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HIF307170

EXAMINING THE EU SAFE HARBOR DECISION AND

IMPACTS FOR TRANSATLANTIC DATA FLOWS

TUESDAY, NOVEMBER 3, 2015

House of Representatives,

Subcommittee on Commerce, Manufacturing, and Trade

joint with the

Subcommittee on Communications and Technology,

Committee on Energy and Commerce,

Washington, D.C.

The subcommittees met, pursuant to call, at 10:00 a.m., in Room 2123, Rayburn House Office Building, Hon. Michael Burgess [chairman of the Subcommittee on Commerce, Manufacturing, and Trade] presiding.

Present from the Subcommittee on Commerce, Manufacturing, and Trade: Representatives Burgess, Lance, Blackburn, Harper,

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Guthrie, Olson, Pompeo, Kinzinger, Bilirakis, Brooks, Mullin, Upton (ex officio), Schakowsky, Clarke, Kennedy, Welch, and Pallone (ex officio)

Present from the Subcommittee on Communications and Technology: Representatives Walden, Latta, Shimkus, Blackburn, Lance, Guthrie, Olson, Pompeo, Kinzinger, Bilirakis, Johnson, Long, Collins, Barton, Upton (ex officio), Eshoo, Welch, Clarke, Loeb sack, Matsui, McNerney, and Pallone (ex officio)

Staff present: Gary Andres, Staff Director; Ray Baum, Senior Policy Advisor for Communications and Technology; Leighton Brown, Press Assistant; James Decker, Policy Coordinator for Commerce, Manufacturing, and Trade; Andy Duberstein, Deputy Press Secretary; Melissa Froelich, Counsel for Commerce, Manufacturing, and Trade; Grace Koh, Counsel for Telecom; Paul Nagle, Chief Counsel for Commerce, Manufacturing, and Trade; Tim Pataki, Professional Staff Member; David Redl, Counsel for Telecom; Charlotte Savercool, Professional Staff for Communications and Technology; Dylan Vorbach, Legislative Clerk for Commerce, Manufacturing, and Trade; Gregory Watson, Legislative Clerk for Communications and Technology and Oversight and Investigations; Michelle Ash, Chief Counsel for Commerce, Manufacturing, and Trade; Christine Brennan, Press Secretary; Jeff Carroll, Staff Director; David Goldman, Chief Counsel for

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Communications and Technology; Lisa Goldman, Counsel; Tiffany Guarascio, Deputy Staff Director and Chief Health Advisor; Lori Maarbjerg, FCC Detailee; Diana Rudd, Legal Fellow; Ryan Skukowski, Policy Analyst; and Jerry Leverich, Counsel for Communications and Technology.

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1           Mr. Burgess. Very well. I will ask all of our guests to take  
2 their seats. The joint Subcommittees on Commerce,  
3 Manufacturing, and Trade and the Subcommittee on Communications  
4 and Technology will now come to order.

5           I will recognize myself 4 minutes for the purpose of an  
6 opening statement.

7           And I do want to welcome you all to our joint hearing on the  
8 transatlantic data flows and the impact of the European Union Safe  
9 Harbor Decision.

10           Over 4,400 businesses have self-certified compliance with  
11 the Safe Harbor agreement through the Department of Commerce. A  
12 lot of jobs, a lot of industries are connected to those 4,400  
13 businesses. The Safe Harbor agreement has provided a mechanism  
14 to carry out commerce with the European Union. There is no trade  
15 partnership, no trade partnership that is more important than the  
16 trade partnership with the European Union. The depth and breadth  
17 of the United States and the European Union relationship is not  
18 simply economic. It is strategically important, and it is also  
19 one of respect and cooperation.

20           In today's world, as our members know, you can't do business  
21 without digital data flows. So today, our two subcommittees send  
22 an important message. There is no reason to delay. Both sides  
23 have all that is needed to put a sustainable Safe Harbor agreement

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1 into place. It is our understanding is that there is an agreement  
2 in principle. And I certainly thank the important work that the  
3 Department of Commerce has done to achieve a new agreement. They  
4 offered a bipartisan briefing to our members. Their message was  
5 the correct one. We cannot let anything get in the way of moving  
6 as quickly as possible to secure the new Safe Harbor agreement.

7 I also want to thank the important enforcement work that the  
8 Federal Trade Commission has done enforcing the existing Safe  
9 Harbor framework. I know that they will continue to do the same  
10 for the new Safe Harbor.

11 For the sake of our jobs, for the sake of small and  
12 medium-sized businesses relying on the Safe Harbor, and of all  
13 of the jobs that they support in both the United States and the  
14 European Union, I encourage all parties to stay at the negotiating  
15 table to solidify a new data transfer agreement well in advance  
16 of the January 2016 deadline. There is no other path forward.  
17 And I can assure you that our committee will continue to watch  
18 the negotiations closely and to be helpful where we can.

19 I would now like to recognize the vice chair of the  
20 Communications Subcommittee, Mr. Latta, for the remainder of the  
21 time.

22 Mr. Latta. Well, I thank the chairman for yielding, and I  
23 also thank our witnesses for being here today.

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1           We are all aware of the crucial role the internet plays in  
2 the trade relationship between the United States and the European  
3 Union. For over a decade, the U.S.-E.U. Safe Harbor agreement  
4 has recognize the internet's importance and kept cross-border  
5 data flows open to reduce barriers to trade.

6           However, since the Court of Justice ruled the agreement  
7 invalid, the U.S. has diligently worked on revising the framework  
8 to prevent a hindrance to the global economy. My hope for today's  
9 hearing is to continue the discussion on a framework that will  
10 provide marketplace stability and adequately protect consumer  
11 data. It is imperative for U.S. and European companies to be able  
12 to operate and conduct transatlantic business with certainty.

13           And with that, Mr. Chairman, I yield back the balance of my  
14 time.

15           Mr. Burgess. The chair thanks the gentleman. The  
16 gentleman yields back.

17           The chair recognizes the ranking member of the Subcommittee  
18 on Commerce, Manufacturing, and Trade, Ms. Schakowsky, for 4  
19 minutes for an opening statement, please.

20           Ms. Schakowsky. Thank you, Mr. Chairman, and Chairman  
21 Walden as well for calling today's joint hearing on the  
22 implications of the Schrems v. Data Protection Commissioner  
23 decision on the Safe Harbor agreement and the future of U.S.-E.U.

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1 cross-border data flows. This is an important and timely subject  
2 for our subcommittee to consider, and I welcome our witnesses.

3 The Safe Harbor framework included principles that U.S.  
4 companies could follow in order to meet E.U. standards for data  
5 security and privacy. That framework has enabled American  
6 companies to attract and retain European business with the  
7 American and E.U. economies representing almost half of the global  
8 economic activity, the value of a functional Safe Harbor agreement  
9 cannot be overstated.

10 The Schrems decision threatens to undermine business between  
11 our countries and the European continent. The more than 4,000  
12 American companies and millions of U.S. employees who have worked  
13 to abide by the Safe Harbor agreement cannot afford that outcome.

14 But the Schrems decision does rightly call into question the  
15 adequacy of U.S. data security practices. There are legitimate  
16 concerns about the protection of personal information collected  
17 and stored online, not just for European citizens, but actually  
18 for our own as well.

19 As a former member of the House Intelligence Committee, I  
20 believe that we must establish adequate and transparent data  
21 security and privacy protections, and if we fail to do that, the  
22 economic implications could be disastrous.

23 I will soon introduce legislation that would require strong

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1 security standards for a wide array of personal data, including  
2 geolocation, health-related, biometric, and email and social  
3 media account information. It would also require breached  
4 companies to report the breach to consumers within 30 days. My  
5 bill would enhance data security standards here at home, and it  
6 would probably have the added benefit of making the E.U. more  
7 confident in U.S. privacy and data security standards.

8 I look forward to hearing our witnesses' prescriptions for  
9 a path forward that will maintain cross-border data flows, while  
10 enhancing the security of data held in the United States. Our  
11 businesses, our workers and consumers in the United States and  
12 European Union deserve no less.

13 And I would like to yield the balance of my time to  
14 Representative Matsui for her remarks.

15 Ms. Matsui. Thank you. Thank you very much.

16 Data is a lifeblood of the 21st century economy and critical  
17 to innovation and competition. Through my work as co-chair of  
18 the Congressional High Tech Caucus, I understand the importance  
19 of cross-border flow policies that support economic growth.

20 This is about more than the over 4,000 businesses which rely  
21 on Safe Harbor but also the hundreds of millions of consumers in  
22 the United States and Europe that rely upon services that move  
23 data across borders. We can all agree that the Safe Harbor



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1 standards written before the advent of the smartphone or the  
2 widespread use of cloud services deserve to be updated, and we  
3 can do so in a way that recognizes the importance of protecting  
4 private personal information while also reaping the benefits of  
5 our interconnected economies.

6 I look forward to hearing from today's witnesses, and I yield  
7 back the balance of my time.

8 Ms. Schakowsky. And I yield back.

9 Mr. Burgess. The chair thanks the gentlelady. The  
10 gentlelady yields back.

11 The chair now recognizes the chairman of the full committee,  
12 Mr. Upton, 4 minutes for an opening statement, please.

13 The Chairman. Well, thank you, Mr. Chairman.

14 Our partnership with Europe has always been marked by  
15 friendship, shared interest, and mutual benefit. From autos to  
16 ideas, an awful lot of things made in Michigan and across the  
17 country have made their way across the Atlantic.

18 Of course, it is just not the U.S. that benefits from our  
19 relationship with Europe. The exchange of goods and services  
20 between the U.S. and E.U. amounts to almost \$700 billion. It is  
21 critical to both of our economies. Important to this trade  
22 infrastructure is the free flow of information, and the inability  
23 to pass data freely between the two jurisdictions is a barrier

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1 to the growth of our two economies.

2 So we must move swiftly towards a framework for a sustainable  
3 Safe Harbor. And while I recognize there are some who want to  
4 leverage this important relationship and focus on areas of  
5 disagreement, I would urge folks to keep in mind the countless  
6 small and medium enterprises that rely on the Safe Harbor  
7 framework. I support the work and direction of the Department  
8 of Commerce in negotiating this new framework and I encourage its  
9 speedy adoption, and yield the balance of my time to Mrs.  
10 Blackburn.

11 Mrs. Blackburn. Thank you, Mr. Chairman.

12 And I am so appreciative of our witnesses being here and for  
13 the hearing on this issue today. It is something that needs some  
14 thoughtful attention, and we look forward to directing our  
15 attention to solving the issue.

16 The chairman mentioned the amount of trade, and when you are  
17 looking at nearly \$1 trillion in bilateral trade and knowing that  
18 the free flow of information is important to this, data transfer  
19 rights are important to this discussion. We do need to approach  
20 this thoughtfully.

21 Mr. Meltzer, I was caught by your stat on digital trade and  
22 what it has done to increase the U.S. GDP, and then on the fact  
23 that the U.S.-E.U. data transfers are 50 percent higher than the

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1 U.S.-Asia transfers, and I think that the difference in those  
2 flows is really quite remarkable. So I will want to visit with  
3 you more about that.

4 Congress has attempted, through a couple of pieces of  
5 legislation, as you all know, the Judicial Redress Act and the  
6 Freedom Act, to address the privacy concerns. I had the  
7 opportunity several months ago to be in Europe and discuss with  
8 some of our colleagues, Members of Parliament, their concerns,  
9 and I hope that we are going to be able to negotiate in good faith  
10 and find some answers.

11 And with that, Mr. Chairman, I will yield to you the balance  
12 of my time if any other Member would like to claim it.

13 Mr. Burgess. The chair thanks the gentlelady. The  
14 gentlelady yields back.

15 The chair recognizes the gentlelady from California, Ms.  
16 Eshoo, the ranking member of the Subcommittee on Communications.

