewall,” under which it has exerted strict control over the use of the limited system of fiber optic cables that connects networks in China to the outside world. As we understand it, China has installed certain hardware, known as “tappers” or “network sniffers,” at each entry point so that when a user in China attempts to access a good or service located on a server outside of China, the tappers create mirror copies of the data packets that flow back and forth between the two servers, and the

⁴ According to measures issued by China’s State Council, Internet services providers may not disseminate information with content that: (1) opposes the fundamental principles determined in the Constitution; (2) compromises state security, divulges state secrets, subverts state power or damages national unity; (3) harms the dignity or interests of the state; (4) incites ethnic hatred or racial discrimination or damages inter-ethnic unity; (5) sabotages state religious policy or propagates heretical teachings or feudal superstitions; (6) disseminates rumors, disturbs social order or disrupts social stability; (7) propagates obscenity, pornography, gambling, violence, murder or fear or incites the commission of crimes; (8) insults or slanders a third party or infringes upon the lawful rights and interests of a third party; (9) disturbs the public order by instigating illegal gatherings, associations, parades, demonstrations, or assemblies; (10) organizes activities in the name of illegal civil organizations; contains other content prohibited by the laws and administrative regulations, or by the state.

mirror copies are delivered to a set of computers that automatically review the data packets. The computers can be, and often are, pre-programmed to block a particular domain name server (“DNS”), Internet Protocol (“IP”) address, or Universal Resource Locator (“URL”) address.⁵

The government of China (“GOC”) also employs tens of thousands of individuals whose sole mission is to search the Internet for objectionable content. Their work often results in the blocking of additional DNS, IP, and URL addresses.⁶

Following USTR’s Article III:4 request, China defended its Internet censorship as an effort to “safeguard the public.”⁷ Although the ruling Communist Party claims its monitoring and blocking is to promote “constructive” websites, stop the spread of “harmful information,” and develop what it calls a healthy internet culture, it is unclear what content is subject to blocking and often the blocked content has nothing resembling “harmful information.”⁸ Additionally, the blocking appears motivated by other competitive or political agendas. For example, access to the Android Marketplace was blocked within China just after Google announced it would help the Dalai Lama to visit South Africa virtually.⁹

II. Harm Caused By China’s Restrictions

Chinese internet restrictions have disadvantaged American businesses, to the benefit of Chinese businesses. According to news reports, Facebook and Twitter, for example, have been blocked in China. In their absence, copycat websites based in China (with censored content) have been able to flourish. It seems unlikely that Facebook and Twitter will be able to regain the market

⁵ See e.g., “12VPN and Other VPN Services DNS Poisoned by Great Firewall in China,” June 27, 2011, available at <http://www.bestvpnservice.com/blog/12vpn-now-dns-poisoned-in-china-by-great-firewall>; “Google+ Now DNS Blocked in China,” July 5, 2011, available at <http://www.isidorsfugue.com/2011/07/google-now-dns-blocked-in-china.html>; “China Strengthens Great Firewall, While, Chinese Bypass It,” March 3, 2011, available at <http://www.bestvpnservice.com/blog/china-strengthens-great-firewall-while-chinese-bypass-it>; “Ahead of Party Anniversary, China Poisons the Internet,” July 1, 2011, available at <http://uncut.indexoncensorship.org/2011/07/ahead-of-party-anniversary-china-poisons-the-internet/>.

⁶ See “You’ve Got Mail,” Time Magazine, October 16, 2011, available at <http://www.time.com/time/magazine/article/0,9171,2096818,00.html>

⁷ “Beijing leaps to defense of ‘Great Firewall of China,’” Reuters, October 20, 2011, available at <http://www.reuters.com/article/2011/10/20/us-china-internet-idUSTRE79J1PU20111020>.

⁸ See “6th Plenum Report Suggests China Will Strengthen Internet Management,” Digicha Internet and Digital Media in China, October 26, 2011, citing from the “Central Committee Decision Concerning the Major Issue of Deepening Cultural System Reforms, Promoting the Great Development and Prosperity of Socialist Culture” from the 6th Plenum of the 17th Communist Party Congress (currently available only in Chinese), available at <http://digicha.com/index.php/2011/10/6th-plenum-report-suggests-china-will-strengthen-internet-management/>.

⁹ “Android Marketplace blocked by Great Firewall of China,” The Register, October 10, 2011, available at http://www.theregister.co.uk/2011/10/10/china_android_blocking/.

share lost to their Chinese competitors even if they were unblocked at some point in the future. Chinese users have already developed a preference for certain social media sites, and it is doubtful that they would have an incentive to switch services.¹⁰ The loss of a huge potential market for these companies indicates the extent of the harm caused by the Chinese actions. In addition to the direct loss of access to Chinese consumers by these companies comes the loss from all of the advertisers that would ordinarily be offering their services on the Internet pages of these social media service providers.

