

**TESTIMONY OF**

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**BEFORE THE**

**United States House of Representatives**

**Committee on Energy and Commerce**

**Subcommittee on Commerce, Manufacturing, and Trade**

**Cross Border Data Flows: Could Foreign Protectionism Hurt U.S. Jobs**

**PRESENTED**

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**1:30 PM**

Chairman Terry, Ranking Member Schakowsky, and members of the Subcommittee, I would like to thank you all for giving eBay Inc. the opportunity to testify today on the very important topic of the role of cross border data flows in promoting global commerce, economic growth and opportunity. Our company is a truly global business. 60% of our Marketplaces business is international. Our platforms enable hundreds of thousands of U.S. entrepreneurs, small businesses, as well as mid-size and large businesses, to reach customers around the world. We empower over 148 million buyers globally on our marketplaces, as well as 152 million PayPal account holders, with users in 203 countries. This is a new kind of a global trade that is truly beneficial for Main Street businesses across America, and underpinning this new kind trade is uninhibited cross border data flows and the Internet.

eBay Inc. serves as a platform for the growth and development of technology-enabled small business exporters. Founded in 1995, eBay Inc. connects millions of buyers and sellers globally on a daily basis through eBay, one of the world's largest online marketplaces; PayPal, which enables individuals and businesses to securely, easily, and quickly send and receive online payments around the world; and eBay Enterprise, which enables omni-channel commerce, multichannel retailing and digital marketing for global enterprises. eBay Inc. is in the business of empowering businesses of all sizes to engage in the global marketplace through technology tools and platforms to directly engage with customers wherever they are.

eBay Inc. is an Internet and mobile technology-based business, but in the 21<sup>st</sup> Century global economy, every business that operates internationally in any significant scale depends on access to, and transmission of, digital goods and services, including logistics, online services, distribution networks, finance and professional services. The Internet accounts for 21% of GDP growth in advanced economies and facilitates \$8 trillion each year in e-commerce. Led by our global leaders in the Internet industry,

the U.S. captures more than 30% of global Internet revenues and more than 40% of net income. But data moving across borders is not just an Internet industry phenomena, it impacts every business, including manufacturers, agricultural businesses, and financial services providers. McKinsey reports that 75% of the impact of the Internet is being realized by traditional industry.<sup>i</sup> The US International Trade Commission, in its recently released report on digital trade, estimates that digital trade has already boosted U.S. gross domestic product by 3.4 to 4.8%, through enhanced productivity and reduced international trade costs, and the effect on U.S. total employment ranged from no change to an increase of 2.4 million full-time equivalents.<sup>ii</sup>

The issue of cross border data flows impacts an even wider swath of American businesses, because it is not just important to big, global businesses that have operations in multiple countries; the household names of the trade debates that everyone knows. Cross border data and the Internet lie at the heart of a new trade phenomenon driven by small and micro-businesses that are engaging in trade. And, these small businesses are at risk of harm if open cross-border data flows are restricted or shut down.

My team at eBay Inc. has spent the last four years conducting research on the growth of global trade by technology-enabled small businesses.<sup>iii</sup> The findings from our research are quite extraordinary. In the US, only about 4% of traditional businesses export. However, our research demonstrates that over 95% of the US-based small businesses using our eBay Marketplaces platform engage in exporting.<sup>iv</sup> In addition, traditional US businesses that export reach on average 2-3 different markets per year, while US-based small and mid-size business exporters using eBay reach over 30 markets per year.

Our data points to technology-enabled businesses being healthier than their offline counterparts. Only 45% of traditional US businesses survive their first four years; nearly 65% of the new US-based

businesses that use our platform, survive their first four years. In short, technology-enabled businesses export at a higher rate to more countries and with a higher survival rate than their offline counterparts. Finally, technology-enabled trade is not only more robust than traditional trade, it is also more inclusive. The largest 5% of businesses in the US account for over 90% of the total exports. The largest 5% of US technology-enabled businesses on the eBay Marketplace account for less than 20% of the total export market share. Businesses of all sizes are competing and winning online; their growth is coming from overseas buyers.

