



**Testimony of Peter Allgeier
President
Coalition of Services Industries (CSI)**

**Hearing On
“International Data Flows:
Promoting Digital Trade in the 21st Century”**

**House Committee on the Judiciary
Subcommittee on Courts, Intellectual Property, and the Internet**

**November 3, 2015
2141 Rayburn House Office Building
Washington DC**

***Testimony of Peter Allgeier
President, Coalition of Services Industries (CSI)***

***Before the House Committee on the Judiciary
Subcommittee on Courts, Intellectual Property and the Internet***

***Hearing on
“International Data Flows: Promoting Digital Trade in the 21st Century”
November 3, 2015***

Good Afternoon, Chairman Issa, Ranking Member Conyers and members of the Subcommittee. My name is Peter Allgeier. I am the President of the Coalition of Services Industries (CSI).

The Coalition of Services Industries (CSI) is the leading industry association devoted exclusively to promoting the international objectives of the U.S. service sector. Our members include the vast array of U.S. companies that provide services domestically and internationally, such as banking, express delivery and logistics, energy, insurance, media and entertainment, retail and wholesale services, technology, telecommunications, and other services sectors. We work globally to obtain solutions to significant international services issues, such as interference in cross-border data flows, unfair competition from state-owned enterprises, domestic content and localization requirements, and lack of transparency and due process in regulatory regimes.

Two Revolutions

The global economy is experiencing two inextricably linked revolutions: the Digital Revolution and the Services Revolution. The United States is in the best position to define the courses of those revolutions and to benefit from them---if we pursue the right policies, especially international trade policies.

The United States is at the forefront of both movements. Our innovations in technology and in business models set the direction and pace of these revolutions. As a result, we are the most competitive supplier of international services in the world. Last year we exported services worth more than \$700 billion, resulting in a services surplus of nearly a quarter trillion dollars.

Services Revolution

The Services Revolution is evident from the fact that services by far are the largest source of jobs, output, and job growth. More important is that services are the enablers of all other sectors of the economy, including manufacturing, agriculture and energy. These sectors depend on banking, insurance, computer-related services, logistics, engineering, communications, etc. to achieve their production and income goals. All of these services and other sectors also depend on digital communication within their businesses, with their customers, and with their suppliers. Services and digital communications are critical elements in the operation of global value chains, which are the principal phenomenon in international trade today.

Digital Revolution

At the center of the services revolution is a second revolution: “The Digital Revolution”, of which the Internet is emblematic. This has enabled services to be delivered digitally across borders to a degree that was unimaginable twenty years ago. Keep in mind that Amazon.com was only founded in 1994, and Facebook was founded ten years later.

None of this was contemplated twenty years ago when people negotiated the GATS (General Agreement on Trade in Services), the multilateral rules for trade in services that was part of the Uruguay Round in the World Trade Organization. The world has changed radically in the intervening years as a result of technological advances, global data flows, global value chains, innovative business practices, and the widespread use of the Internet by everyone.

The international rules and provisions governing trade in services and digital trade have not kept up with these developments. They urgently need to be updated and brought into line with the realities of today’s digitally-connected world.

Internet is the New Great Silk Road

The Internet is the Great Silk Road of the 21st century. Just as the Great Silk Road provided the transmission route for trade among Asia, Europe and North Africa during the 6th thru 14th centuries, the Internet today plays that role for the entire globe.

In this digital age, companies in international markets constantly need to move data digitally across the globe for their own internal operations and in serving their customers.

While this may be obvious in the case of insurance firms processing claims or accounting firms verifying and reviewing audits, it is actually essential for any international business. For example, think of express delivery companies tracking packages across the globe, or an airline company remotely monitoring its engines while the planes are in flight. Retailers have to manage their worldwide procurement and inventory. Health professionals seek second opinions from specialists across the globe.

Many countries that do not share our entrepreneurial and technological aptitudes seek to gain advantage by imposing limits on our businesses' ability to conduct their operations in the most efficient ways possible. Governments increasingly and routinely impose legal restrictions on the ability of a firm to manage and move its own data across borders, or they impose requirements to store data on local servers.

A common reaction by such countries is for the government to require that foreign firms establish facilities for storing and processing their data in the jurisdiction that they are serving. This tendency is particularly pronounced in regulated sectors such as banking, insurance, and telecommunications. Imposing such server localization requirements impede both efficiency and security in handling data. They are the current millennium's version of the Norse King Canute, trying to turn back "the cloud", as he claimed the power to turn back the tide.

Local storage requirements require data which is generated in a country to remain stored on domestic servers. Companies operating in a country with local storage requirements cannot remain competitive in the global market. Local storage requirements increase business costs and induce delays, which make companies' pricing less competitive and more costly for consumers.

