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Computer & Communications Industry Association

September 27, 2010

Ms. Carmen Suro-Bredie
Chairman, Trade Policy Staff Committee
Office of the United States Trade Representative
600 17th Street, NW
Washington, DC 20208

Re: Request for Comments Concerning China's WTO Compliance (Docket No. USTR-2010-0019)

Dear Ms. Suro-Bredie:

The Computer & Communications Industry Association (CCIA) appreciates the opportunity to submit comments to assist the Office of the United States Trade Representative (USTR) in the preparation of its annual report to the Congress on China's compliance with the commitments made in connection with its accession to the World Trade Organization (WTO). CCIA is an international, nonprofit association of computer and communications industry firms, representing a broad cross section of the industry. CCIA is dedicated to preserving full, fair and open competition throughout our industry. Our members employ more than 600,000 workers and generate annual revenues in excess of \$200 billion.

Since CCIA was founded over three decades ago, support for free and open markets has been a core principle of the association. As the leading export industry of the U.S., the high-tech sector in particular benefits greatly from expanded trade. CCIA has long valued the WTO as the guarantor of the rules-based trading system. According to the WTO itself, "The system's overriding purpose is to help trade flow as freely as possible — so long as there are no undesirable side-effects — because this is important for economic development and well-being. That partly means removing obstacles. It also means ensuring that individuals, companies and governments know what the trade rules are around the world, and giving them the confidence that there will be no sudden changes of policy. In other words, the rules have to be 'transparent' and 'predictable'."¹

E-Commerce and Trade

The development of the Internet has led to a revolution in the way we conduct

¹ World Trade Organization Information and External Relations Division, "Understanding the WTO", Chapter 1: Basics, available at <http://www.wto.org/english/thewto_e/whatis_e/tif_e/utw_chap1_e.pdf>.

international commerce and trade. In the new world of electronic commerce, removing obstacles and helping trade flow as freely as possible means safeguarding the free flow of information. The Chinese government's blocking and filtering of Internet content through its Great Firewall blatantly restricts that flow with grave consequences for U.S. Internet companies.

The United States is an information economy, and U.S. companies are leading vendors of information products and services. In this context, information discrimination by the Chinese government fundamentally undermines U.S. economic interests, such as the interests of U.S. Internet companies engaged in electronic commerce seeking to access the Chinese market. Filtering American Internet content and services has the effect of filtering out American competition, and it must be combated.

The success of e-commerce depends on users feeling comfortable and secure enough to utilize the services our industry provides. That comfort and security cannot exist while the Chinese government continues its Internet censorship. When the Chinese government stifles online freedom or otherwise restricts the Internet, it creates a hostile market environment by preventing consumers from fully using new products, applications and services offered by or through U.S. technology companies.

Trade Impacts of Chinese Internet Censorship

Chinese government restrictions on the Internet affect trade in a variety of ways, including as follows:

- Information discrimination represents a “non-tariff barrier” (NTB). By attempting to co-opt U.S. businesses into content filtering, barriers to market entry are created that would not otherwise exist.
- Information discrimination constitutes an unfair “rule of origin” by filtering out U.S.-originating content such as certain U.S. domains deemed to be “subversive.”
- Information discrimination violates the fundamental free trade principle of “national treatment” to U.S. services and service providers. For U.S. companies to be perceived - whether fairly or not - as being coerced by the Chinese government into compromising U.S. values may undermine consumer trust, seriously damage U.S. brands, and may even lead to legal penalties at home. This advantages Chinese domestic companies who face no such risk themselves.
- Despite the fact that the WTO requires “transparent and predictable rules,” the Chinese government regularly restricts the Internet without transparency and accountability. “Many of the measures that prevent U.S. Internet companies from doing business in China are not publicly available.” “As a result, U.S. Internet companies remain subject to an invisible web of measures that prevent them from

doing business in China.”²

- When a country blocks access to a U.S. search engine or website, the advertising on those sites is also being blocked, and trade in the products and services advertised are interfered with. This could particularly impact small businesses that rely on U.S. websites to reach international markets.
- Finally, there is evidence that Internet censorship by the Chinese government leads to a form of import substitution called “copy to China” (C2C). “(T)here is another aspect to the C2C model which accounts for its success: Facebook, Twitter and Foursquare were blocked by the Chinese government’s Great Firewall of China (#GFW) first. Before they were blocked, all of these applications had large numbers of users in China. In the case of Facebook, there were a large number of users in China before it was blocked, starting with westerners in China, but then spreading to local Chinese users. After it was blocked, Chinese local user numbers fell off precipitously; this helped the new Chinese copycat applications to grow in numbers, while the original western applications retained users who were mainly from the west who preferred using English and had access to a VPN which gave them access through proxy servers.”³

Need for A New Framework

Our new and networked world has given rise to a new concept of trade barriers. Geographical borders and physical ports are no longer the only points of entry for trade. For e-commerce, censorship and filtering of the Internet can lead to a virtual blockade of Internet products and services. There must be a framework to address the issue of information flow and to establish new rules of the road to adapt the timeless goals of the WTO to the new online reality. As a first step, USTR should bring a WTO challenge against Chinese Internet censorship to launch the needed debate on how to ensure the free flow of information, without which there can be no free flow of trade.

Sincerely,



Edward J. Black
President & CEO
Computer & Communications Industry Association

² Gilbert Kaplan (Partner, King & Spalding LLP on Behalf of California First Amendment Coalition). “Testimony on Access to Information and Media Control in the People’s Republic of China before the U.S.-China Economic and Security Review Commission.” (Date: 7/18/2008), *available at* <http://www.uscc.gov/hearings/2008hearings/written_testimonies/08_06_18_wrts/08_06_18_kaplan_statement.php>.

³ Paul Denlinger, “Why China’s Web Copycats Succeed,” Forbes Blogs, Aug. 19, 2010, *available at* <<http://blogs.forbes.com/china/2010/08/19/why-chinas-web-copycats-succeed/>>.