17 Ms. Eshoo. Thank you, Mr. Chairman.

18 And I want to thank you and the ranking member of your  
19 subcommittee for joining with Communications and Technology  
20 Subcommittee to have this important hearing. I thank the  
21 witnesses for being here. And we have a very full hearing room,  
22 so there is not only a great deal of interest in this issue, but  
23 there is a lot at stake.

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1           In my Silicon Valley congressional district and on both sides  
2 of the Atlantic, companies continue to reel from the October 6  
3 decision by the European Court of Justice to nullify the U.S.-E.U.  
4 Safe Harbor agreement. As one expert remarked, "aside from  
5 taking an ax to the undersea fiberoptic cables connecting Europe  
6 to the United States, it is hard to imagine a more disruptive  
7 action to the transatlantic digital commerce."

8           For the past 15 years, thousands of companies, as has been  
9 stated by, I think, every member that has spoken so far, both small  
10 and large have relied upon this agreement to effectively and  
11 efficiently transfer data across the Atlantic and in a manner that  
12 protected consumer privacy.

13           Recognizing the magnitude of the court's decision, earlier  
14 this month I joined with several colleagues, both sides of the  
15 aisle, and a letter to Secretary Pritzker and the FTC Chairwoman  
16 Ramirez urging the Administration to redouble their efforts to  
17 come up with a new agreement with the E.U.

18           Given the strong economic relationship between the U.S. and  
19 E.U., estimated over \$1 trillion annually, \$1 trillion, I mean  
20 that is -- you are really talking about something when you say  
21 \$1 trillion -- we have to move quickly with the European regulators  
22 to provide a swift solution to what is no doubt creating a great  
23 deal of uncertainty. In practice, this means reaching the Safe

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1 Harbor 2.0 agreement as soon as possible.

2 I also think we have to acknowledge that there is an elephant  
3 in the room, which is a major contributing factor in my view in  
4 the court's ruling: privacy concerns relating to U.S.  
5 surveillance methods. Having served on the House Intelligence  
6 Committee for nearly a decade, I have consistently worried about  
7 the impact of U.S. surveillance activities on both U.S. citizens  
8 and companies. Given that the E.U.'s court decision made clear  
9 that the U.S. must provide "an adequate level of protection" for  
10 E.U.-U.S. data transfers, I look forward to hearing from our  
11 witnesses about how this can be achieved in the Safe Harbor 2.0.

12 I think if we don't really deal with this, we will be missing  
13 a large point here. In a digital economy, there is nothing more  
14 important than the free flow of data across borders. A Congress  
15 that is united in support of this goal and the reinstatement of  
16 a new agreement I think will ensure the continued growth of digital  
17 commerce in the years to come.

18 So I thank our witnesses for being here today and for your  
19 commitment to ensuring unfettered data transfers between the U.S.  
20 and the E.U.

21 And with that, I yield back the balance of my time, Mr.  
22 Chairman. Thank you.

23 Mr. Burgess. The gentlelady yields back. The chair thanks

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1 the gentlelady.

2 The chair recognizes the chairman of the Communications and  
3 Technology Subcommittee, Mr. Walden, for 4 minutes for an opening  
4 statement.

5 Mr. Walden. Thank you, Mr. Chairman. And I want to thank  
6 our witnesses for being here. This is obviously an issue of great  
7 importance to all of us.

8 The borderless nature of the internet is an important force  
9 driving economic success and innovation. For internet-based  
10 companies, the value of free flow of digital data between the E.U.  
11 and the United States is obvious. But analysts have also pointed  
12 out that up to 75 percent of the value added by transnational data  
13 flows on the internet goes to traditional industries, especially  
14 via increases in global growth, productivity, and employment.

15 Communications and technology underpin every sector of the  
16 global economy, from precision farming to sensor-monitored  
17 shipping, from Facebook to McDonald's, from footwear  
18 manufacturers to custom furniture makers. These networks are the  
19 infrastructure of the 21st century economy, and free flow of  
20 information is critical to making that infrastructure work.

21 The free flow of information has especially benefited small  
22 and medium-sized companies by opening markets on both sides of  
23 the Atlantic that were previously inaccessible. These are the

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1 businesses that gain new consumers simply by virtue of the nearly  
2 costless ability to find new suppliers, strike quicker  
3 agreements, or access new markets. These are the businesses that  
4 will suffer the greatest harm and bear the greatest risk if we  
5 are not able to come to a new Safe Harbor framework.

6 The Safe Harbor cut down on the cost of compliance with the  
7 various State privacy regulations in the European Union. Without  
8 the shelter of a Safe Harbor, these businesses have the choice  
9 of operating at increased risk, paying expensive costs to lower  
10 that risk, or simply stopping the flow of information altogether,  
11 that is, stopping business altogether.

12 The Department of Commerce estimates that in 2013, 60 percent  
13 of the 4,000-plus participants in the Safe Harbor framework were  
14 small or medium-sized enterprises, spanning 102 different  
15 industry sectors. A break in the flow of data has the potential  
16 to cause real impacts to the economies on both sides of the  
17 proverbial pond.

18 So I am encouraged to hear that the negotiators on Safe Harbor  
19 2.0 have reached an agreement in principle -- that is really good  
20 news -- and I cannot emphasize enough how important it is to reach  
21 a new and firm agreement before the grace period elapses in  
22 January.

23 I would like to thank our witnesses again for spending time

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1 to discuss their understanding of the impact of the ruling of the  
2 European Court of Justice. We welcome your thoughts and let  
3 forward to hearing from you.

4 With that, I would yield such time as the -- pardon me? Oh,  
5 I guess Mr. Barton didn't want any time. Thank you. So I yield  
6 back balance of my time.

7 Mr. Burgess. The chair thanks the gentleman. The  
8 gentleman yields back.

9 The chair recognizes the ranking member of the full  
10 committee, Mr. Pallone of New Jersey, 4 minutes for an opening  
11 statement, please.

12 Mr. Pallone. Thank you, Mr. Chairman.

13 This is the committee's second hearing on the topic of data  
14 moving across national borders. The digital movement of data  
15 affects consumers and businesses in both the United States and  
16 in Europe and in every country of the world.

17 The U.S. leads the world in technological innovation. It  
18 has exported over \$380 billion worth of digital services in 2012.  
19 Meanwhile, internet commerce grew threefold from 2011 to 2013 and  
20 is expected to reach 133 billion by 2018. And the economic  
21 relationship between the United States and the European Union is  
22 the strongest in the world.

23 Since our December 2014 hearing on this issue, the big change



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1 is that the European Court of Justice invalidated the Safe Harbor  
2 agreement between the United States and the European Union that  
3 allowed American companies to transfer European users'  
4 information to the U.S., and the elimination of the Safe Harbor  
5 has caused great uncertainty.

6 However, as early as 2013, long before the court's October  
7 2015 decision, the 15-year-old agreement was under renegotiation.  
8 And during this time, the U.S. and the E.U. have been working hard  
9 to strengthen the privacy principles of the original agreement  
10 to ensure they cover the newest business models and data transfers  
11 that exist.

12 Almost a year later, we today repeat our desire to see those  
13 negotiations completed. I urge the parties to quickly finalize  
14 a new agreement tailor-made for the modern economy and the modern  
15 consumer. A new agreement can and should improve consumer  
16 privacy and data security. Businesses can and should adhere to  
17 strong privacy principles from inception.

18 Building trust with consumers worldwide requires a  
19 multifaceted approach through appropriate legislation and  
20 regulation, as well as through trade negotiations, and therefore,  
21 I also would urge this Congress to act by passing effective  
22 baseline privacy and data security protections. For the internet  
23 of the future, economic gains and consumer protections go

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1 hand-in-hand. When consumers feel safe that their personal  
2 information is protected, they do more business online.

3 I hope that today's discussion, as well as the ongoing  
4 negotiations between the United States and the E.U. will encourage  
5 a step in the right direction on data privacy not only for  
6 Europeans but for American citizens as well. We can have  
7 innovation and protections for consumer privacy. We have done  
8 it time and time again. There is no reason why it should be  
9 different in this space than in any other.

10 In today's heavily digital commercial environment,  
11 cross-border data flows are not just a normal part of doing  
12 business but essential to the American economy and American jobs.  
13 And I welcome this opportunity, Mr. Chairman, to discuss the value  
14 of secure and free data flow between the United States and Europe.

15 I yield back.

16 Mr. Burgess. The gentleman yields back. The chair thanks  
17 the gentleman for his comments.

18 This concludes Member opening statements. The chair would  
19 remind Members that pursuant to committee rules, all Members'  
20 opening statements will be made part of the record.

21 And we do want to thank our witnesses for being here today,  
22 for taking time to testify before the subcommittee. You will each  
23 have an opportunity to give an opening statement. That will be

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1 followed by a round of questions from Members.

2 Our panel for today's hearing will include Ms. Victoria  
3 Espinel, President and CEO of the Business Software Alliance; Mr.  
4 Joshua Meltzer, Senior Fellow for Global Economy and Development  
5 at the Brookings Institute; Mr. Marc Rotenberg, President of the  
6 Electronic Privacy Information Center; and Mr. John Murphy,  
7 Senior Vice President for International Policy at the United  
8 States Chamber Of Commerce.

9 We appreciate all of you being here with us today. We will  
10 begin the panel with you, Ms. Espinel, and you are recognized for  
11 5 minutes for a summary of your opening statement.

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1 STATEMENTS OF VICTORIA ESPINEL, PRESIDENT AND CEO, BUSINESS  
2 SOFTWARE ALLIANCE; JOSHUA MELTZER, SENIOR FELLOW, GLOBAL ECONOMY  
3 AND DEVELOPMENT, BROOKINGS INSTITUTE; MARC ROTENBERG, PRESIDENT,  
4 ELECTRONIC PRIVACY INFORMATION CENTER; AND JOHN MURPHY, SENIOR  
5 VICE PRESIDENT FOR INTERNATIONAL POLICY, U.S. CHAMBER OF COMMERCE

6  
7 STATEMENT OF VICTORIA ESPINEL

8 Ms. Espinel. Thank you very much.

9 Good morning, Chairman Burgess and Ranking Member  
10 Schakowsky, Chairman Walden and Ranking Member Eshoo, and members  
11 of both subcommittees.

12 My name is Victoria Espinel. Thank you for the opportunity  
13 to testify today on behalf of BSA, the software alliance. BSA  
14 is the leading advocate for the global software industry in the  
15 United States and around the world.

16 While the 19th century was powered by steam and coal and the  
17 20th century by electricity, cars, and computers, the 21st century  
18 runs on data. Today, data is at the core of nearly everything  
19 we touch. Banking, genome mapping, teaching our children, and  
20 safely getting home from work and back again, all run on data.

21 And this data economy is a global phenomenon. People around  
22 the world are benefiting from data innovation. Accordingly, we  
23 recognize that, as we proceed, we must be diligent to ensure

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1 personal privacy is fully respected and robust security measures  
2 are in place to guard the data involved.

3       Barriers to the free movement of data undermine the benefits  
4 of the data economy. Recent developments in Europe present a  
5 significant challenge that must be taken seriously and warrants  
6 immediate action. Last month, the European Court of Justice  
7 struck down the Safe Harbor. The Safe Harbor set out rules that  
8 enabled nearly 5,000 American companies to provide a huge array  
9 of data services to European enterprises and individuals.

10 Companies abiding by the Safe Harbor rules could easily and  
11 efficiently transfer data to the U.S. consistent with E.U. law.

12       The European Court of Justice decision upended this process.  
13 The uncertainty about international data flows created by the  
14 European Court of Justice's decision deters innovation and makes  
15 it much more difficult for our members to serve their millions  
16 of customers in Europe, which harms U.S. competitiveness.

17       To address this, Congress and the U.S. Government should  
18 engage immediately and actively with their European counterparts  
19 to restore stability in transatlantic data flows. Specifically,  
20 we need three things. First, rapid consensus on a new agreement  
21 to replace the Safe Harbor; second, sufficient time to come into  
22 compliance with the new rules; and third, a framework in which  
23 the European Union and the United States can develop and agree

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1 on a sustainable long-term solution that reflects and advances  
2 the interests of all stakeholders.