The number of Internet users in China has exceeded 500 million, growing at double digit rates since 2008, roughly twice the size of the U.S. market, which grew only 2.5 to 4.5 percent in the same timeframe. China is now the largest market for Internet users¹¹ and U.S. businesses are effectively being blocked from or only given highly restricted access to that market. U.S. companies excluded from the Chinese market are not just large tech companies but small and medium businesses including “travel sites, engineering firms and consulting firms, which have found their sites blocked and have complained to the trade office.”¹² A 2011 report by the McKinsey Global Institute estimates that there is a ten percent increase in productivity for small and medium businesses from internet usage.¹³ This productivity growth is denied U.S. companies that are blocked from providing their services in China.

U.S. companies are subject to the strict controls that completely disrupt their service, or at a minimum seriously delay the transmission of information. Users of these websites, if they

¹⁰ See, e.g., Lin Shujuan, *Flutter over New Twitter*, China Daily (Oct. 22, 2009) http://www.chinadaily.com.cn/cndy/2009-10/22/content_8829406.htm (discussing the rise in popularity of Sina Weibo, a microblogging website with monitored content, since Twitter became inaccessible in China); Glen Loveland, *When Will China Unblock Facebook and Twitter?* (Sep. 28, 2009) <http://www.examiner.com/x-/x-15615-Asia-Headlines-Examiner~y2009m9d28-When-will-China-unblock-Facebook-and-Twitter> (“Every Chinese user who can’t use the site is that much more likely to turn to China’s domestic copycat, YouKu”); *China’s Twitter Clones*, Read Write Web (Mar. 5, 2010) http://www.readwriteweb.com/archives/china_twitter_clones.php (quoting Chinese technology writer Kaiser Kuo: “Although there would be an uptake in the number of users on Twitter, if it was ever to be made available again, Weibo and others will have gained too much momentum by then”).

¹¹ “U.S., China Clash Over Internet Great Wall,” China-U.S. Trade Law, October 31, 2011, available at <http://www.chinaustradelawblog.com/2011/10/articles/trade-disputes/wto/us-china-clash-over-internet-great-wall-acaaeaecea/>.

¹² “China tangles with Internet access,” Politico, citing USTR official, October 30, 2011, available at <http://www.politico.com/news/stories/1011/67190.html>.

¹³ *Internet Matters: The Net’s Sweeping Impact On Growth, Jobs, and Prosperity*, McKinsey Global Institute, May 2011, available at http://www.mckinsey.com/mgi/publications/internet_matters/pdfs/MGI_internet_matters_full_report.pdf.

actually endure the wait and do not move to a competitor service supplier,¹⁴ suffer from a decrease in the quality of service, causing commercial harm to U.S. companies.¹⁵

It would be very useful for this Commission to undertake, directly or perhaps through an economic consulting firm, an economic analysis of the overall harm caused to U.S. companies by the Chinese blockage and censorship of the internet. I think that would be one useful follow-up to this hearing.

III. China's Internet Restrictions Violate Its International Trade Obligations

The Chinese Government's actions appear to constitute various violations of WTO agreements to which China is a party, particularly the GATS Agreement. The Chinese actions in question, although often based on unwritten policies and practices, would still constitute "measures" that can be challenged under the World Trade Organization Dispute Settlement procedures. In this regard, the Appellate Body and various WTO panels have confirmed that actionable "measures" subject to WTO dispute settlement include not only written laws and regulations, but other government actions as well.¹⁶ Panels have also recognized the subtleties of government pressure on private companies as "measures" that may be challenged at the WTO.¹⁷

In addition to USTR's current GATS Article III:4 request, there are more aggressive steps that the United States could take to protect its vital economic interests. While we believe that China currently is preparing its official response to USTR's Article III:4 request, if China fails to respond or fails to respond meaningfully, the United States would then have a readily apparent basis to initiate formal dispute settlement proceedings in the WTO. Paragraph 1 of GATS Article XXIII says "[i]f any Member should consider that any other Member fails to carry out its obligations or specific commitments under this Agreement, it may with a view to reaching a mutually satisfactory resolution of the matter have recourse to the dispute settlement understanding."

¹⁴ "Android Marketplace blocked by Great Firewall of China," The Register, October 10, 2011, available at http://www.theregister.co.uk/2011/10/10/china_android_blocking/.

