ITIF | INFORMATION TECHNOLOGY & INNOVATION FOUNDATION

June 24, 2021
Ms. Lisa R. Barton
Secretary
U.S. International Trade Commission
500 E St. SW

Re: ITIF Pre-hearing Statement Regarding Investigation No. 332-585: Foreign Censorship Part 1: Policies and Practices Affecting U.S. Businesses and Investigation No. 332-586: Foreign Censorship Part 2: Trade and Economic Effects on U.S. Businesses.

Dear Ms. Barton:

Please find below the Information Technology and Innovation Foundation's (ITIF) pre-hearing statement concerning investigations No. 332-585 and No. 332-586. We look forward to delivering our full statement at the hearing on October 6, 2020. If you have any questions, please do not hesitate to contact me at (202) 626-5720 or ncory@itif.org.

Sincerely,

Nigel Cory
Associate Director, Trade Policy, The Information Technology and Innovation Foundation

United States International Trade Commission
Investigation No. 332-585

ITIF Pre-hearing Statement Regarding Investigation No. 332-585: Foreign Censorship Part 1: Policies and Practices Affecting U.S. Businesses and Investigation No. 332-586: Foreign Censorship Part 2: Trade and Economic Effects on U.S.

Presented by:
Nigel Cory
Associate Director, Trade Policy
The Information Technology and Innovation Foundation

June 24, 2021

Censorship is becoming a growing non-tariff barrier (NTB) to trade as countries around the world are enacting overly restrictive and discriminatory laws and regulations around digital content they identify as "objectionable." For the United States, a lot is at stake. The United States is a world leader in both the broad set of services that make up the global digital economy and the creative sectors that make movies, TV shows, video games, e-books, and other content. U.S. firms (and the economy as a whole) are more reliant than ever on data and digital content and the ability to transfer it in order to use the Internet to engage with customers and markets around the world. This testimony will highlight key forms of censorship as an NTB, major offenders, and the harms caused by these barriers.

U.S. firms and their increasingly digital goods and services are susceptible to non-tariff barriers in the form of both at-the-border and behind-the-border laws and regulations. Censorship as an NTB takes on a few key forms, such as:

- At the border blocking of access to websites with legal content, such as China's "Great Firewall."
- Arbitrary, opaque, and discriminatory content review processes for TV shows, movies, apps, software, video games, and other digital content.
- Quotas on certain foreign content, such as movies.

- Arbitrary, opaque, and discriminatory licensing and control over Internet, content distribution, Internet access, and Internet connectivity services, such as Internet “blackouts” and not granting licensing to video-on-demand streaming and virtual private network (VPN) services.
- Forced local data residency requirements (known as data localization) for “content moderation” frameworks that are in large part driven by censorship as governments want to remove content and speech they deem politically sensitive.

Analyzing censorship and trade is challenging and requires nuance. There is a need to differentiate between good-faith efforts by countries to address legitimate issues about digital content, such as those targeting child pornography, violent extremist material, copyright infringing material and services, and other issues where many countries mutually recognize there are problems. For example, a growing number of countries allow firms to get legal injunctions to get Internet service providers to block their users from accessing certain websites involved in the mass distribution of copyright-infringing material. This is not censorship, any more than not letting people yell fire in a crowded theatre is censorship.

Not every website should be freely accessible. Some argue that even the legitimate blocking of content helps totalitarian governments justify their own content blocks. These nations don’t need additional justification. Moreover, there is a stark difference between a government that uses transparent means within an independent legal system to block access to illegal content and one that is engaging in censorship in order to control its population. Furthermore, just as supporting bans on the importation of ivory does not make one a protectionist, supporting website blocking for sites dedicated to piracy does not make one an opponent of a free and open Internet. However, when countries (such as China, Iran, and elsewhere) block access to Internet services due to the political and social nature of the content, this is censorship. Likewise, many countries have frameworks to review digital content as part of classification schemes (e.g., to designate what is safe for children). This is not censorship. However, when countries use purposely opaque (and politically motivated) assessment criteria and processes or make arbitrary decisions to block foreign services and content (such as is the case in China, Nigeria, and India), this is censorship.

Similarly, not all countries have a constitutional right, and broad legal protections, for free speech like the United States. Differing legal, social, cultural, and political values and systems mean that countries take different approaches to determining what discourse is or is not protected online, even in other democratic countries. Certain discourse and content that is legal in the United States may be illegal in other countries, such as content related to hate speech. While this may raise valid human rights concerns, it's less of a trade issue, as these cases tend to be narrowly focused and within a broader legal framework where U.S. firms have a transparent criteria and legal redress to manage country-specific differences.

This highlights the importance of a careful assessment of the underlying motivation behind restrictions targeting digital content when analyzing content moderation versus censorship and in considering the trade impact. While censorship may be a primary motivation for many of these policies, by making life hard or simply keeping U.S. firms or content out of the market, the government gets the added benefit of protecting local firms from foreign competition. It is somewhat easier (but still challenging) to assess the trade impact when U.S. firms and products are completely excluded from a market (such as China), but it is still difficult as local market factors (like differing consumer preferences) mean that U.S. firms may not have the same market share as at home or in neighboring markets. It's also challenging to assess the individual and cumulative impact of U.S. firms and products being temporarily banned (as in Internet "blackouts") or when certain content (whether TV shows or video games) are only temporarily blocked or are delayed in being released. However, the impact of each market barrier adds up in a similar ways as how increases in tariffs or slow and costly import customs clearance deleteriously affects trade in physical goods.