3 To the first point, fortunately, the United States and the  
4 E.U. were already deep in talks to revise the Safe Harbor agreement  
5 when the European Court of Justice issued its decision. And to  
6 this I want to join the chairman in thanking the Department of  
7 Commerce for all the hard work they have done on the negotiation  
8 far.

9 The new version of the framework will include up-to-date  
10 safeguards. Updating the framework makes good sense. Much has  
11 changed since the Safe Harbor was first set up in the year 2000.  
12 The volume of data is increasing exponentially. Here is an  
13 incredible fact: More than 90 percent of the data that exists  
14 in the world today was created in the last 2 years alone, and that  
15 is a rate of change that will continue to increase exponentially.  
16 The volume of business data worldwide is doubling every 15 months,  
17 so these negotiations must continue, and the new Safe Harbor must  
18 be finalized quickly.

19 Second, even if there is consensus on a new agreement, as  
20 we believe there will be, companies will need an appropriate  
21 standstill period in which to adapt their operations to the new  
22 legal realities. An appropriate standstill period is essential  
23 to consumers on both sides of the Atlantic.

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1           And finally, while a new agreement to replace the Safe Harbor  
2 is a vital and immediate step, it is not the complete solution  
3 to the larger issue of privacy protections in the digital age.  
4 We urge Congress and the United States Government to look to the  
5 longer term.

6           The European Court of Justice ruling set a standard of  
7 essential equivalence between privacy rules in Europe and the  
8 United States, in effect, a comparative analysis of our respective  
9 regimes. The European Court of Justice points most sharply at  
10 U.S. surveillance regimes put in place to protect our national  
11 security and their impact on individual privacy. Balancing these  
12 essential goals is a task this Congress has and will continue to  
13 consider. Most recently, the enactment of the USA Freedom Act  
14 is recognition that the balance is ever-changing and laws must  
15 stay up-to-date.

16           Ultimately, however, essential equivalence and the pursuit  
17 of protecting privacy in a changing world will be a dynamic concept  
18 that will change as laws and practices evolve. We need a  
19 framework that is sustainable over the long term. The original  
20 Safe Harbor lasted nearly 15 years. To achieve that sort of  
21 stability, we will need to develop a more enduring solution for  
22 data transfers.

23           The United States and Europe are not as far apart on privacy

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1 as some might think. Where there are gaps span the Atlantic,  
2 whether perceived or actual, we can close those through a  
3 combination of dialogue and international commitments, and  
4 Congress will be a key part of enabling this to happen.

5 Thank you again for providing this opportunity to share our  
6 views on these important matters, and I look forward to your  
7 questions.

8 [The prepared statement of Ms. Espinel follows:]

9

10 \*\*\*\*\* INSERT 1 \*\*\*\*\*



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1           Mr. Burgess. The chair thanks the gentlelady.

2           Dr. Meltzer, you are recognized 5 minutes for an opening  
3 statement, please.

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1 STATEMENT OF JOSHUA MELTZER

2  
3 Mr. Meltzer. Chairman Burgess, Chairman Walden, Ranking  
4 Member Schakowsky, and Ranking Member Eshoo, honorable members  
5 of both committees, thank you for this opportunity to share my  
6 views with you on the Safe Harbor decision and the impacts for  
7 transatlantic data flows.

8 Transatlantic data flows underpin and enable a significant  
9 amount of trade and investment where this concerns personal data  
10 of people in Europe and it is subject, therefore, to European  
11 privacy laws. The Safe Harbor framework has allowed personal  
12 data to be transferred from the E.U. to the U.S., but as a result  
13 of a recent decision of the European Court of Justice, the ability  
14 to do this has been called into serious question.

15 I will briefly outline the link now between data flows and  
16 transatlantic trade and investment and discuss the potential  
17 implications of this European Court of Justice decision.

18 As has been noted already, the U.S.-E.U. economic  
19 relationship is the most significant in the world. In 2014 alone  
20 transatlantic trade was worth over \$1 trillion. And would you  
21 also not forget the importance of the investment relationship with  
22 stock of investment in both jurisdictions is over \$4 trillion.

23 Data flows between the U.S. and the E.U. are also the largest

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1 globally, 55 percent larger than data flows between the U.S. and  
2 Asia alone. These data flows underpin and enable a significant  
3 amount of this bilateral economic relationship. Just to give you  
4 a couple of examples, businesses use internet platforms to reach  
5 customers in Europe. Internet access and the free flow of data  
6 supports global value chains, and data flows are essential when  
7 U.S. companies with subsidiaries in Europe manage production  
8 schedule and human rights and H.R. data.

9 The global nature of the internet is also creating new  
10 opportunities for small and medium-sized enterprises to engage  
11 in international trade. For example, 95 percent of those SMEs  
12 in the U.S. who use eBay to sell goods and services to customers  
13 do so in more than four countries overseas. This compares with  
14 less than 5 percent of such businesses when they are exporting  
15 off-line. And this is obviously important as SMEs are the main  
16 drivers of job growth in the United States, accounting for 63  
17 percent of net new private sector jobs since 2002.

18 Unfortunately, there is only limited quantitative data on  
19 the impact of the internet in cross-border data flows on  
20 international trade. If we focus on services that can be  
21 delivered online, in 2012 U.S. exported over 380 billion of such  
22 services, and over 140 billion of that went to the E.U.

23 So E.U. privacy laws require entities that are collecting

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1 personal data to comply with privacy principles. And when  
2 transferring this personal data outside of the E.U., this can only  
3 be done under specific conditions. One of these is a finding from  
4 the European Commission that the receiving country provides an  
5 adequate level of privacy protection, which essentially requires  
6 that they have privacy laws equivalent to the E.U. There are  
7 other forms, models, contracts, and binding corporate rules,  
8 though these are not well utilized.

9 The U.S. Safe Harbor framework has allowed for the transfer  
10 of personal data from the E.U. to the U.S., despite differences  
11 in approaches to privacy protection. In the recent Schrems  
12 decision, the European Court of Justice has effectively  
13 invalidated this mechanism for transferring personal data from  
14 the E.U. to the U.S.

15 Now, in terms of its immediate impact of this decision, the  
16 European data privacy actors have said that they will wait until  
17 the end of January 2016 before enforcing Schrems. Since 2014,  
18 there has been an effort to renegotiate Safe Harbor, and certainly  
19 one solution here would be for the newly renegotiated Safe Harbor  
20 agreement to address all the concerns that the European Court of  
21 Justice has outlined with the current Safe Harbor framework.  
22 However, until we know the outcome of these negotiations and,  
23 importantly, whether they are acceptable to the European Court

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1 of Justice, there will remain considerable legal uncertainty as  
2 to how transfers of personal data from the E.U. to the U.S. can  
3 continue.

4 Failure to find a way for companies to transfer personal data  
5 to the U.S. can have significant economic repercussions, and these  
6 costs are likely to fall most heavily on small and medium-sized  
7 enterprises who lack the resources to navigate the complex legal  
8 issues and to manage the risk. In addition, some of the other  
9 mechanisms available for the transfer personal data to the U.S.  
10 such as binding corporate rules are often not available to small  
11 and medium-sized enterprises who do not have a corporate presence  
12 in the E.U.

13 I appreciate the opportunity to offer my views on this  
14 important issue and look forward to your questions.

15 [The prepared statement of Mr. Meltzer follows:]

16

17 \*\*\*\*\* INSERT 2 \*\*\*\*\*

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1

Mr. Burgess. The chair thanks the gentleman.

2

Mr. Rotenberg, you are recognized for 5 minutes, please.

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1 STATEMENT OF MARC ROTENBERG

2  
3 Mr. Rotenberg. Thank you, Mr. Chairman, Ranking Member  
4 Schakowsky, Chairman Walden, members of the committee. I  
5 appreciate the opportunity to testify today. My name is Marc  
6 Rotenberg. I am President of EPIC. I have also taught  
7 information privacy law at Georgetown for the past 25 years and  
8 study closely the developments of the European Union privacy  
9 system.

10 I need to explain that the Safe Harbor framework from the  
11 outset raised concerns among experts, consumer organizations, and  
12 privacy officials, many of whom looked at the framework and saw  
13 a familiar set of principles but were concerned about the  
14 enforcement of those principles. Over the last several years,  
15 there have been repeated calls on both sides of the Atlantic to  
16 update and strengthen the Safe Harbor framework.

17 In our comments to the Federal Trade Commission, we routinely  
18 ask the agency to incorporate strong privacy principles to give  
19 meaning to the Safe Harbor framework, but the agency was reluctant  
20 to do so. And so to us and others, the judgment of the European  
21 Court of Justice did not come as a surprise. The problems with  
22 Safe Harbor were familiar.

23 But I should explain also this approach to data protection

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1 in Europe is familiar in the United States. The European  
2 regulators are trying to protect a consumer interest, which is  
3 data protection set out in a Charter of Fundamental Rights and  
4 attempting to hold foreign companies to the same standards that  
5 they would hold domestic companies. We do the same thing in the  
6 U.S. with product safety, consumer products, automobiles.  
7 Emissions standards, for example, must be equally enforced  
8 against foreign auto suppliers, as they are against U.S. firms,  
9 because U.S. firms should not have to carry a cost that foreign  
10 firms would not. This is essential to understanding the notion  
11 of essential equivalence in the judgment of the European Court  
12 of Justice. But another key point to make, which I set out in  
13 the testimony on pages 10 and 11, is the language in the Charter  
14 of Fundamental Rights. This is the European bill of rights, and  
15 they have set out both privacy and data protection as cornerstone  
16 rights within their legal system, one protecting the right to  
17 privacy and the other explicitly saying that everyone has the  
18 right to the protection of personal data. Such data must be  
19 processed fairly and such compliance must be ensured by an  
20 independent authority.

21 Now, I know it would be tempting in the context of the current  
22 discussion to imagine that a Safe Harbor 2.0 could address the  
23 challenge that the European Court of Justice has set out, but my



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1 sense is that that approach will not be adequate because part of  
2 what the European Court of Justice has identified is also the  
3 concern shared by U.S. consumer groups, privacy experts, and  
4 others, that the U.S. has not updated its privacy law.

5 The data not only on European citizens but also on U.S.  
6 citizens lacks adequate protection, and that is why in my  
7 testimony today I am strongly recommending that you consider  
8 long-overdue updates to domestic privacy law, that you not simply  
9 see this as a trade issue. I propose, for example, four specific  
10 steps I believe Congress could take that over the long term would  
11 solve not only the Safe Harbor problem but would be good for U.S.  
12 consumers and for U.S. business.

13 Specifically, I think the Consumer Privacy Bill of Rights,  
14 which the President has proposed and reflects many privacy bills  
15 that have gone through this committee as a good starting point.  
16 I think updates to the U.S. Privacy Act would make a lot of sense.  
17 I know they are already under consideration by Congress. I think  
18 the creation of an independent data protection agency in the U.S.  
19 is long overdue and could help address concerns on both sides of  
20 the Atlantic. And finally, I think we do need an international  
21 framework to ensure transborder data flows not only between the  
22 E.U. and the U.S. but among all of our trading partners around  
23 the world because we are today in a global economy.

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1           Now, I know you may think this is just the view of perhaps  
2 privacy people or consumer groups, but I would like to share with  
3 you the views that have recently been expressed by leaders of the  
4 internet industry. It was Microsoft President Brad Smith who,  
5 after the decision of the European Court of Justice, said "privacy  
6 is a fundamental human right." It is Apple's CEO Tim Cook who  
7 said just 2 weeks ago on NPR "privacy is a fundamental human  
8 right." These are the exact same words of the European Court of  
9 Justice. This is the view of U.S. consumer groups. I believe  
10 on both sides of the Atlantic there is consensus for the view that  
11 privacy is a fundamental right.

