



October 10, 2017

The Honorable Bob Latta
Chairman

The Honorable Jan Schakowsky
Ranking Member

Subcommittee on Digital Commerce and Consumer Protection
House Energy & Commerce Committee

Subject: Hearing on 21st Century Trade Barriers on October 12

Dear Chairman Latta and Ranking Member Schakowsky,

On behalf of the Insights Association,¹ the leading nonprofit trade association for the marketing research and analytics industry, thank you for holding this Thursday's hearing of the Digital Commerce and Consumer Protection Subcommittee on "21st Century Trade Barriers" and the vital issue of international digital trade.

Barriers to market access can take many forms, but restrictions on private sector cross-border data flows have become particularly burdensome: data localization laws, which require U.S. companies to physically store data in the country in which it originates; and laws like the European Union's (EU) General Data Protection Regulation (GDPR), which require U.S. companies to adopt significantly more restrictive foreign data privacy practices.

These laws and regulations have been enacted in many countries.² Often framed as concern about U.S. government surveillance, some are driven by foreign governments' desires to access their own citizens' data. However, even former President Obama called out the EU for using the GDPR as a pretext for digital protectionism.³

Local servers lead to a greater semblance of local control. They also generally require local workers, payment of local taxes, and submission to other local regulations. Meanwhile, "harmonization" of U.S. law to a foreign standard may not make the most sense economically, as innovative data businesses

¹ The Insights Association's membership includes both research and analytics companies and organizations, as well as the researchers and research departments inside of non-research companies and organizations. The Insights Association helps empower intelligent business decisions as a voice, resource, and network for the companies and individuals engaged in this important work.

² Testimony of Robert D. Atkinson, Information Technology and Innovation Foundation on "International Data Flows" at the House Subcommittee on Courts, Intellectual Property and the Internet. November 3, 2015. http://www2.itif.org/2015-atkinson-international-data-flows.pdf?_ga=1.4629043.1886866732.1462063876

³ President Barack Obama: "Sometimes the European response here is more commercially driven than anything else. ...sometimes their vendors — their service providers who, you know, can't compete with ours — are essentially trying to set up some roadblocks for our companies to operate effectively there." <http://www.marketingresearch.org/article/obama-calls-out-european-data-protection-plain-protectionism>

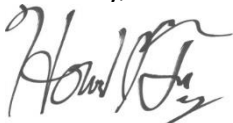
generally develop and grow in the U.S., and our approach to data privacy may be a key factor in our competitive advantage.⁴

Although the Insights Association was disappointed by the U.S. abandonment of the Trans Pacific Partnership (TPP) trade agreement, because of the important provisions to facilitate cross-border data flows, but we have appreciated the Trump Administration's focus on similar principles in the current renegotiation of the North American Free Trade Agreement (NAFTA), including: the establishment of rules to prevent "measures that restrict crossborder data flows" or "require the use or installation of local computing facilities"; getting signatories agreement "not to impose customs duties on digital products" (like research and analytics software); and demanding "non-discriminatory treatment of digital products transmitted electronically" and "fair and open conditions for services trade."

We also encourage the Subcommittee to examine the complicated challenges facing U.S.-EU digital trade. We rolled with the punches when the European Union Court of Justice struck down the Safe Harbor, encouraging our members to embrace its replacement arrangement, the U.S.-EU Privacy Shield. However, the Irish Data Protection Commissioner just referred the underlying case, Schrems v. Facebook, back to the EU high court again, based on concerns about the data protection "adequacy" of model clauses as a mechanism for data transfers to the U.S. The challenge could potentially lead to the court striking down not just the model clauses, relied upon by many companies, but the newly-vital Privacy Shield agreement as well, endangering most every trans-Atlantic data transfer.

The Insights Association looks forward to your October 12 hearing, and working with the Subcommittee to support the ability of American businesses to share data across borders, in furtherance of domestic economic growth.

Sincerely,



Howard Fienberg
Director of Government Affairs
Insights Association

⁴ "Corporate privacy officers discuss global compliance, trans-Atlantic competition, a comprehensive privacy law, and the US-EU Safe Harbor." March 7, 2013. <http://www.marketingresearch.org/article/corporate-privacy-officers-discuss-global-compliance-trans-atlantic-competition>