



TELECOMMUNICATIONS
INDUSTRY ASSOCIATION

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Douglas M. Bell
Chair, Trade Policy Staff Committee
1724 F Street NW
Washington, DC 20508

RE: Russia's WTO Implementation – Implementation of Its WTO Obligations, Docket Number USTR-2014-0016

Dear Mr. Bell:

The Telecommunications Industry Association (TIA) appreciates the opportunity to submit comments regarding the Russian Federation's implementation of its WTO obligations.

TIA represents the global information and communications technology (ICT) manufacturer, supplier, and vendor industry through standards development, policy initiatives, business opportunities, market intelligence, and networking events. With support from over 300 participating companies, TIA enhances the business environment for companies involved in telecommunications, broadband, mobile wireless, information technology, networks, cable, satellite, unified communications, emergency communications, and the greening of technology. TIA is accredited by the American National Standards Institute (ANSI) as a standards development organization.

Overview

Russia's entry into the rules based trading system will provide immediate and long term mutual economic benefits to the United States and Russia by contributing to certainty and predictability in the commercial environment. In particular, we would note the importance of Russia as a growing market for the U.S. telecommunications industry. For 2013, TIA estimates Russia's telecommunications market for equipment and associated services totaled \$99.8 billion

USD, which makes it the fifth largest market when compared to European countries.¹ As a major exporter of ICT products and consumer of these products, Russia's accession to the WTO will contribute to its fuller integration into the global ICT supply chain for products and services.

Cost efficient access to the most advanced ICT products through global supply chains will be beneficial to Russia as it works further integrate itself into the global digital economy and to meet its national goals of enhancing connectivity for its citizens and further developing its ICT industry by the year 2018². Important to meeting these national goals will be improvements to the commercial environment that eliminate regulations that unnecessarily impede trade and contribute uncertainty to the investment environment. We appreciate the opportunity to highlight several areas important to the telecommunication sector where we believe Russia can make progress towards fulfilling its WTO commitments.

Information Technology Agreement

The WTO Information Technology Agreement (ITA) is one of the most commercially significant agreements for the ICT industry. The ITA continues to play a key role in the global ICT ecosystem by lowering the costs of ICT products, encouraging the development of ICT industries, and enhancing the diffusion of ICT products to consumers and businesses. For these reasons, we were pleased with the commitment by the Russian Federation in the "Report of the Working Party on the Accession of the Russian Federation to the World Trade Organization"³ (the Working Party Accession Report) to "*submit its Information Technology Agreement (ITA) Schedule to the ITA Committee for verification, in accordance with ITA procedures, in order to enable the Russian Federation to join the ITA when it became a WTO Member*".

We understand that Russia has still not taken the necessary final action to incorporate its ITA commitments into its bound rates and would strongly urge Russia to make the necessary changes to its bound rates so that it can join the ITA as expeditiously as possible.

¹ TIA, "TIA's 2014-2017 ICT Market Review and Forecast", 2014, <http://www.tiaonline.org/resources/market-forecast>

² See "[Goals of the Ministry of Telecom and Mass Communications of the Russian Federation 2012-2018](#)", Accessed on 22 September 2014

³ World Trade Organization, "[Report of the Working Party on the Accession of the Russian Federation to the World Trade Organization](#)", Accessed on 22 September 2014

Import Licensing for Products with Encryption Technology

With regard to import licensing for products containing encryption technology in Russia, the Russian Federation committed in the Working Party Accession Report to apply “*on a non-discriminatory basis and in conformity with the relevant provisions of the WTO Agreement, in particular, Articles I and III of the GATT 1994, and that procedures related to the notification, evaluation, approval, and licensing of goods containing encryption technology, would be transparent and predictable and would not impose unreasonable or burdensome requirements on such goods*”. Currently, Russia has in place a complex and non-transparent licensing regime that unnecessarily impedes the importation of goods that incorporate encryption technology. In addition, the use of these products is further encumbered through the use of activity licenses once imported into Russia.

As a practical matter, a wide variety of commercially available products incorporate encryption technologies for the benefit of the user – for both consumers and businesses. For ICT devices and networks, the ability to ensure the security of information is a priority, and encryption is an important tool that contributes to information security. Practical examples on why this type of functionality is important include the need for businesses to secure data for competitive reasons and for consumers to ensure the privacy of their personal information.

The current system of import licensing for products containing encryption technology poses unnecessary barriers to their importation through inconsistent application of the licensing requirements and an overly broad scope of product coverage. In addition, we understand that in some cases, import licensing requirements for commercial products are issued on a per shipment basis rather than for a “product family”, which further burdens importers of these products through added administrative processes and costs. The implementation of activity licenses further impedes commercial activity for imported products with encryption technology by requiring separate licenses for the resale and servicing of these products after their importation.

To meet its WTO accession commitments, we recommend that Russia ensure that all exempted products as defined under the Notes to Category 5, Part 2 of the Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies

are exempted from import and activity licensing requirements⁴. To the extent that a product does require an import license, we recommend that blanket licenses and one-time notifications be implemented to streamline the import licensing system. To enhance transparency, we recommend that explanations on why a license is denied or revoked be provided in a timely manner to the license applicant and the establishment of an appeals process, should a license be denied or revoked. Finally, we would urge regulatory consistency among the Customs Union Members (Russia, Belarus, and Kazakhstan).

Copyright Levy System

With regard to the management of copyright levies in Russia, the Russian Federation committed in the Working Party Accession Report to “*adopt necessary measures to monitor and hold accountable organizations engaged in collective management of rights to ensure that right-holders received remuneration that was due to them*”. While we respect the need to compensate copyright holders for their works, copyright levies tend to be an inexact method of distributing remuneration for a variety of reasons, which affect ICT manufacturers and importers to the Russian market. Examples of the challenges encountered include inconsistent application of the copyright levy, difficulty in determining an equitable distribution of remuneration to rights holders, and in some cases, issues regarding the transparency of collection agencies.

