

**Coalition of Services Industries (CSI) Submission:
Request for Comments and Notice of Public Hearing Concerning Russia's Implementation
of Its WTO Commitments
USTR-2017-0012**

The Coalition of Services Industries (CSI) appreciates the opportunity to submit comments to the Office of the United States Trade Representative to assist in preparation of its annual report to Congress on Russia's implementation of its obligations as a member of the World Trade Organization (WTO).

CSI, established in 1982, is the leading industry association devoted exclusively to helping America's services businesses and workers compete in world markets. CSI member companies represent a broad spectrum of the U.S. services sector including distribution services, express delivery, financial services, media and entertainment, telecommunications, information and communication technology services, and professional services. These services are a critical fuel for U.S. economic growth.

Overview

According to the latest data, U.S. exports of services to Russia were an estimated \$4.7 billion in 2015 and U.S. imports were \$2.4 billion, resulting in a \$2.3 billion services surplus.¹ Sales of services in Russia by majority U.S.-owned affiliates were \$12.0 billion in 2014 (latest data available), while sales of services in the United States by majority Russia-owned firms were \$633 million.²

After 18 years of negotiation, Russia joined the WTO in 2012—an act aimed to “[integrate] Russia into a system of fixed rules governing trade behavior and providing the means to enforce those rules and its market access commitments.”³ The expected benefits from Russia's entry into the WTO included “improved market access for U.S. exports of goods and services and Russia's implementation of established, enforceable, multilateral trade rules.”⁴

As part of accession, Russia agreed to provide new opportunities in several services sectors:⁵

¹ USTR, “2017 National Trade Estimate,” March 2017, <https://ustr.gov/about-us/policy-offices/press-office/reports-and-publications/2017/2017-national-trade-estimate>, 367.

² USTR, “2017 National Trade Estimate,” March 2017, <https://ustr.gov/about-us/policy-offices/press-office/reports-and-publications/2017/2017-national-trade-estimate>, 367.

³ U.S. Trade Representative, “Russia's Accession to the World Trade Organization: Why Accession Benefits the U.S. Economy,” https://ustr.gov/sites/default/files/Factsheet%20on%20Why%20Accession%20Benefits%20the%20US%20Economy_0.pdf, 2.

⁴ U.S. Trade Representative, “Russia's Accession to the World Trade Organization: Why Accession Benefits the U.S. Economy,” https://ustr.gov/sites/default/files/Factsheet%20on%20Why%20Accession%20Benefits%20the%20US%20Economy_0.pdf, 1.

⁵ U.S. Trade Representative, “Russia's Accession to the World Trade Organization: Why Accession Benefits the U.S. Economy,” https://ustr.gov/sites/default/files/Factsheet%20on%20Why%20Accession%20Benefits%20the%20US%20Economy_0.pdf, 2.

- Financial Services: Russia agreed to allow full foreign ownership of most banks, securities firms, and nonlife insurance firms.
- Telecommunications: Russia agreed to grant access to the telecommunications market to all foreign suppliers.
- Computer Services: Russia agreed to grant U.S. providers access in hardware and software installation, data processing, and database services.
- Audio-visual Services: Russia agreed to allow U.S. motion picture distribution and projection services access to the market.
- E-Commerce: Russia agreed to Internet sales and cross-border wholesale and retail distribution.
- Distribution: Russia allowed U.S. retailers and other distributors to operate wholly-owned subsidiaries to distribute most products.

WTO Implementation Issues

Although there has been progress in many services sectors, implementation issues remain regarding audiovisual services, data localization, national treatment, and encryption. The latter is an issue that USTR’s report has highlighted in the past.⁶ Russia does not recognize any products as “mass market,” which prevents American companies from freely exporting certain products with encryption to Russia. Also, in the import licensing process itself, Russia does not observe the time-limited nature of the process (no more than 90 days).