12           Thank you.

13           [The prepared statement of Mr. Rotenberg follows:]

14  
15 \*\*\*\*\* INSERT 3 \*\*\*\*\*

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1           Mr. Burgess. The chair thanks the gentleman.

2           Mr. Murphy, you are recognized for 5 minutes, please.

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1 STATEMENT OF JOHN MURPHY

2  
3 Mr. Murphy. Mr. Chairman, Ranking Member Schakowsky,  
4 distinguished members of the committee, it is an honor to appear  
5 before you this morning on behalf of the U.S. Chamber of Commerce,  
6 the Nation's largest business association representing companies  
7 of every size, sector, and state. And it is representing those  
8 companies that I would like to share my comments.

9 We have spoken this morning about the importance of the  
10 international movement of data and how important it is to  
11 companies of all kinds. I can speak on behalf of this dynamic  
12 and multifaceted array of member companies to confirm that.

13 Examples of data flows take many forms, including a small  
14 exporter operating through an e-commerce portal, a large company  
15 with operations in multiple countries managing its human  
16 resources, a wind turbine sending data on its performance to the  
17 engineers who keep it running, or a transatlantic tourist using  
18 a credit card. In short, today's hearing isn't really just about  
19 internet companies but about companies. It isn't about the  
20 internet economy; it is about the economy.

21 However, as we have heard, the tremendous benefits of  
22 transatlantic data flows are now at risk. The invalidation of  
23 the Safe Harbor agreement raises serious questions. I would

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1 point out that before its decision, the European Court of Justice  
2 did not conduct any formal investigation into U.S. current  
3 surveillance oversight. In fact, the decision was based largely  
4 on process concerns internal to the European Union.

5 Even so, more than 4,000 companies have been left asking  
6 whether they can continue to transfer personal data from Europe.  
7 They are now faced with the tough choice of deciding whether to  
8 continue their transatlantic business or face potentially costly  
9 enforcement actions.

10 While companies in the Safe Harbor program continue to  
11 guarantee a high level of data protection for the users of their  
12 products and services, alternatives cannot be devised overnight.  
13 Data privacy systems are complex legally and technically. One  
14 alternative suggested by the European Commission, binding  
15 corporate rules, can cost over \$1 million and take at least 18  
16 months to develop and implement. This is a nonstarter for small  
17 businesses.

18 Or consider a U.S. hotel chain with locations across Europe,  
19 each of which works with a host of small businesses that might  
20 provide food for their in-house restaurant or janitorial  
21 services. All of those relationships involve data flows, and  
22 that means there are hundreds of arrangements across hundreds of  
23 properties that may need to change at considerable cost.

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1 Another example comes from the auto industry, which uses Safe  
2 Harbor to identify vehicle safety issues and for quality and  
3 development purposes. However, the industry now faces the  
4 challenge of meeting both U.S. and E.U. regulatory requirements,  
5 which made diverge. Under U.S. law, auto manufacturers must  
6 share a vehicle identification numbers of cars sold globally in  
7 the event of a vehicle service campaign such as a recall. This  
8 U.S. obligation may now conflict with E.U. privacy rules.

9 So what is the outlook? Companies may be faced with a  
10 patchwork of 28 different enforcement and compliance regimes in  
11 different E.U. member states or more where local governments are  
12 involved. There is a serious disconnect between the E.U.'s  
13 stated goals of spurring innovation and fostering a startup  
14 culture and statements by some European officials about the need  
15 for IT independence and calls for data localization.

16 Further, some in Europe are trying to use legitimate concerns  
17 about data protection as an excuse for protectionism, and the  
18 uncertainty facing business worsens. This approach has been  
19 frequently rebuked by many others in the E.U., but it merits  
20 careful scrutiny.

21 While the business community is committed to working with  
22 our European colleagues to ensure a balanced and proportionate  
23 system of rules, we must be vigilant. We must ensure that the

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1 European Union does not hold the United States to a different  
2 standard on national security and law enforcement issues.

3 Specifically, what should be done? First, we need a new and  
4 improved Safe Harbor agreement that reflects current  
5 circumstances. The Chamber greatly appreciates the efforts of  
6 the Department of Commerce and the FTC to provide clarity and reach  
7 an agreement on a revised Safe Harbor. Further, we applaud the  
8 House for taking an important first step toward resolving related  
9 concerns with the passage of the Judicial Redress Act, and we are  
10 encouraging the Senate to act swiftly to give this bill final  
11 passage.

12 The recently announced Umbrella Agreement is also another  
13 important step forward allowing data sharing in certain  
14 circumstances between law enforcement and national security  
15 agencies. Also important are other safeguards instituted in the  
16 United States in recent years that provide a level of protection  
17 equivalent to or even greater than that found in the European Union  
18 and among its member states.

19 The Chamber appreciates the opportunity to provide these  
20 comments to the committee, and we stand ready to assist in any  
21 way possible to ensure data flows can continue across the  
22 Atlantic.

23 [The prepared statement of Mr. Murphy follows:]

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1           Mr. Burgess. The chair thanks the gentleman for his  
2 testimony, and thank all of you for your being here this morning  
3 and sharing your thoughts with us. We are going to move into the  
4 question part of the hearing, and I am going to begin by  
5 recognizing Mr. Walden 5 minutes for his questions, please.

6           Mr. Walden. I thank the chairman, and I thank all of you  
7 for your testimony. It is most enlightening and helpful as we  
8 wrestle with this issue ourselves.

9           Ms. Espinel and Mr. Murphy, do you think the Department of  
10 Commerce needs to be doing anything differently to arrive at Safe  
11 Harbor framework that will stand up to scrutiny by the European  
12 legal system, and if so, what would that be?

13           Ms. Espinel. So I would say, first, I want to thank the  
14 Department of Commerce for all the work they have been doing in  
15 negotiating the Safe Harbor. And our understanding is that talks  
16 are well underway and we are at the moment cautiously optimistic  
17 that we will be able -- we meaning the United States and the  
18 European Union -- will be able to find our way to a new Safe Harbor  
19 agreement.

20           And so on that I think the Department of Commerce is doing  
21 all that they can. I would continue to urge Congress to encourage  
22 the Department of Commerce to focus on that, and also to the extent  
23 you are speaking to your European counterparts, to encourage the

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1 Europeans to come to a speedy conclusion on a new Safe Harbor  
2 agreement.

3 But I would also say that a new Safe Harbor agreement, while  
4 I think it is the immediate short-term step that we need, it will  
5 not solve the larger issue. And so I think we need to focus first  
6 and foremost at the moment on resolution of the new Safe Harbor  
7 agreement, but I think we need to quickly turn to coming up with  
8 a longer-term, more sustainable, global solution for data  
9 transfers. And that is something that we would like to be working  
10 with Congress on and will be working closely with the Department  
11 of Commerce, the FTC, as well as the governments of the European  
12 Union and the European Commission.

13 Mr. Walden. All right. Mr. Murphy?

14 Mr. Murphy. I would agree with those comments. Just  
15 briefly, the Department of Commerce has made every effort to get  
16 ahead of this problem. In fact, before the European Court of  
17 Justice decision had advanced significantly towards reaching a  
18 new agreement, obviously further negotiations were required after  
19 the ruling came out to reflect those findings. But they have done  
20 a good job, and they have done a good job reaching out to the  
21 business community to gather their input as well.

22 Mr. Walden. Okay. Dr. Meltzer, what impacts will  
23 continuing uncertainty around transatlantic data flows have on

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1 foreign direct investment both in the United States and the  
2 European Union from your perspective?

3 Mr. Meltzer. Thank you for the question. I think it is  
4 important to recognize that the implications of the Schrems  
5 decision at the moment are going to be direct on those who are  
6 certified under the Safe Harbor framework, but the implications  
7 are potentially a lot more significant. We already see in the  
8 E.U., for instance, that some of the data protection authorities  
9 in Germany have effectively stated that the other mechanisms that  
10 the E.U. has for transferring data -- namely, standard model  
11 contracts and binding corporate rules themselves -- are likely  
12 to be available for transferring personal data to the E.U.

13 So effectively, you know, there is enormous legal  
14 uncertainty around the whole process and available options for  
15 making this to happen. So one would expect that, for the moment,  
16 you know, all forms of, you know, foreign investment that  
17 essentially are relying on incorporating the transfer of personal  
18 data are going to have to be reviewing their processes, and a lot  
19 of investment decisions and trade is going to be placed under that  
20 sort of higher level of risk and uncertainty for the time being.

21 Mr. Walden. And I noted in some of the testimony, too, it  
22 is not just the E.U. anymore. I mean, other countries are looking  
23 at this, what the E.U. has concluded, and now they are starting

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1 to question whether their own Safe Harbor agreements were correct.  
2 And somebody tell me how this is spreading and what we need to  
3 be cognizant of going outward. Mr. Rotenberg?

4 Mr. Rotenberg. Thank you, Mr. Walden. I do discuss in my  
5 prepared statement efforts that actually preceded the judgment  
6 of the European Court in Canada, in Japan, in South Korea, and  
7 part of the point that I am trying to make today is that this is  
8 not simply a matter of trade policy. In other words, where  
9 countries have established fundamental rights, they will see a  
10 need to protect those rights.

11 And the second part of the Schrems decision doesn't just  
12 invalidate Safe Harbor. It says that each one of the national  
13 data protection agencies has the authority to enforce fundamental  
14 rights, which means even in agreements between the Department of  
15 Commerce and the Commission could be challenged by a member  
16 country.

17 Ms. Espinel. But if I could just add briefly --

18 Mr. Walden. Please do.

19 Ms. Espinel. -- there are a number of countries around the  
20 world that are looking to put or considering putting trade  
21 barriers in place to restrict the movement of data across national  
22 borders for a variety of reasons. This is a fight that we have  
23 been fighting for at least 5 years now market to market around

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1 the world. I think one of the recent inventories of countries  
2 that are considering put the number at 18, including significant  
3 trading partners such as China but also Russia, Nigeria, and a  
4 number of other trading partners.

5 So while the subject of this hearing is the U.S.-E.U. Safe  
6 Harbor, and that is a subject of great concern to us, there is  
7 a larger issue here, I think, about setting up a global framework  
8 that allows data to move freely around the world beyond just the  
9 United States and Europe.

10 Mr. Walden. Thank you. My time is expired.

11 Mr. Burgess. The gentleman yields back. The chair thanks  
12 the gentleman for his questions.

13 The chair recognizes the gentlelady from Illinois, the  
14 ranking member of the Subcommittee on Commerce, Manufacturing,  
15 and Trade, 5 minutes for questions, please.

16 Ms. Schakowsky. Thank you, Mr. Chairman.

17 It has been reported that the Department of Commerce and the  
18 European Union have agreed, at least in broad strokes, on a  
19 replacement for Safe Harbor. And like you, I support passage of  
20 a comprehensive privacy bill and a comprehensive data security  
21 bill. However, I also hope that the new deal for Safe Harbor can  
22 be reached soon and that it will contain significant protections  
23 for consumers.

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1           Mr. Rotenberg, in answering the following, please put aside  
2 your call for changes to domestic law for a moment. I will ask  
3 you that question a bit later. But in your opinion, what should  
4 be in the new agreement if there is to be a new agreement to afford  
5 consumers stronger privacy protections?

6           Mr. Rotenberg. It is a difficult question to answer. There  
7 are 13 specific proposals that were presented by the European  
8 Commission to the Department of Commerce, and the Department of  
9 Commerce and FTC has tried in this negotiation to address the  
10 issues that have been raised.

11           But the reason that it is a difficult question to answer,  
12 as other witnesses have pointed out, is that neither the Commerce  
13 Department nor the FTC has legal authority over the surveillance  
14 activities undertaken by police or intelligence agencies in the  
15 United States. And you could say that is kind of a deal-breaker  
16 on the European side because it is explicit in the opinion of the  
17 Court of Justice that there must be legal authority to restrict  
18 that type of mass surveillance.