China is by far the worst offender in using censorship as a barrier to digital trade. U.S. firms have lost significant revenue by being blocked or inhibited from accessing and operating in the Chinese market. Within the Chinese context, censorship means broad, discriminatory, and arbitrary control over data, digital content, distribution platforms, IT infrastructure, and the respective firms involved in each. China uses opaque, discriminatory, and arbitrary content moderation and control rules to severely limit or fully prohibit foreign firms and their digital products from accessing multiple sectors of the Chinese market. Chinese protectionism in these sectors has already inflicted significant costs on U.S. trade and firms, and the threat will only grow with the continued proliferation and acceptance of these practices. While censorship is far from China's only (digital) protectionist tool, it is a key one that has led to a generation of Chinese consumers unaware of the vast differences between their Internet consumption and the rest of the world's.

China uses the Great Firewall to block thousands of foreign websites and thus deny market access; however, this is simply one way in which China uses censorship as an NTB. As a specific example, China's rapidly expanding video game market already accounts for 33 percent of total global revenue for PC and mobile gaming, but foreign games make up only a small minority of the games approved by censors. In 2019, of the 1,570 games approved, an overwhelming 88 percent (1,385) titles were domestic, a phenomenon not seen in other countries where titles by major U.S. and Japanese developers have a large share of the market. The justifications for blocking games can be as arbitrary and vague as "overly obscene or immoral" content and "cultural content." The lack of a clear criteria and a transparent approval and appeal process gives Chinese officials a free hand to block foreign content not just in their rapidly expanding gaming market, but also in the equally enticing Chinese movie and TV markets.

China is particularly problematic as it acts a model of protectionism-through-censorship globally. India, Indonesia, Nigeria, Turkey, Vietnam, and other countries are attracted to China's model due to its ability to control content and act as a barrier to trade. These countries are no doubt emboldened by the fact China has been able to enact these restrictions without repercussions from its trade partners. In 2018 alone, at least 25 nations throttled users' bandwidth, shut off their mobile or broadband Internet services altogether, or blocked access to mainstream Internet sites or applications. Censorship is one of the reasons governments have cut off access to the Internet, as evidenced by the erroneously asserted justification that it was necessary to stem political protests and to stop the spread of "fake" news, alongside broad and vague concerns about public safety and national security. Eleven countries have banned or restricted VPNs, which use encryption to provide users a private connection over the Internet in order to prevent local ISPs from monitoring their online activity.

The impact on U.S. trade, competitiveness, and innovation is many, varied, and significant. U.S. firms have already lost billions of dollars in sales in key sectors due to these practices, and this number will only increase as protected Chinese firms grow and expand globally and as other countries emulate its approach or adopt their own. Tech firms and content creators losing access to foreign markets reduces their global market share and revenue, which reduces their ability to support R&D, content creation, and associated U.S.-based operations.

While it is challenging to calculate an exact figure, the Information Technology and Innovation Foundation conservatively estimates that Google, which withdrew from the Chinese market in 2010, subsequently lost more than $32 billion in search revenue over a 5-year period from 2013 to 2019. Likewise, Amazon and Microsoft's cloud services, which Chinese policies have severely restricted, lost a combined $1.6 billion over the two-year period from 2017 to 2018. As the China market continues to rapidly grow, these losses will also grow significantly. And it is important to remember that this was all during a time when China was already running significant trade surpluses with the United States.

The problem (and potential economic impact) of censorship as an NTB is further exacerbated by policymakers calling for firms to leave the Chinese market in response to documented human rights violations. Such a move would not punish China by robbing it of the services of the U.S. tech giants, but instead would forfeit the entirety of the Chinese market to the tech giants' competition. With or without these U.S. firms present, the Chinese public will face a highly censored Internet. Therefore, the best way to combat the Chinese Communist Party's rising power and global influence is to keep U.S. firms competing in China and striving to attain the highest possible market share. Of course, the United States and its allies must remain committed to the protection of human rights and condemn and punish governments that blatantly violate them. Supporting trade and supporting human rights do not have to be mutually exclusive: the United States can diplomatically challenge China on its human rights violations while simultaneously working to remove NTBs caused by censorship through a targeted, detailed strategy.

U.S. policy must recognize the harm caused by these barriers and seek to mitigate their impact on global digital market access. Because China (and other countries) rely on a range of otherwise legitimate public policy goals to provide a justification for their approach to censorship—such as public safety, morals, and national security—the United States and other governments have been reluctant to challenge Chinese practices. This needs to change. If the United States fails to act against China and other countries' use of censorship as an NTB it'll be undermining the U.S.'s leading role in the global digital economy. Failure to act will also further legitimize the concept of "digital sovereignty" where governments intervene directly and extensively in the digital economy to censor online data flows and digital content without limits. The United States must develop and employ a stronger strategy to push back against the trade impact of Chinese censorship as an NTB, and to prevent this protectionist model from spreading to more markets.