Audiovisual Services

Russia applied new restrictions on foreign providers of audiovisual or online video on demand services (the “VOD Law”) effective July 1, 2017. The VOD Law applies to video on demand services that: (1) distribute audiovisual works via the Internet; (2) require customers to pay a fee or view ads in order to access audiovisual content targeted to Russian end-users; and (3) are accessed by more than 100,000 users located in Russia within a 24-hour period. The VOD Law also introduces foreign ownership restrictions on VOD services in Russia. Under the law, non-Russian entities are not allowed to own, manage or control more than 20% of the equity share in a regulated VOD service, unless (i) fewer than 50% of the end users of the service globally are Russian, and (ii) the service obtains a discretionary exemption from a Russian government commission established under the law. The VOD Law states that such exemptions would be granted based on the commission’s determination as to whether the given VOD service “will facilitate the development of the audiovisual services market in [Russia].”

National Treatment, Data Localization, and Encryption

On national treatment, data localization, several laws and regulations hamper American firms. For example:

- Federal Law 242-FZ regarding data localization and national treatment (relevant to GATS)
 - This law affects the normal business operations of all industries in Russia by imposing inefficient operational rules, particularly the requirement in Article

⁶ Please see pgs 13-15 of USTR’s December 2016 Report on the Implementation and Enforcement of Russia’s WTO Commitments.

18 to store personal data concerning Russian citizens in data centers located in Russia. It appears that Roskomnadzor, the federal regulator responsible for implementing this law, has accepted mirroring of data—keeping copies of data within Russia rather than the more extensive requirements of processing it in-country—to be compliant with the law. However, the vague language in the law could allow for blocking cross-border data flows in future, lending to an uncertain business environment in Russia. Furthermore, even mirroring of data can be very costly to businesses, particularly Small and Medium Size Enterprises (SME), increasing barriers to entry for the Russian market. In addition, the federal media regulator has been empowered to block local access to the websites of non-compliant companies. Given the law’s expansive scope, foreign companies without a legal presence in Russia, which might pay only a cursory attention to the Russian market, can be labelled data protection violators and blocked.

- The “Yarovaya Amendments,” 374-FZ and 375-FZ regarding data localization and encryption key surrender (relevant to GATS)
 - These amendments require “organizers of information distribution on the internet” to store the content of communications that they enable within Russia for 6 months. In addition, telecommunications companies have to store metadata of all communications within Russia for three years, whereas “organizers,” referring to internet providers, must store metadata for one year. If any of this data is encrypted, then companies must also provide encryption keys to the implementing agency, the Federal Security Service (FSB). These requirements will be costly for American companies operating in Russia and expose them to serious security risks.
- Federal Law 149-FZ “On Information, Information Technologies and the Protection of Information” regarding data localization (relevant to GATS)
 - Article 10.1 “The Duties of an Organizer of Dissemination of Information on the Internet,” requires “organizers of the distribution of information on the internet” to retain all metadata within Russia for six months and provide access to that data to security agencies. This applies to an incredibly wide range of companies that facilitate the receiving, transmitting, delivery, and or processing of electronic messages—including any email and internet based messaging services. Second, Article 10.2, the “Blogger’s Law,” requires bloggers with more than 3,000 daily users to register with Roskomnadzor and places restrictions on what they can and cannot post to their website. This law not only has significant free speech and human right implications, but it also creates costly barriers for U.S. companies who wish to do business in Russia.
- The Kremlin’s 16-point Plan regarding import substitution, national treatment, encryption (relevant to GATT and GATS)
 - In January 2016, the Kremlin issued a 16-point plan for improving the competitiveness and security of the Russian ICT sector through import-substitution, increased surveillance capabilities, and increased education on

issues related to cyber. The plan is focused on import substitution and has generally been talked about in the context of “internet sovereignty.” Two new executive decrees associated with this plan call for ministries to create plans that: prioritize Russian-produced software and equipment for government purchases, create additional obligations for how the personal information of Russian citizens is processed, regulate the encryption of data, reorganize federal cyber-threat monitoring, and establish a Center of Import Substitution for Information and Communication Technologies.

Conclusion

Though Russia has made some progress, much work remains. CSI urges USTR to continue pressing the Russian government to address implantation on encryption, audiovisual services, national treatment, and data localization to ensure that Russia is indeed compliant with its WTO obligations. Such compliance is a key step in creating a more balanced trade relationship between our two countries.