19           And I won't go into that debate right now, but the question  
20 that you have asked, which is how do you solve the issues that  
21 have been identified post-ruling in the Safe Harbor negotiation,  
22 I actually don't think there is an answer to. And this even puts  
23 aside my recommendation for changes in domestic law. I think that

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1 is the reality on the European side as they look at next steps  
2 in this process. So in your recommendations for changes in the  
3 domestic law, you aren't looking at the issue of government  
4 surveillance?

5 Mr. Rotenberg. Well, certainly, yes. I mean the Freedom  
6 Act was a significant step forward for privacy protection in the  
7 United States, but it limited only the surveillance activities  
8 directed toward U.S. persons. That is the 215 collection  
9 program. The Freedom Act did not address the 702 program, which  
10 was collection directed toward non-U.S. persons. And that  
11 remains a key concern on the E.U. side. And I don't think that  
12 the Department of Commerce can negotiate that in the context of  
13 a Safe Harbor 2.0. So at a minimum I think that would have to  
14 be done to comply with the judgment of the court.

15 Ms. Schakowsky. So there have been various press accounts,  
16 and of course, the terms of the new agreement have not been made  
17 public, but are there certain provisions that you do consider  
18 helpful? For example, we have heard that there will be increased  
19 transparency. Is that something that you think they --

20 Mr. Rotenberg. Well, it would be good, but to be fair, in  
21 the original Safe Harbor proposal, which we were involved with,  
22 we actually favored the principles. We said these are familiar  
23 principles. They exist both on the U.S. side and on the European

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1 side, and they seem like a good basis to promote transborder data  
2 flows. We were not against the principles in the original Safe  
3 Harbor, but the problem was the lack of enforcement.

4 And you see the lack-of-enforcement issue continues even in  
5 the Safe Harbor 2.0 because unless Federal Trade Commission or,  
6 as I have proposed, an independent data protection agency, has  
7 the authority to enforce those principles, it won't have a  
8 significant impact on how it is viewed on the European side.

9 But I agree. I think the steps are in the right direction,  
10 but they don't solve the enforcement problem.

11 Ms. Schakowsky. In April, Mr. Rush, Congressman Rush and  
12 I offered an amendment in the nature of a substitute to the Data  
13 Security and Breach Notification Act that would require  
14 commercial entities that owned or possessed consumers' personal  
15 information to create and implement security procedures to  
16 safeguard that data, among other things. Those procedures would  
17 have to include processes for identifying, preventing, and  
18 correcting security vulnerabilities. Is this important in  
19 domestic --

20 Mr. Rotenberg. Yes, actually, I think that is a very  
21 important proposal. Because there is increasing awareness on  
22 both sides of the Atlantic of the need for data breach  
23 notification, the Europeans have recently updated their law in



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1 part in response to developments that have taken place in U.S.  
2 law. And I think your proposal would carry that process forward  
3 in a way that is favorable again for consumers and businesses.  
4 I don't think this is a process that puts consumers against  
5 business. I think we are all on the same page wanting to maintain  
6 transborder data flows. So to the extent that these changes help  
7 strengthen consumer confidence, I think it is a step in the right  
8 direction.

9 Ms. Schakowsky. Thank you. I would like to have further  
10 conversations with you at another time. Thank you very much. I  
11 yield back.

12 Mr. Burgess. The chair thanks the gentlelady, and the chair  
13 will recognize himself 5 minutes for questions.

14 Dr. Meltzer, you have indicated in your testimony that  
15 cross-border data flows affect small and medium-sized business.  
16 Can you give us an idea as to what that effect is?

17 Mr. Meltzer. So the effect is in multiple ways. I  
18 apologize for some generality. As I mentioned in my opening  
19 statement, there is unfortunately a paucity of very high data on  
20 this issue. EBay, I mentioned, has been particularly helpful in  
21 providing data about the way that small businesses export on its  
22 platform, and I think it is a good example because it captures  
23 a lot of the ways that small businesses are using the internet

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1 to access customers globally, and that is certainly the case when  
2 it comes to transatlantic trade. And so there is one example  
3 where there is a lot of new opportunities for engagement in the  
4 global economy by small businesses that really was not possible  
5 before that relies on cross-border data flows.

6 We will have a component of that, which is certainly personal  
7 data, which is going to be significantly potentially inhibited  
8 by the ruling in the Schrems decision. And as I think has been  
9 mentioned before, this is an issue which is  
10 transatlantic-specific but is global in its implications.

11 One of the things I think is worth recognizing is also that  
12 there is essentially a global, you know, debate going on about  
13 the appropriate form of privacy model protection going forward.  
14 There is the U.S. version, which is essentially embodying the APEC  
15 cross-border privacy principles, and there is the E.U. approach,  
16 and both models are being discussed in different form globally.  
17 and different countries are looking at different approaches, and  
18 which way they go will have a significant impact on how small  
19 businesses operate not only on a transatlantic basis but how they  
20 use the internet to leverage and engage globally IN all countries  
21 around the world.

22 Mr. Burgess. Well, along those lines then, the benefits  
23 that occur to small and medium-sized enterprises, they are not

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1 unique to the United States-European Union relationship?

2 Mr. Meltzer. No, absolutely not. And in many respects the  
3 opportunities for small and medium-sized enterprises are as real  
4 here as they are in Europe, as they are actually in a range of  
5 other countries, including specifically developing countries,  
6 which have been be able to engage in international trade in a way  
7 that was not possible. So the potential implications of this are  
8 much broader than the transatlantic nature, are certainly broader  
9 than for the SME sector here in the U.S., but certainly globally.

10 Mr. Burgess. Thank you, and I thank you for those answers.

11 Mr. Murphy, the Chamber of Commerce obviously represents a  
12 broad range of interests across the country. Can you give us a  
13 sense what you are hearing from your members, how important it  
14 is that the United States and European Union reach a new agreement  
15 on a new Safe Harbor?

16 Mr. Murphy. Well, it is indispensable to U.S.-E.U. economic  
17 relationship. It is without peer in the world today. And, as  
18 I think several members of the committee have pointed out,  
19 bilateral trade is \$1 trillion annually, but that doesn't even  
20 capture the additional \$5 trillion in sales by U.S. affiliates  
21 in Europe or European affiliates in the United States. There is  
22 no relationship like that. U.S. investment in Europe is 40 times  
23 what U.S. companies have invested directly in China. So getting

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1 this right matters for all kinds of companies.

2 I think for small businesses, they are just waking up to it.  
3 Dr. Meltzer's comments about eBay and the large number of  
4 companies that use that platform as exporters and the uncertainty  
5 about what that would mean for them.

6 But I think that there are potential hidden costs for many  
7 small businesses as well. For instance, I gave my example about  
8 a hotel chain operating in Europe and the many small businesses  
9 which provide services to that hotel. Certainly, many of them  
10 have never thought about this. In the absence of a revised Safe  
11 Harbor agreement, companies may face an incentive to bring that  
12 kind of work in-house, and that could be very damaging for small  
13 businesses going forward.

14 Mr. Burgess. So what is the current state of risk for your  
15 members, and then, further, is that level of risk sustainable for  
16 them?

17 Mr. Murphy. I think that we are going through a bit of a  
18 state of shock here in the wake of the ruling. There was a wide  
19 expectation that the ruling might be in some way adverse. I think  
20 the full dimensions of it were not fully appreciated in advance.  
21 So there is a circling of the wagons right now to try and work  
22 with the authorities to find a solution in the near term.

23 I do agree with Ms. Espinel, though, that this is an issue

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1 that even in the happy event that we are able to achieve in the  
2 next weeks or couple of months a new Safe Harbor agreement, this  
3 issue is going to require constant attention to get it right on  
4 a global level.

5 Mr. Burgess. And thank you for your responses.

6 The chair yields back and recognizes Mr. McNerney 5 minutes  
7 for questions, please.

8 Mr. McNerney. I thank the chair and I thank the witnesses,  
9 very interesting hearing this morning.

10 Mr. Rotenberg, in my mind there is a significant distinction  
11 between government surveillance on the one hand and data breach  
12 from non-state actors, businesses, or so on on the other hand that  
13 are trying to get information that they shouldn't have. Which  
14 do you feel is more significant in the Schrems decision?

15 Mr. Rotenberg. Well, the Schrems decision looks primarily  
16 at a commercial trade framework, which is what Safe Harbor was,  
17 and concludes that that trade framework did not meet the adequacy  
18 requirement of European law. So in that respect I guess you could  
19 say it is commercial. But you see, from the European perspective,  
20 because privacy is a fundamental right, the question of who gets  
21 access to it in some respects is not as significant. It is the  
22 underlying privacy interest. So both will remain important.  
23 The European privacy officials will look to whether the personal

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1 data that is being collected is used for impermissible reasons  
2 either on the commercial side or on the intelligence side.

3 Mr. McNerney. Have you been keeping up with the exceptional  
4 access question here in the United States?

5 Mr. Rotenberg. I am not sure if I understand the question.

6 Mr. McNerney. Well, the FBI and other organizations want  
7 to have an encryption key --

8 Mr. Rotenberg. Right.

9 Mr. McNerney. -- that is accessible to them so they can  
10 look at data with proper warrants -- provisions. Do you think  
11 that that would hurt our businesses?

12 Mr. Rotenberg. Well, I certainly think that would be a  
13 mistake. I understand the Bureau's concern. We have had this  
14 discussion for many, many years. At the risk, of course, of the  
15 so-called key escrow approach to encryption is that you leave  
16 systems vulnerable to --

17 Mr. McNerney. Right.

18 Mr. Rotenberg. -- cyber criminals. In the best of  
19 circumstances you can execute your lawful investigation, but we  
20 know from experience there are many other scenarios, and those  
21 weaknesses will be exploited.

22 Mr. McNerney. Well, what are some of the differences in  
23 between data protection in the U.S. and data protection in Europe?

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1           Mr. Rotenberg. Well, I actually think there is much more  
2 similarity between the two approaches than people commonly think.  
3 The European Union privacy law mirrors many of our own privacy  
4 laws, our Fair Credit Reporting Act, our Privacy Act. All of  
5 these U.S. laws have many of the same principles that the Europeans  
6 do. The difference, I think, is that we have not updated our laws  
7 as the Europeans have, so the divide that you are seeing today  
8 is really not one about disagreement as to what privacy protection  
9 means. It is really divide over the scope of application.

10           Mr. McNerney. Thank you. One more question for you. Do  
11 you have specific recommendations then for data privacy? It  
12 sounds like what you are saying is that we really should be more  
13 proactive in terms of keeping up --

14           Mr. Rotenberg. Yes --

15           Mr. McNerney. -- with the scope of the problem.

16           Mr. Rotenberg. I think we should update our national law.  
17 I mean, again, it is obvious there is no benefit to consumers to  
18 see the disruption of transborder data flows. Everyone wants to  
19 ensure that the data flows continue. But we also know that the  
20 weaknesses in U.S. privacy protections will continue even with  
21 a new Safe Harbor. So there has to be within the United States  
22 an effort to update our privacy law, I believe.

23           Mr. McNerney. Thank you. Ms. Espinel, will American

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1 service members stationed in Europe be able to communicate as  
2 easily with their loved ones here in the United States absent Safe  
3 Harbor?

4 Ms. Espinel. That is an excellent question, and I think,  
5 you know, there are clearly going to be a number of impacts, and  
6 I am happy to speak to those. I think we don't know today what  
7 the full extent of those impacts will be, but communication  
8 between the United States and Europe, I think, is clearly one of  
9 the things that could be implicated, among a number of other things  
10 as well.

11 Mr. McNerney. Well, how can U.S. companies ensure that our  
12 service members are not cut off from their families?

13 Ms. Espinel. So I would say there are three things that we  
14 need to happen. The first is one that we have talked about already  
15 today, which is that we need to come to a new resolution for the  
16 Safe Harbor. So that is sort of a first immediate step. The  
17 United States and Europe need to come together to agree on a new  
18 Safe Harbor.