Alongside these impressive statistics there are many excellent examples of small business success stories including:

- Tracey Johnson from Valley, Nebraska, sells jewelry and hair care products to consumers all over the world through eBay and PayPal. Tracey sells to dozens of countries worldwide, including small countries like Malta. He said that his ability to export across the globe has increased his sales.
  
- Esther Ben Porat lives and works in Lincolnwood, Illinois. Her business focuses on commercialized fabrics. She sells her products around the world using the eBay platform and her own website. Esther's business has grown around 10-15% annually. She has been able to hire 6 employees and has annual revenues of about \$3 million.
  
- Finally, Jamie Wankum lives in North Sioux City, South Dakota and before starting his business he managed international sales for Gateway Computers. Jamie left Gateway after 15 years to

start his own business focused on the electronics sector. He has grown his business from a local shop to a global enterprise with around \$3 million in annual revenue.

The kind of cross-border trade being done by these, and hundreds of thousands of other “micro-multinationals” spread across America, is growing rapidly. A research report from Progressive Economy finds that low-value or “micro” US exports increased by 103% between 2005 and 2010, more than twice the increase for all exports.<sup>v</sup> Moreover, the 2013 World Economic Forum (WEF) Enabling Trade report found that the use of technology platforms can reduce the burdens small businesses face when selling overseas, increasing cross-border small business sales by 60-80%.<sup>vi</sup>

This new more inclusive version of globalization depends upon four key components that make up what we refer to as the Global Empowerment Network: 1) the Internet; 2) the services that exist on top of the Internet; 3) the small shipments logistics network that carries the physical products being traded by technology-enabled small businesses; and 4) the educational infrastructure for small businesses to learn about online opportunities and be educated on how to leverage online tools. Restrictions on cross border data flows threaten to diminish the benefits of all of these factors.

Some governments around the world have responded to concerns about trust in the Internet ecosystem, usually in the form of perceived privacy or security threats, by proposing laws that would require Internet companies to locate storage infrastructure (generally in the form of data centers) in-country. Some governments have even gone so far as to require organizations to process all data locally. These restrictions would greatly limit the many benefits of the Internet that have been laid out above. Imposing data localization requirements on Internet-enabled businesses is problematic from both an economic and security perspective.

Localization requirements undermine the economic benefits of the Internet, particularly for small enterprises and consumers. Small enterprises are generally less able to afford the additional costs that data localization imposes and would be less able to engage in global trade using the Internet. Large businesses will be forced to make decisions based on regulations rather than price, resulting in inefficiencies that give rise to higher prices which are passed on to local small businesses and local end consumers. In this particularly sensitive time in which regional economies are still reeling from the recession, these types of non-tariff barriers to trade only serve to further slow economic recovery.

Professor Anupam Chander at UC-Davis Law School estimates that building a data center in Brazil costs \$60.9 million on average, while building one in Chile and the United States costs \$51.2 million and \$43 million, respectively. Moreover, Professor Chander describes estimates the costs of data center operation at \$950,000 in Brazil, \$710,000 in Chile, and \$510,000 in the United States each month.<sup>vii</sup> The European Centre for International Policy Economy, an independent think tank, estimates that data localization legislation in Brazil, China, the EU, India, Indonesia, Korea, and Vietnam could impact GDP from anywhere between -.1% to -1.7% depending on the market.<sup>viii</sup> So really, restrictions on cross border data flows only serve to harm the local economy.

