

September 17, 2014

Hon. Lee Terry

Opening Statement – “Cross Border Data Flows: Could Foreign Protectionism Hurt U.S. Jobs?”

Good afternoon, and welcome to our hearing entitled, “Cross Border Data Flows: Could Foreign Protectionism Hurt U.S. Jobs?”

I want to mention before we get started, that eBay is here to testify today, and I am especially thankful for that because eBay owns PayPal, which has an office of over 4,000 employees in the Omaha area.

We are here today to discuss an emerging trend among many countries around the globe that could potentially have a negative impact on our economy.

First of all, what are data flows and why are they important?

The flow of data across borders simply refers to the ability to send an e-mail, a file transfer, video, or other electronic data from one country to another.

And because very little business is done without some form of electronic data, “data flows” are a big deal for manufacturing, energy, agribusinesses, health care, financial institutions, retailers, advertisers, insurers, and tech companies.

But several countries have proposed or enacted restrictions on cross-border data flows or have required companies to locate data centers within their own borders.

For example, Russia has made a law restricting data flows. Brazil proposed a “Civil Internet Framework” that would have authorized the government to require data to be stored in Brazil.

The governments of Indonesia, Singapore and India have also issued proposals that would either subject cloud computing to additional regulation or require data to remain stored inside the respective

countries. Sadly, these are but a few of the countries where this is an issue.

Proposals to require local data centers have been aptly named “forced localization,” and come with varying rationales.

The European Commission, for example, has argued that localization of data could be a way to promote domestic industry and create jobs.

But as we’ll hear from some of the witnesses today, it’s doubtful that such policies would achieve these intended goals. More likely, they would take away the benefits that digital trade brings to that country and to U.S. companies.

Other proponents of data flow restrictions argue that the revelations concerning U.S. intelligence surveillance justify balkanizing the flow of data.

The United States should send a clear message that forced localization and other restrictions on data flows are commercial regulations that affect businesses, and recent headlines cannot be used to force concessions from U.S. companies that cost us jobs here in the U.S.

Moreover, it is simply not accurate to say that there are not privacy protections in the U.S.

Over 300 federal and state privacy laws on the books in the U.S. prove otherwise. FTC enforcement proves otherwise. And our marketplace shows otherwise.

We have more privacy and risk officers in the U.S. than anywhere else in the world. Companies are reacting to the market and giving consumers more control – like Facebook’s recent policy announcement that permits users to remove themselves from categories of advertising.

And there are few nations with a better record for the rule of law. Intelligence surveillance is being tackled as it should, with input from Congress and our national security agencies.

When it comes to trade, the U.S. cannot allow protectionism—under the pretext of privacy—to threaten U.S. jobs and U.S. competitiveness. Our trade negotiators with USTR and the International Trade Administration have stressed to their counterparts overseas that the negotiations must focus on the commercial flow of data which is of great value to everyone involved.

There are many pieces that touch on data flows: the Trans-Pacific Partnership (TPP), the Trade in Services Agreement (TiSA), the Transatlantic Trade and Investment Partnership (TTIP), and the Safe Harbor Framework. We cannot falter in any of these.

I am hopeful that Congress can send a unified message to current and future trading partners that trade barriers will not be tolerated, and that we will protect our economic interest in data flows.

I thank the witnesses for being here today to shed more light on this issue and for giving our subcommittee the opportunity to spearhead Congress' activity in this area.