19 The second thing that we need is we need some appropriate  
20 amount of time for U.S. companies to be able to come into  
21 compliance with those new regulations. And then, as we have been  
22 discussing today, we need to be actively working on what a  
23 long-term, sustainable solution is going to be. I think we are



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1 all in agreement that while it is enormously important to come  
2 to a new agreement on the Safe Harbor as quickly as possible, that  
3 will not be our long-term solution and we need to be working  
4 together on a long-term, sustainable solution.

5 Mr. McNerney. So you pivoted back to your opening remarks,  
6 then, on the three things that we need to do?

7 Ms. Espinel. I think those are the three things that we need  
8 to keep a laser focus on.

9 Mr. McNerney. Thank you. Mr. Chairman, I yield back.

10 Mr. Burgess. The chair thanks the gentleman. The  
11 gentleman yields back.

12 The chair recognizes the gentlelady from Tennessee, Mrs.  
13 Blackburn, 5 minutes for questions, please.

14 Mrs. Blackburn. Thank you so much, Mr. Chairman, and thank  
15 you all for answering the questions and being right to the point.  
16 We appreciate that.

17 Mr. Meltzer, I wanted to come to you. Your October 2014  
18 working paper on transatlantic data flows, some great stats in  
19 there and they really cause you to think when you look at the worth  
20 of the digitally exported services and how that does affect our  
21 trade. So thank you for that and for making that available.

22 I want to go back to something Chairman Burgess was beginning  
23 to push on a little bit, the short- and long-term consequences

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1 as we look at solidifying a Safe Harbor framework. And back to  
2 the issue of U.S. businesses, whether they are large or small,  
3 and let's talk about between now and January 2016 and what the  
4 impact is going to be as you have got that Article 29 Working Party  
5 trying to finalize the Safe Harbor agreement. So I would like  
6 to hear from you, just let's narrow this focus down and look at  
7 these businesses between now and January 2016. We know the volume  
8 that is being exported and look at what you think the impact is  
9 going to be and then what consequences do you see arising if a  
10 new Safe Harbor agreement is unable to be finalized.

11 Mr. Meltzer. Yes, thank you for that question. So to the  
12 first part, assuming that the data protection authorities, all  
13 of them, speak to the commitment not to enforce the Schrems  
14 decision until the end of January 2016, then we are presumably  
15 still in a reasonable status quo environment and data flows should  
16 continue, though under a certain amount of increased uncertainty.

17 Post-January, the question is going to be whether Safe Harbor  
18 has been concluded. But as I think the witnesses have said, I  
19 think even with conclusion of Safe Harbor, it is still ultimately  
20 going to be a question of whether the satisfies the European Court  
21 of Justice, and these will most likely have to be ultimately  
22 settled again by the European Court of Justice because the data  
23 protection authorities have been given the clear authority to

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1 investigate complaints regarding adequacy of data flows. So I  
2 would imagine a situation even after concluded Safe Harbor 2.0  
3 where you still get data protection authorities looking into  
4 whether in fact there is adequacy. So this is certainly going  
5 to increase the risk environment.

6 Stepping back a little bit, I think that there is an interest  
7 clearly -- a significant interest on the U.S. side to make sure  
8 that this is resolved. I think this is an equally important  
9 interest on the E.U. side to resolve this issue as well. The costs  
10 to the E.U. economy are also going to be very significant if they  
11 don't manage to resolve this transborder data flow issue. So I  
12 think those two dynamics give me some hope that a solution is going  
13 to be found, but a number of steps, I think, are going to have  
14 to be taken before that is going to be clear.

15 Mrs. Blackburn. Okay. Ms. Espinel, do you think they will  
16 reach an agreement, and what do you see as the stumbling blocks?

17 Ms. Espinel. We are, as I said, confident, strongly  
18 cautiously optimistic that the Department of Commerce and the  
19 European Union will be able to come to an agreement. All  
20 indications are that the discussions are going well. And as Dr.  
21 Meltzer pointed out, there are very strong interests on both sides  
22 of the Atlantic to coming to an agreement.

23 So, you know, while not wanting to diminish the difficulties

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1 inherent in that, we do believe that they will come to an agreement  
2 in the short-term, although I feel duty-bound to emphasize that  
3 we also believe that the short-term agreement will not be the end  
4 of this discussion, that we will need to come up with a long-term  
5 solution, you know, both to serve the interests of larger  
6 companies but also to serve the interests of the many small and  
7 medium-sized businesses that are affected by this and the millions  
8 of customers on both sides of the Atlantic that are affected.

9 Mrs. Blackburn. Thank you. I am out of time, but I am going  
10 to submit a question for answer dealing with transfer rights,  
11 which I think is something that we probably should be having a  
12 discussion on also.

13 So I will yield back.

14 Mr. Burgess. The gentlelady yields back. The chair thanks  
15 the gentlelady.

16 The chair recognizes the gentlelady from New York, Ms.  
17 Clarke, 5 minutes for questions, please.

18 Ms. Clarke. I thank the chairman, Mr. Burgess, and I thank  
19 our witnesses for their testimony this morning.

20 Ms. Espinel, we know that big companies will likely be able  
21 to use their legal and technical solutions to get by without Safe  
22 Harbor, but what about small businesses? And do small businesses  
23 have the resources and expertise necessary to implement

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1 alternatives?

2 Ms. Espinel. So that is a fantastic question, and as has  
3 been pointed out earlier in this hearing, most of the companies  
4 that are affected by the Safe Harbor are small and medium  
5 companies. You know, there are two different aspects of this.  
6 One way, obviously, to try to deal with this is to build data  
7 centers around the world. That is a solution that is out of reach  
8 to all but the very largest of companies around the world. It  
9 is also a very inefficient way to do remote computing and data  
10 analytics. And in fact, it is not only inefficient, it is  
11 impossible if information is siloed in different locations. So  
12 that is not an option for the smaller companies.

13 And the difficulties of living in a world where there is a  
14 patchwork of regulations is even harder for smaller companies to  
15 deal with. It is no picnic for the larger companies to be sure,  
16 but I think it is impossible for smaller companies. And I think,  
17 you know, one of the things that it does is there are enormous  
18 efficiencies from remote computing, from cloud computing, from  
19 data analytics that benefit big companies, but they also benefit  
20 small companies, in some ways even more. As Chairman Walden said,  
21 75 percent of the value-add there is to traditional industries,  
22 and there are many small companies across all economic sectors  
23 that are affected by this. And putting a shadow over what are

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1 still relatively nascent industries, cloud computing and the data  
2 analytics at this point, I think it is hard to actually measure  
3 what the negative impact of that would be going forward.

4 Ms. Clarke. So if you were to advise small companies, given  
5 what we know right now in the negotiations, what sort of  
6 infrastructure or construct would you advise these smaller  
7 companies to begin looking at?

8 Ms. Espinel. So, as I said, some options are just completely  
9 out of the reach of small companies. I think what the small  
10 companies need is in line with what we would recommend generally.  
11 We all of us need to have a new Safe Harbor agreement in place.  
12 We all of us need some appropriate amount of time to come into  
13 compliance with those new regulations. And then we all need a  
14 long-term solution that is going to work. And that long-term  
15 solution, I think, needs to have at least three aspects to it.  
16 One, we talked a lot about the importance of privacy. I think  
17 it is important that whatever long-term solution there is it  
18 provides that a person's personal data will attract the same level  
19 of protection as it moves across borders.

20 We need to have a solution that will allow law enforcement  
21 to do the job that it needs to do and protect citizens around the  
22 world, and we need to have a solution that will reduce the amount  
23 of legal uncertainty that exists right now, not just for big

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1 companies but for small companies as well.

2 Ms. Clarke. So, Mr. Murphy, given the Safe Harbor ruling's  
3 impact on small businesses, are your organizations doing anything  
4 to ensure that small businesses have the understanding,  
5 expertise, resources necessary to continue their business  
6 operations without a Safe Harbor agreement?

7 Mr. Murphy. Well, at present, the circumstances don't  
8 really provide workable alternatives. As I mentioned in my  
9 testimony, the European Commission, in the wake of the ruling by  
10 the European Court of Justice, indicated that one valid  
11 alternative is to use what is called binding corporate rules. But  
12 as Cam Kerry, the former general counsel at the Department of  
13 Commerce has pointed out, implementing these can cost \$1 million  
14 and can take 18 months. This is completely out of the reach of  
15 most of our small business members. While larger companies may  
16 be able to move in some cases to adopt such an approach, there  
17 is really no alternative for the small companies to revise Safe  
18 Harbor agreement.

19 Ms. Clarke. Have any of you panelists -- I only have a few  
20 seconds left -- given any thought to sort of the nuance that has  
21 to be an agreement that would address the concerns of small  
22 business in our country?

23 Mr. Rotenberg. What we haven't discussed is the role of

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1 innovation in the internet economy. And our view is that privacy  
2 rules would actually encourage innovation, particularly with  
3 small firms. And what I have in mind is to the extent that small  
4 and medium enterprises can develop their services in way that  
5 minimizes the privacy risk, it also reduces the regulatory burden,  
6 because what happens when people look closely at these data  
7 protection assessments, they ask what kind of data is being  
8 collected? Is the credit card information secure? Do you need  
9 the Social Security number? I think small businesses can  
10 actually compete in this space by coming up with business  
11 practices that are actually modeled practices for privacy  
12 protection. That is what I would recommend.

13 Mr. Burgess. The gentlelady yields back. The chair thanks  
14 the gentlelady.

15 The chair recognizes the gentleman from Texas, the chairman  
16 emeritus, Mr. Barton, 5 minutes for questions, please.

17 Mr. Barton. I want to thank both chairmen for this joint  
18 hearing, and it is a very important topic.

19 I am in a little bit of a dilemma. I am the long-term  
20 co-chairman of the Congressional House Privacy Caucus, and I am  
21 also a pro-business Republican, so if I put my pro-business hat  
22 on, I want to renegotiate this Safe Harbor agreement as quickly  
23 as possible with as little muss and fuss as possible. But if I



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1 put my privacy caucus co-chairman hat on, I think the European  
2 Union has highlighted a substantial issue, and that the U.S.  
3 privacy laws aren't as strong as they could be and that people  
4 like me think they should be.

5 So I guess my first question to Mr. Rotenberg would be what  
6 is the primary difference between the European Union privacy  
7 protections for their citizens and the privacy protection  
8 currently under law here in the United States?

9 Mr. Rotenberg. Well, first of all, Mr. Barton, I actually  
10 wanted to thank you for all of your work as a pro-business  
11 Republican in support of consumer privacy. I think you help  
12 demonstrate that in this country privacy is actually a bipartisan  
13 issue, and it is compatible with business.

14 But I think the point you make is also critical, which is  
15 that the Europeans have brought attention to areas of U.S. privacy  
16 law where we have more work to do. We have a good framework. Our  
17 Privacy Act of '74 is a good law, our Fair Credit Reporting Act  
18 of 1970 is a good law, but these are old laws. They have not been  
19 updated. We really haven't thought yet about biometric  
20 identification, genetic data, facial recognition, you know,  
21 secretive profiling of consumers. These are real issues. And  
22 the Europeans have spent the last decade trying to understand how  
23 to protect privacy while promoting innovation.

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1           So my answer is I think we should continue down the road,  
2           which we actually started in the U.S., which is protecting privacy  
3           in law, but keep moving forward. I think the European decision  
4           provides that opportunity.

5           Mr. Barton. Under the current negotiations that are going  
6           on between the U.S. and the European Union to come up with a new  
7           Safe Harbor agreement, does the U.S. delegation have the authority  
8           to make substantive changes in U.S. policy, or are we trying to  
9           finesse the substantive disagreement and come up with just a  
10          better administrative solution?