In the case of Russia, TIA continues to be concerned with the administration of the existing copyright levy system administered by the Russian Union of Right-Holders (RUR), which is the accredited organization for the collection and distribution of remuneration to rights holders in Russia. We were encouraged last year by the announced review of Russia’s current copyright levy system by the Ministry of Economic Development (MED) in its consultation request. However, we understand that the consultations and review have not yet been completed, and would urge the MED to complete the review and consultations as expeditiously as possible.

A transparent process is essential to the effectiveness of a copyright levy system; in particular, in the areas of how the scope⁵ and the amount of a copyright levy are determined as

⁴ [Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies](#), Category 5 – Part 2, Accessed on 28 August 2013

⁵ The current list of levied products, accredited by the Decree October 14, 2010, No. 829, contains products which do not have any recording function (e.g. DVD players) and products which are not used for reproduction of

well as the process of distributing remuneration to rights holders, which are lacking in the current system administered by the RUR. This lack of transparency increases the difficulty to meet the commitments by Russia to monitor and hold accountable organizations (*i.e.* the RUR) engaged in collective management of rights. We would also note our concern that the RUR, as the accredited collection organization, does not appear to have the legal authority to effectively administer the copyright levy system.

In addition, we would note that the current copyright levy system allows for the unequal treatment of importers of products as compared to domestic manufacturers. The current system requires the Russian Customs Authority to report to the Ministry of Culture all imported products that fall under the copyright levy system, while domestic manufacturers are allowed to self-declare their products, resulting in a higher burden for imported goods. The current system also differentiates the scope of product coverage for imported products as compared to domestic products, which exacerbates the concerns of companies with regard to entering into agreements with the RUR as the accredited collection society. We understand that in 2014 the Ministry of Culture has commenced inspection of alleged non-payment for some businesses, which appears to focus on foreign companies doing business in Russia. Given MED's consultations and review of the current copyright levy system, TIA requests a halt to these inspections by the Ministry of Culture and a withdrawal of the Ministry of Culture's orders as a result of the inspections until the MED has completed its process and issued recommendations.

We urge Russia to reexamine the practicality of copyright levies as a way to distribute remuneration to rights holders for alternative approaches that provide a more transparent and effective means of remuneration, which could include licensing directly from rights holders to users by including the remuneration in retail prices, with or without digital rights management, or direct government subsidies. In this digital network age, Russia's copyright levy system is outdated. Since there are various players in the content related industry (*e.g.* internet service providers, content aggregators, content distributors, distribution platforms, copying device manufacturers/importers, *etc.*), we believe it would be essential to create a level playing field to bring more growth and success to Russia's burgeoning digital economy.

copyrighted works for private purpose (e.g. digital still cameras). These are clearly inconsistent with the article 1245 of the Civil Code of the Russian Federation (CC RF).

With respect to Russia's commitments related to collective management of rights and distribution of remuneration, we would urge the MED to complete its review of the current copyright levy system to address the shared concerns that we have provided, with the goal of developing a transparent system that treats all products equally. Finally, we would also urge the Russian Federation to immediately dismiss criminal proceedings against importers which have not concluded agreements with the RUR and, as a result, have not yet started to pay copyright levies because such proceedings have no legal grounds.⁶

Government Procurement Agreement

We congratulate the Russian Federation on becoming the 27th observer to the WTO Committee on Government Procurement earlier this year. We note that Russia has committed to accede to the Government Procurement Agreement (GPA) within four years of its accession to the WTO and would urge Russia to move forward with its accession to the GPA as expeditiously as possible.

Localization Requirements for Personal Data

While it is unclear to what extent Russia's WTO commitments relate to Federal Law No. 242-FZ⁷ that would establish localization requirements for the personal data of Russian citizens, we wish to note our concerns with its implementation. In addition to concerns with the general policy of data localization, we are concerned with the broad scope and vague definition of "personal data" in Federal Law No. 242-FZ. We understand that there is consideration of changing the original implementation date of September 2016 to January 2015, which will likely create implementation problems for industry.

⁶ According to Article 1245 of CC RF, the legal nature of copyright levy is categorized as a civil matter. According to the Decree October 14, 2010, No. 829, payment of copyright levy shall be made in pursuance of a contract concluded between the importer of the levied products and the accredited organization (RUR). Article 421 of CC RF establishes freedom of contract principle. No compulsion to conclude a contract shall be allowed, excluding any cases when the obligation to conclude the contract is fixed by CC RF, any law or a voluntary obligation. Meanwhile, the legislation fixes no importer's obligation to conclude contracts with the accredited organization. So, objectively importers which have not concluded with RUR are innocent under the current system. The same thing is described by the MED in its consultation request.

⁷ Federal Law No. 242-FZ "On Amendments to Certain Legislative Acts of the Russian Federation for Clarification of the Procedure of Personal Data Processing in Information and Telecommunication Networks" was adopted on 21 July 2014.

The free flow of information across borders is critical for a broad range of industries by facilitating access to international markets, lowering operational costs by leveraging global computing resources like cloud-based services, and providing a platform for a variety of new and innovative business models. We would urge the Russian government to abstain from policies that unnecessarily impede the cross-border flow of information, which will hinder Russia's further integration into the global digital economy.

Conclusion

We thank you again for the opportunity to provide comments regarding the Russian Federation's implementation of its WTO obligations. If you have any questions, please contact Eric Holloway, Director for International & Government Affairs, at eholloway@tiaonline.org.

Best regards,

A handwritten signature in black ink, appearing to read "Daboffy".

Danielle Coffey
Vice President, Government Affairs