Moreover, businesses typically backup data outside the country in which it is collected to ensure that it remains safe and secure in the event of natural disasters, power outages, and other situations that take a data center offline. Preventing data from crossing borders will eliminate the ability to mitigate these risks.

Examples of local data storage and processing requirements abound. For example, Greece, China, India, Russia, Indonesia, and Malaysia all require data generated within the country be stored on servers within the country.

Localization Means No Clouds

Localization requirements essentially make cloud computing services impossible, as it is a portal to outsource both software and hardware in order to increase efficiency, reduce costs, and provide better security of data. In addition, requiring data centers to remain in the country of origin severely limits businesses, both domestic and international, from serving foreign markets.

Digital Trade Must be Central to Negotiations

To be a truly 21st Century trade agreement, negotiations must open borders to digital trade in the same manner in which they open borders to trade in goods and services.

New negotiations should set the standard for digital trade by:

- Ensuring parties can transfer, access, process, and store data across borders;
- Prohibiting parties from requiring the establishment or use of local servers;
- Ensuring non-discriminatory treatment of digital products and services from other parties; and
- Allowing parties to regulate cross-border data flows for legitimate policy reasons only within accepted standards under the GATS Article XIV.

It is essential that our government oppose attempts in all sectors to impose localization requirements on our businesses. The opportunity to do so lies in the various trade negotiations occurring now---the Trans Pacific Partnership agreement (TPP), Transatlantic Trade and Investment Partnership (TTIP), the Trade in Services Agreement (TiSA) and in the World Trade Organization. President Obama has stated clearly that a motivation for the TPP and other negotiations is for the U.S. to exercise the lead in setting the rules for the 21st century. In all of these negotiations, therefore, we should insist on rules that prohibit such localization requirements on any of our businesses.

Assessing Current Trade Agreements and Negotiations

It appears that the TPP negotiations have made important progress in advancing the objective of freedom for cross border data flows and prohibitions on

localization requirements. These provisions are horizontal provisions, so they apply to all economic actors unless one of the parties registers a non-conforming measure (NCM), i.e., a specific legal exception to that obligation. At this point we are not aware of such an NCM.

However, the TPP does include one very disturbing exception to the prohibition of localization requirements. Financial services, which include both banking and insurance, is excluded from the localization prohibition that covers every other business. But most disturbing is that this exception has occurred at the insistence of the United States. This misguided position gives our trading partners the perfect political argument to impose such requirements on our businesses. Yet in the world of cloud computing, the physical location of the data storage and processing makes no difference in the timely access to data by regulators or law enforcement officials. This position is particularly misplaced in that these are among the most highly regulated businesses in our economy, so any delays in providing data to financial regulatory agencies would jeopardize a recalcitrant company's very right to operate.

If we want to maintain our competitiveness and leadership in the midst of the Services and Digital Revolutions, we need to stand firmly against localization requirements in all of our trade relations. The U.S. services industry is eager to work with the Congress and the Administration to ensure that the implementation of TPP and the negotiation of other agreements prevent the various forms of localization requirements.

Beyond the TPP, the U.S. is negotiating the plurilateral Trade in Services Agreement (TiSA) in Geneva and the Transatlantic Trade and Investment Partnership (TTIP) with the European Union. It is essential that we not repeat the mistake in these negotiations that has occurred in the TPP with respect to localization. I hope that this Subcommittee will register its strong opposition to excluding any sector of the economy from the provisions on cross border data flows and the prohibition of localization requirements. The Reports of both the House Ways and Means Committee and the Senate Finance Committee on Trade Promotion Authority state explicitly that financial services should not be excluded from these provisions.

In addition to the challenges of ensuring open digital trade in these trade negotiations, we face a serious threat to trans Atlantic digital and services trade as a result of the recent ruling by the European Court of Justice that the Safe Harbor

Agreement between the U.S. and the European Union is invalid on the grounds of being inconsistent with European data privacy law. The Safe Harbor arrangement is the mechanism that sets the standard under which thousands of firms have been able to transfer data back and forth between Europe and the United States for fifteen years in compliance with European privacy requirements. The European Data Protection Authorities have provided a 90 day moratorium on enforcement of the ruling. It is essential that U.S. and European Commission authorities agree on a legally valid and commercially workable alternative to the existing Safe Harbor. Our member companies are eager to work with the Administration to find a solution that preserves our companies' ability to move data across the Atlantic.

Conclusion:

Our competitiveness and prosperity depend upon embracing the Services and Digital Revolutions in order to create the conditions in which all businesses can benefit from these developments.

CSI and its member companies and their employees congratulate this Subcommittee for its close attention to promoting digital trade and American leadership in its further advancement.

Thank you for the opportunity to appear before the Subcommittee today. I look forward to responding to any questions that Members may have.