11          Mr. Rotenberg. I think it will ultimately be for Congress  
12          to make the changes in U.S. law that are necessary to provide  
13          adequate protection not only for the European customers of U.S.  
14          businesses but also for the U.S. customers of U.S. businesses.

15          Mr. Barton. Mr. Murphy, do you agree with that?

16          Mr. Murphy. Our read of the ruling of the European Court  
17          of Justice is that it was fundamentally a federalism issue within  
18          Europe having to do with the role of the European Commission on  
19          privacy versus the role of the data protection agencies in the  
20          28 member states. And to a significant degree the renegotiation  
21          of the Safe Harbor reflects their need to reorganize how they  
22          address privacy and the dissatisfaction with how it was handled  
23          by the Commission.

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1           That is a complex process. Federalism is always  
2 complicated. I don't have to tell a Member of Congress. But the  
3 ruling itself was more process-related and about those issues than  
4 it was about U.S. privacy protection. After all, there was no  
5 comprehensive examination of U.S. privacy law in the context of  
6 the European Court of Justice ruling.

7           Mr. Barton. Mr. Chairman, it is rare that there is not a  
8 silver lining in every issue, and this is an example of where in  
9 the short term we want to work with our negotiators to solve this  
10 problem because small businesses and large businesses all over  
11 the United States need access to the European market and need to  
12 be able to transfer data and information seamlessly back and  
13 forth. But in the somewhat longer term, perhaps it will give  
14 impetus to this committee and the Congress to address some of the  
15 fundamental issues and hopefully come up with stronger privacy  
16 protections for our citizens.

17           And with that, Mr. Chairman, I yield back.

18           Mr. Burgess. The gentleman yields back. The chair thanks  
19 the gentleman.

20           The chair recognizes the gentlelady from California, Ms.  
21 Eshoo, 5 minutes for questions, please.

22           Ms. Eshoo. Thank you, Mr. Chairman. And I apologize to the  
23 witnesses that I had to step out. There is a memorial service

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1 for I just think one of the greatest individuals that ever served  
2 in the Congress, the late Congressman Don Edwards. So I hope that  
3 the questions that I ask haven't already been asked. If they have  
4 been, it is because I had to step out.

5 First of all, Mr. Chairman, I would like to ask for unanimous  
6 consent to submit for the record a November 3 letter from the  
7 Internet Association to the chairs and the ranking members of C&T  
8 and CMT Subcommittees.

9 Mr. Burgess. Without objection, so ordered.

10 [The information follows:]

11

12 \*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

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1 Ms. Eshoo. And I thank you for that.

2 I mentioned in my opening statement what I think is a major  
3 issue in this on the part of the E.U., and that is what type of  
4 access the European data and American intelligence agencies, you  
5 know, what should be given over because there is a very, very large  
6 issue. I mean it is like right under the sheets, and that is that  
7 -- well, you all know what has taken place relative to the  
8 surveillance and what was carried in the mainstream press where  
9 American companies, products were stopped from being shipped,  
10 things were inserted in those products, repackaged, and sent off.  
11 Now, that is, I believe and others believe, really damaging to  
12 the brand American product. And the Europeans are deeply  
13 suspicious of that.

14 So, first of all, what I would like to ask you is how would  
15 you handle that with the E.U.? Do you believe that there should  
16 be an adjustment on the part of our country because this is a big  
17 concern of theirs? And if so, how so? So just go quickly so I  
18 just get a flavor from each one of you what your thinking is on  
19 this issue.

20 Ms. Espinel. So I would just say quickly that is clearly  
21 something that the opinion focused on as well. I think we need  
22 to -- and that is why we have been focusing on we need a short-term  
23 solution but we also need a long-term solution because we know

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1 that negotiation of Safe Harbor will not address all of the larger  
2 issues, including that one.

3 USA Freedom Act I think was a good example of our Congress  
4 being able to balance privacy and national security, so we would  
5 be looking to work with Congress on this issue in the future, and  
6 we are confident that that --

7 Ms. Eshoo. Do you think that the Europeans --

8 Ms. Espinel. -- balance can be found.

9 Ms. Eshoo. -- understand the steps that we took very well?  
10 Or do you know of those conversations having taken place so that  
11 the knowledge is deeper and broader? I don't think we cured  
12 everything, must frankly. We really never do because you have  
13 to develop consensus, and these are tough issues.

14 Ms. Espinel. So I think that is a fantastic point, and I  
15 think one of the things that we really need is to have a political  
16 environment that is cooperative and constructive. And so one of  
17 the things that I would respectfully urge Congress to do, when  
18 you are talking to your counterparts in the European Union, that  
19 I would urge the Administration to do that we can do as well is  
20 to help the Europeans understand our privacy system better,  
21 including some of the recent improvements like the USA Freedom  
22 Act.

23 I take this opportunity to thank you all for voting for the

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1 Judicial Redress Act and hope that the Senate follows your  
2 leadership on that.

3 Ms. Eshoo. Great. Let me just get one more in to you and  
4 to others. This weekend, the CEO and cofounder of Virtru authored  
5 an op-ed in VentureBeat in which he suggested that encryption and  
6 anonymization are ways to adapt to the E.U.'s new data rules. Do  
7 you agree? Do you disagree? Do you think it is helpful? Do you  
8 think that it will --

9 Mr. Rotenberg. This is almost exactly --

10 Ms. Eshoo. -- serve our interests?

11 Mr. Rotenberg. Yes, this is almost exactly the point I was  
12 making to Congresswoman Clarke. I actually think both of those  
13 techniques, encryption and anonymization, provide an opportunity  
14 for internet-based businesses to minimize their privacy burdens.  
15 I think it would be --

16 Ms. Eshoo. Has anyone taken this on voluntarily that you  
17 know of?

18 Mr. Rotenberg. -- a very good step forward.

19 Ms. Eshoo. Any companies to your knowledge taken this on  
20 voluntarily?

21 Ms. Espinel. In terms of encryption --

22 Ms. Eshoo. To adopt these practices --

23 Ms. Espinel. So I would just say that --

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1 Ms. Eshoo. -- post-Snowden --

2 Ms. Espinel. -- our companies care deeply about privacy.  
3 Many of them have adopted various encryption practices in order  
4 to protect their customers' data.

5 Ms. Eshoo. Thank you to the witnesses. Again, thank you,  
6 Mr. Chairman.

7 Mr. Burgess. The gentlelady yields back. The chair thanks  
8 the gentlelady.

9 The chair recognizes the gentleman from New Jersey, Mr.  
10 Lance, Vice Chairman of the Commerce, Manufacturing, and Trade  
11 Subcommittee, 5 minutes for questions.

12 Mr. Lance. Thank you, Chairman, and good morning to the  
13 distinguished panel. And I commend you, Mr. Chairman and the  
14 other chairman, Mr. Walden, for this very important hearing.

15 This is obviously a challenge based upon the decision, but  
16 I think we have the expertise and the bipartisan cooperation,  
17 particularly in this committee, to overcome the challenge and to  
18 work together to an effective solution. And I guess in the  
19 short-term or intermediate term, it is the negotiations now  
20 occurring but then moving forward. My estimate would be is that  
21 we probably ultimately need legislation. I would like the view  
22 of each member of the panel on whether I am correct on that, current  
23 negotiations, but then perhaps we will have to have legislation



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1 as well, to each member of the distinguished panel.

2 Ms. Espinel. So in terms of having, you know, a long-term  
3 sustainable --

4 Mr. Lance. Yes.

5 Ms. Espinel. -- global solution, we will need to work with  
6 a number of countries on that, including the United States.

7 I would say I don't want to dismiss the improvements that  
8 have been made to our legislation recently in the last couple of  
9 years and beyond legislation such as the President's order number  
10 28 and increase FTC enforcement. I do think we may need to look  
11 at other legislative options in the future. And we would  
12 obviously like to be working closely with Congress on that. But  
13 I think in order to come up with a global framework, we will be  
14 needing to work with governments around the world to either update  
15 their systems or to have a principle-based approach that is  
16 flexible enough that it could work within all of our systems.

17 Mr. Lance. Thank you. Dr. Meltzer?

18 Mr. Meltzer. Yes. I agree that a significant amount of  
19 progress has been made here domestically. I mean the issues  
20 around surveillance and collecting personal data is one which is  
21 obviously important domestically and has been driven by domestic  
22 factors rather than, you know, what the E.U. wants the U.S. to  
23 do. And I think that will continue to be the case.

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1           This discussion with the E.U. tends to be a bit distorted  
2 because the European Commission has no authority over national  
3 security issues. So what is missing in this debate on the E.U.  
4 side is actually the fact that the national security agencies are  
5 more or less doing very much what the NSA does and probably with  
6 a lot less due process. So we need to remember that this is not  
7 necessarily -- the U.S. has got a particular balance between  
8 national security and privacy, which is working through, and this  
9 debate also needs to be, I think, invigorated when we talk about  
10 this in the E.U. context as well.

11           Mr. Lance. And before answering, Mr. Rotenberg, let me say  
12 I share Chairman Emeritus Barton's concerns regarding privacy.  
13 And I think it is certainly possible to be a business-centric,  
14 relatively conservative Republican and greatly interested in  
15 privacy. And then I think it is also possible obviously on the  
16 other side, on the Democratic side. So your views as to whether  
17 we will need legislation ultimately?

18           Mr. Rotenberg. Thank you. I am quite certain you will need  
19 legislation. And let me tell you what I think will happen --

20           Mr. Lance. Yes, sir.

21           Mr. Rotenberg. -- if you don't have legislation.

22           Mr. Lance. Yes, sir.

23           Mr. Rotenberg. If you only have a revised Safe Harbor 2.0

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1 and you don't address these 702 problem and wait until 2017 when  
2 that expires and you don't solve the problem that the FTC actually  
3 doesn't have enforcement, I think you will almost immediately see  
4 European data protection agencies attack the revised agreement.  
5 So to have a meaningful agreement that addresses the concerns that  
6 have been set out in the court's opinion, you have to do at least  
7 those two things. You have to update 702 and you need enforcement  
8 authority for the FTC.

9 Mr. Lance. Thank you. Mr. Murphy -- and I am certainly  
10 interested in you with the Chamber of Commerce because you  
11 represent what is best in America and our entrepreneurial spirit.

12 Mr. Murphy. Well, thank you. Certainly, it is in the realm  
13 of a pro-business conservative to support privacy in businesses  
14 as well.

15 Mr. Lance. Of course.

16 Mr. Murphy. Privacy is indispensable.

17 Mr. Lance. Of course. Of course.

18 Mr. Murphy. And companies take this very seriously.

19 I would just add a clarification, though, that with regard  
20 to whether or not there should be further privacy legislation in  
21 the United States, the ruling of the European Court of Justice  
22 does not provide a roadmap for that. It was process-oriented.  
23 It had to do with federalism within the European Union. It did

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1 not assess in any comprehensive way U.S. privacy laws.

2 Mr. Lance. Substantive -- yes, it was a procedural matter.

3 I think this is very helpful, and I am sure we will continue

4 to work with the entire group. And this is an important issue.

5 And, Mr. Chairman, I yield back at 17 seconds.

6 Mr. Burgess. The gentleman yields back. The chair thanks

7 the gentleman.

8 The chair recognizes the gentleman from Vermont, Mr. Welch,

9 5 minutes for questions, please.

10 Mr. Welch. Thank you very much, Mr. Chairman, and thank the

11 witnesses.

12 Mr. Rotenberg, you mentioned that if we are -- the

13 legislation would have to address the 702 problem and provide FTC

14 enforcement, correct?

15 Mr. Rotenberg. [Nonverbal response.]

16 Mr. Welch. I want to ask you, Mr. Murphy, whether that would

17 be problematic for you to allow the FTC to actually have the

18 enforcement authority and to address the 702 problem.