¹⁵ See e.g., "Can China's Economy Thrive with a Censored Internet?" Time, October 26, 2011, available at <http://curiouscapitalist.blogs.time.com/2011/10/26/can-china%E2%80%99s-economy-thrive-with-a-censored-internet/>.

¹⁶ See, e.g., Appellate Body Report, *United States – Sunset Review of Anti-Dumping Duties on Corrosion-Resistant Carbon Steel Flat Products from Japan*, WT/DS244/AB/R (adopted Jan. 9, 2004), paras. 81-85 ("In principle, any act or omission attributable to a WTO Member can be a measure of that Member for purposes of dispute settlement proceedings".) (The Appellate Body also referred to its earlier opinion in *Guatemala–Cement I (AB)*, which stated that "... a 'measure' may be any act of a Member, whether or not legally binding, and it can include even non-binding administrative guidance by a government.").

¹⁷ Panel Report, *Japan – Measures Affecting Consumer Photographic Film and Paper*, WT/DS44/R (adopted Apr. 22, 1998), para. 10.44.

In addition to a potential violation under GATS Article III on transparency, there are other WTO obligations that China appears to violate with its Internet restrictions, including other GATS provisions, as is discussed below.

Initiation of a WTO dispute settlement proceeding against Chinese Internet restrictions by the United States would signal to the U.S. business community, to consumers around the world, and to China, that the U.S. government will assert its rights under WTO agreements when China fails to fulfill its WTO obligations, even in those areas that may be of a more sensitive nature. Unfortunately, these sensitivities give rise to a number of obstacles to U.S. initiation and prosecution of a formal WTO dispute against China.

As noted, it is difficult to find companies willing to come forward to support a potential case against China for fear of retaliation. Due to this fear, specific facts needed by the U.S. government to support many claims under the WTO are difficult to document. In addition, also as noted, many of the Chinese laws, regulations, policies, and practices regarding Internet services are not written down, although they are enforced *de facto*.¹⁸

A. China's Internet Censorship Violates Other Provisions Of GATS

China made specific commitments regarding market access and national treatment for services in various service sectors.¹⁹ China's Internet policies would appear to violate many of these specific commitments under the GATS, including in the areas of Data Processing Services, Photographic Services, Telecommunication Services, Mobile Voice and Data Services, Audiovisual Services, Tourism and Travel Related Services, and Transport Services. By pursuing these policies, China denies market access to U.S. companies and discriminates against the services of U.S. companies in favor of Chinese companies.

Although U.S. companies offer a wide range of services over the Internet, four service sectors that would appear to suffer disproportionately under Chinese policies are: (1) Advertising services (the primary revenue source for U.S. suppliers of Internet-based services, particularly those operating search engines, social networking, and data/photo sharing, is through advertising and U.S. services suppliers obtain revenue from the development and posting of targeted advertisements on their webpages and facilitating access to other websites by their users clicking on the advertisements); (2) Data processing and tabulation services (relevant U.S. services suppliers are providing consumers with the ability to access certain tools over the Internet that enable them to make, edit, and share videos or photos, or other data and that allow them to search for content on other websites and the U.S. services supplier is necessarily processing data for the consumer and providing a tool to access defined data bases or the Internet generally); (3)

¹⁸ See *US – Zeroing (EC)* at paras. 192, 198.

¹⁹ These commitments appear in an addendum to the Working Party Report on the Accession of China and are an integral part of the GATS. *Report of the Working Party on the Accession of China, Addendum, Schedule CLII--The People's Republic of China, Part II--Schedule of Specific Commitments on Services List, List of Article II MFN Exemption, WT/MIN(01)/3/Add.2* (10 Nov 2001) (“*Schedule of Specific Commitments*”).

On-line information and database retrieval; and (4) Videos, including entertainment software and (CPC 83202), distribution services (“Video/entertainment distribution services”).

There follows below a brief discussion of some of the specific GATS claims that might be made against the Chinese measures in question and some of the factors that would need to be considered in prosecuting such claims.

1. National Treatment

China’s restrictions on U.S. Internet companies appear to violate the national treatment provision in Article XVII of the GATS, which provides that “each Member shall accord to services and service suppliers of any other Member, in respect of all measures affecting the supply of services, treatment no less favourable than that it accords to its own like services and service suppliers.”

The Chinese measures at issue would seem to fall within one or more of at least four services subsectors for which China has inscribed a specific commitment, without limitation on national treatment, in its WTO Services Schedule. As such, China’s measures must comply with the obligations in Article XVII for these subsectors.²⁰ Current Chinese treatment of U.S. Internet companies, including filtering and blocking through the “Great Firewall” and mandated disabling of certain service functions, modifies the conditions of competition in favor of Chinese suppliers such as Baidu (considered the “Google” of China); as such, these measures are inconsistent with Article XVII of the GATS.