Moreover, security is actually diminished as a result of data localization policies. Data management and security is paramount to Internet businesses, and the selection of where to build data centers is heavily focused on security. Security networks are only as vulnerable as their weakest link. Proliferating data centers will reduce the ability of businesses to maintain

security, putting the integrity of the systems in jeopardy, and creating targets for security threats. Robust security and privacy systems have been put in place by major Internet companies. eBay Inc. for example processes over 70,000 requests from law enforcement each year, and has a strict policy of responding to these requests within 20 days. If governments are concerned about resolving security concerns associated with the Internet they should continue to work with intermediaries like eBay and should improve the Mutual Legal Assistance Treaty (MLAT) process, which provides a system of review for law enforcement requests and prevents abuse.

Localization requirements will not achieve the shared goal of increasing security and trust in the Internet. The Internet's architecture is built upon a multi-stakeholder governance model, and that same model can be used to setup a positive framework for privacy and security on the Internet. Governments, industry, users, and technical experts can work together to reconcile regulatory concerns with the practicalities of data management. eBay Inc. is fully committed to working with governments around the world to ensure trust in the Internet ecosystem.

Another point worth noting is that localization barriers are actually proliferating most among some of the larger and more developed countries. G20 countries are responsible for 65 percent of the protectionist measures, and at the same time, they are also the countries which are the worst affected by protectionism.

Finally, it is key to realize that our discussion today about cross border data flows is not merely about business or policy; it is about people. Globalization and trade are fundamental realities of the world we live in. Unfortunately, a significant number of people have not yet been able to directly take part in the global marketplace because they own or work in businesses that are too small. Global trade has been

the purview of the giant multinational companies that could achieve global scale. But now the Internet, and the global data-based businesses and platforms that underpin 21<sup>st</sup> Century commerce, are enabling small business and consumers, for the first time, to truly enjoy the benefits of the global market. We sit at the dawn of a new era of globalization that is far more inclusive than the one that preceded it. A future where millions of small businesses from across the US can contribute to their local economy, but also increase revenue through access to customers around the world. This is good economics because it means more growth and wealth, and it is good for society because it means a more inclusive future. We need to make the right policy choices to achieve this future.

Mr. Chairman, ranking member Schakowsky, members of the subcommittee, we respectfully submit this testimony and pledge to work with you to ensure that US small businesses and consumers can see the true benefits from the Internet.

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<sup>i</sup> McKinsey Global Institute, Internet Matters: The Net's Sweeping Impact on Growth, Jobs, and Prosperity (May 2011) available at: [http://www.mckinsey.com/insights/high\\_tech\\_telecoms\\_internet/internet\\_matters](http://www.mckinsey.com/insights/high_tech_telecoms_internet/internet_matters)

<sup>ii</sup> U.S. International Trade Commission, Digital Trade in the U.S. and Global Economies, Part 2 available at: <http://www.usitc.gov/publications/332/pub4485.pdf>

<sup>iii</sup> The Full range of research can be found here: <http://www.ebaymainstreet.com/commerce-3>

<sup>iv</sup> Enabling Traders to Enter and Grow on the Global Stage available here: [http://www.ebaymainstreet.com/sites/default/files/EBAY\\_US-Marketplace\\_FINAL.pdf](http://www.ebaymainstreet.com/sites/default/files/EBAY_US-Marketplace_FINAL.pdf)

<sup>v</sup> Gresser, Edward. "Lines of Light: Data Flows as a Trade Policy Concept." (2012).

<sup>vi</sup> World Economic Forum, Enabling Trade (2013)

<sup>vii</sup> Anupam Chander, Breaking the Web: Data Localization vs. the Global Internet forthcoming Emory Law Journal (April 2014) available at: [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2407858](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2407858)

<sup>viii</sup> Matthias Bauer, Hosuk Lee-Makiyama, Erik van der Marel, Bert Vershelde, The Costs of Data Localization: Friendly Fire on Economic Recovery (March 2014) available at: [http://www.ecipe.org/media/publication\\_pdfs/OCC32014\\_\\_1.pdf](http://www.ecipe.org/media/publication_pdfs/OCC32014__1.pdf)