If China’s measures were challenged in a WTO proceeding, a Panel would first determine whether China’s measures are indeed “affecting” the supply of these services. As noted by the Appellate Body in *EC – Bananas III*:

[T]he term of “affecting” reflects the intent of the drafters to give a broad reach to the GATS. The ordinary meaning of the word “affecting” implies a measure that has “an effect on”, which indicates a broad scope of application. This interpretation is further reinforced by the conclusions of previous panels that the term ‘affecting’ in the context of Article III of the GATT is wider in scope than such terms as ‘regulating’ or ‘governing.’²¹

²⁰ In the case of potential market access violations in relation to telecommunications services, the United States will need to address potential Chinese arguments that the measures are non-discriminatory and are based on China’s right, under the footnote in its schedule, to require that such services be channeled through approved gateways. Moreover, in relation to national treatment for video/entertainment distribution services, China has not scheduled any limitation in relation to “content review” and thus discriminatory content review would not be justified by any reservation or limitation.

²¹ Appellate Body Report, *European Communities – Regime for the Importation, Sale and Distribution of Bananas*, WT/DS27/AB/R (adopted 25 September 1997), para. 220.

It is therefore not necessary for China's measures to be directly regulating or governing the business of U.S. Internet service providers, but merely that the measures have an effect on these services, and their providers' ability to do business in China. China's measures clearly have "an effect on" these services – indeed, a very detrimental one.²²

Second, the United States would need to demonstrate that China's measures accord "less favorable" treatment to U.S. suppliers than to China's domestic suppliers of "like" services. As set forth in GATS Article XVII:3, the test for less favorable treatment is whether the measure "modifies the conditions of competition in favor of services or service suppliers of" China compared to like services or services suppliers of the United States.²³ Persuading a panel in this regard would require the production of extensive data and specific information demonstrating the competitive disadvantage suffered by U.S. companies due to China's measures. A comparison of blockages of websites, upload times for content of websites, and other significant impediments to Internet service providers would likely reveal significant and swift loss of market share by U.S. providers.

2. Market Access

Article XVI:2 of the GATS prohibits Members from maintaining or adopting quantitative limitations on service operations or service output. China's restrictions on certain U.S. Internet companies' services constitutes a *de facto* quantitative limitation on such services, therefore violating this provision.

3. Domestic Regulation

Under Article VI of the GATS, for services sectors in which specific commitments have been undertaken, China must administer its measures in a "reasonable, objective and impartial manner" and, for all services sectors, must ensure that tribunals or procedures are available for the prompt review and remedy of administrative decisions. China's restrictions on U.S. Internet companies are subjective and non-transparent, and there are no tribunals or procedures for the review of these administrative decisions. The restrictions therefore violate China's obligations under Articles VI:1 and VI:2(a) of the GATS.

China's "Great Firewall" filtering and blocking practices would also seem to violate the GATS Annex on Telecommunications, which states in paragraphs 4 and 5 that "each Member shall ensure that relevant information on conditions affecting access to and use of public telecommunications transport networks and services is publicly available" and that "{e}ach Member shall ensure that any service supplier of any other Member is accorded access to and use of public telecommunications transport networks and services on reasonable and non-

²² See "Enabling Trade in the Era of Information Technologies: Breaking Down Barriers to the Free Flow of Information," Google paper released November 15, 2010, available at http://static.googleusercontent.com/external_content/untrusted_dlcp/www.google.com/en/us/googleblogs/pdfs/trade_free_flow_of_information.pdf.

²³ See, e.g., Panel Report, *Canada – Certain Measures Affecting the Automotive Industry*, WT/DS139/R, WT/DS142/R (adopted 19 June 2000), para. 10.80.

discriminatory terms and conditions.” In addition, paragraph 5(c) imposes an obligation on China to ensure that U.S. services suppliers may use the public telecommunications transport networks and services “for the movement of information within and across borders” and “for access to information contained in data bases or otherwise stored in machine-readable form” in the United States or in the territory of another WTO Member. China’s filtering and blocking on Internet content clearly restricts the availability of these telecommunications networks in a discriminatory fashion.

Conclusion

We appreciate the Commission holding this hearing and inviting me to testify. We also appreciate the efforts of USTR in submitting the GATS III:4 questions. We urge the Commission to take into account our views in its ongoing work on this issue. We also urge the Commission to monitor China’s responses to these questions as well as USTR’s continuing efforts on this very important issue. An open and accessible internet in China is a prerequisite to U.S. success in the Chinese market, and a goal that we must continue to fight for until it is achieved.