19 Mr. Murphy. I don't think we are in a position to assess

20 that right now, but as a general rule, the business community has

21 felt that the FTC does have extensive abilities to enforce U.S.

22 privacy laws that exist. And we are constantly trying to educate

23 our European colleagues about the misconceptions may have about

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1 the U.S. privacy regime. There is --

2 Mr. Welch. Well, let me just interrupt a second because this  
3 is really pretty critical. You have got, I think, general  
4 agreement here that we definitely want to have this Safe Harbor  
5 agreement extended. We want to be able to have this fluid flow  
6 of information back and forth really for business reasons. There  
7 is a general agreement on privacy. But in order for there to be  
8 real enforcement, there has to be some mechanism to take action  
9 in the event there is a breach that then gets us sometimes in this  
10 committee into a debate about the authority of, in this case, the  
11 FTC to act. There are a lot of folks, I think, who are  
12 pro-business who would be in favor of proper enforcement as long  
13 as it didn't go overboard. So I am just looking for some  
14 indication from you as to the openness from your perspective as  
15 someone who would be advocating for the business advantages of  
16 having that include a proper enforcement by a regulatory agency  
17 like the FTC.

18 Mr. Murphy. It is something that I think calls for further  
19 investigation with our membership.

20 Mr. Welch. Okay. Ms. Espinel, let me ask you a few  
21 questions. Thank you very much, by the way.

22 Just to recount the amount of business that goes back and  
23 forth, I mean, what are the implications for your industry in the

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1 event this problem is not solved?

2 Ms. Espinel. So the implications are very significant, and  
3 it is not just the nearly 5,000 companies that have used the Safe  
4 Harbor. It is the millions of customers that rely on that. But  
5 there are all sorts of other implications as well. So, you know,  
6 for example, one of the things that we talk about in the area of  
7 cybersecurity is that you need information to follow the sun. You  
8 need cyber threat information to be in the hands of experts,  
9 wherever they are awake around the world, as quickly as possible.  
10 And things like the revocation of the Safe Harbor put that at risk.

11 You know, many of the companies that rely on the Safe Harbor  
12 using that in part to process payroll so that their employees back  
13 at home can be paid on time. Revocation of the Safe Harbor puts  
14 that at risk.

15 I am confident that there are apps being developed in every  
16 district represented in this room. If those small companies,  
17 those small app developers want to extend into Europe, the  
18 revocation of the Safe Harbor puts that at risk.

19 But more generally, the enormous business efficiency gains  
20 by both big companies and small companies from remote computing,  
21 from data analytics cannot work unless data can move across  
22 borders. So the revocation of the Safe Harbor, one of the big  
23 risks there is that it takes all of that efficiency, all the

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1 enormous potential gained from that efficiency and puts them at  
2 risk. And that affects every economic sector. That is not just  
3 the software industry. That is every economic sector in the  
4 world.

5 I will just close by saying briefly, beyond the business  
6 effects, there are enormous societal benefits that are coming from  
7 things like data analytics, from forecasting cholera outbreaks  
8 to saving the lives of premature babies to helping farmers reduce  
9 use of pesticides. But it is a very new industry, and I think  
10 the shadow that the Safe Harbor decision casts over a nascent  
11 industry is potentially very damaging.

12 Mr. Welch. Okay. Thank you. I only have time for one more  
13 question, but thank you. I consider that a call to action, Mr.  
14 Chairman.

15 Dr. Meltzer, the dispute here, how much of it has to do in  
16 your view with the revelations by Snowden where, on the one hand,  
17 that raised questions about the privacy of information that was  
18 accessible to national security authorities here, but in Europe  
19 we are being told that in fact the security agencies there do the  
20 same but with less protections?

21 Mr. Meltzer. Certainly, the Snowden revelations have cast  
22 a significant pall over the entire political discourse in Europe  
23 around this issue. There is generally, you know, large mistrust

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1 in a number of member states about the way that the U.S. Government  
2 accesses personal data, and it is not well understood about the  
3 progress that has been made in the last couple of years to change  
4 that balance. So I think getting that right has certainly been  
5 part of it.

6 It is actually the case that this is a strange debate in  
7 Europe to the extent that the national security agencies are not  
8 part of the discussion here, and so the balance in the U.S. between  
9 innovation, privacy, and that issue is being reflected very  
10 differently in Europe.

11 Mr. Welch. Okay. Thank you. I yield back.

12 Mr. Burgess. The gentleman yields back. The chair thanks  
13 the gentleman.

14 The chair recognizes the gentleman from Ohio, Mr. Latta, the  
15 Vice Chairman of the Communications and Technology Subcommittee,  
16 5 minutes for questions, please.

17 Mr. Latta. Well, thanks very much, Mr. Chairman, and again  
18 to our witnesses, thanks very much for all of the information you  
19 have given us today. It is very enlightening.

20 And, you know, because when we are talking about trade, it  
21 is important to all of us. I visit a lot of my businesses in my  
22 district all the time, and small businesses especially, it is  
23 amazing how many of them are telling me that they are looking at



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1 overseas to find more job creation for at home and then sell their  
2 products abroad. So this is very, very important to them to make  
3 sure that they can get their products out. And it is also making  
4 sure that they keep the people employed.

5 If I could ask Mr. Murphy, again, we have been talking about  
6 this. I know the gentleman from New Jersey was also talking about  
7 it a little bit ago that when the European Court, you said, did  
8 not examine the recent change in the U.S. oversight electronic  
9 surveillance, and you get into the essentially equivalent to the  
10 safeguards that exist in the E.U. What we have to do right now  
11 to get the Europeans convinced that we are going to have that,  
12 essentially the equivalent for our businesses to be able to work  
13 with them overseas right now?

14 Mr. Murphy. Well, more than anything I think we can do on  
15 this side of the pond, it is what we are seeing European business  
16 do because if failure to achieve a new Safe Harbor agreement is  
17 bad for American business, it is far worse for Europe. According  
18 to ECIPE, the European Centre for International Political  
19 Economy, the think tank in Brussels, they conducted a study which  
20 found that complete data localization in Europe, which is  
21 obviously the worst possible outcome of the controversy today,  
22 would cost the European economy 1.3 percent of GDP. That is more  
23 than \$200 billion.

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1           It would mean higher costs for European consumers. As  
2 competition is lessened, small businesses in Europe would be  
3 particularly hard hit, as I think we have discussed, in a number  
4 of ways here. Some of the smaller E.U. member states would be  
5 particularly sidelined. You think about major service providers  
6 of digital services that are provided to companies and consumers,  
7 in many cases they might simply overlook some of the smaller member  
8 states.

9           We are often hearing from our European friends that they want  
10 to develop their own Silicon Valley. They lament that for some  
11 reason the U.S. economy is much more innovative. We have an ICT  
12 sector in this country that is growing and growing and why can't  
13 they achieve it. Well, this kind of ruling could have a very  
14 chilling factor. And we should care about that because Europe  
15 is our number one economic partner by far, and if their economy,  
16 which is experiencing quite slow growth today, a failure to find  
17 a path forward here would be very costly for the American economy  
18 as well.

19           Mr. Latta. Thank you.

20           Mr. Meltzer, if I could turn to you, and again, your testimony  
21 and also what you have written in your testimony that when you  
22 look at the internet commerce in the United States grew from over  
23 13 billion in 2011 to the estimate of about 133 billion in 2018,

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1 you know, we are seeing what is happening out there. But another  
2 question is will the invalidation of the Safe Harbor agreement  
3 indirectly impact trade relations in economies of countries that  
4 are outside the E.U.?

5 Mr. Meltzer. I think potentially, yes, absolutely it will  
6 be through a variety of mechanisms. One of them certainly is the  
7 fact that trade and commerce now happens in the context of global  
8 value chains. So a lot of the cross-border data between the U.S.  
9 and the E.U. is in fact incorporating imports and products from  
10 around the world, certainly from our NAFTA partners but more  
11 globally. And so the impacts and the flow-through of reductions  
12 in transatlantic trade investment is going to have global  
13 implications at that level.

14 More broadly is how this privacy debate, I think, plays out  
15 globally, whether in fact the world moves down an E.U. top-down  
16 privacy approach or adopts more of the U.S. bottom-up company-led  
17 sectorial approach is going to, I think, have a broader  
18 implications for the types of business models and trade flows that  
19 happen globally and will have significant implications for the  
20 U.S. going forward.

21 Mr. Latta. Let me ask a follow-up on that, then. What  
22 should the U.S. Government be doing right now to preempt the  
23 problems that could exist then for these countries outside the

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1 E.U. because of the decision?

2 Mr. Meltzer. I think one of the main efforts by the U.S.  
3 Government has been in the APEC context, the cross-border privacy  
4 principles there, which has been a set of principles around  
5 privacy, you know, really quite similar to the ones that the E.U.  
6 has. On the principle level there is not that much disagreement.  
7 It is really about how they are going to apply it and enforce,  
8 whether in fact businesses take responsibility for the privacy  
9 of the data or ultimately it is going to be up to sort of a more  
10 regulatory government approach to make sure that that happens.

11 Now, the differences cannot be so great even on that front,  
12 but that model, the APEC approach, is the one that the U.S. has  
13 been trying to push through APEC and through other trade  
14 agreements in another forum.

15 Mr. Latta. Well, thank you very much. Mr. Chairman, my  
16 time has expired and I yield back.

17 Mr. Burgess. The chair thanks the gentleman. The  
18 gentleman yields back.

19 The chair recognizes the gentleman from Illinois, the  
20 subcommittee chairman of the Environment and the Economy  
21 Subcommittee, 5 minutes for questions, please.

22 Mr. Shimkus. You forgot to say the powerful chairman of the  
23 Environment and the Economy.

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1           Welcome. We are glad to have you here. I am going to be  
2 brief. I know my colleagues want to ask a few more questions,  
3 and we are kind of beating a dead horse.

4           I just wanted to say, first of all, we need to get to Safe  
5 Harbor 2.0 as soon as possible. And we really can't move to data  
6 localization. It will hurt all these things on commerce not just  
7 for big businesses but individual consumers. If you look at  
8 banking transactions or you are looking at obviously information,  
9 engineering data going back -- I mean it is just -- so I am not  
10 sure that the public understands the enormity of this issue, and  
11 so we want the Administration to keep moving forward possibly in  
12 this realm.

13           But I am always curious about the court ruling and the  
14 European community not looking to their own backyard, and to the  
15 fact that I think the French new national security surveillance  
16 protocols are much more intrusive, and the proposed U.K. could  
17 be just as bad on the issues of privacy. So, Dr. Meltzer, can  
18 you talk about that little bit? And are they more intrusive in  
19 how they might differ?

20           Mr. Meltzer. I think we are seeing in France following the  
21 attacks, the Charlie Hebdo attacks and the attacks on the Jewish  
22 supermarket, that there have been proposals to reinvigorate and  
23 strengthen the way that the national security agencies operate

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1 in France, and certainly some of the proposals there would see  
2 collection of data and due process, which would be less than what  
3 you see in the U.S.

4 I think the point is that each country has got to find its  
5 own appropriate balance between national security and privacy.  
6 The U.S. is clearly going for a revision of that balance here  
7 following the Snowden leaks. The problem I think in the debate  
8 is that the way that discussion is playing out is that we have  
9 a separate debate on privacy as a human right when we talk about  
10 this between the U.S. and the E.U., and it ignores the security  
11 dimension to these, which is happening at the national member  
12 state level.

13 Mr. Shimkus. But they are member states of the E.U., so it  
14 is curious for many of us to say it is okay for them locally within  
15 their own cyber -- you know, their own country, but as a member  
16 of the E.U. to place these additional barriers or concerns or  
17 disrupt trade when internally they may be as --

18 Mr. Rotenberg. Mr. Shimkus --

19 Mr. Shimkus. -- could be -- I want to continue. One more  
20 question for Dr. Meltzer, and I did want to be brief. Can you  
21 talk about the -- Dr. Meltzer, back to the major part of the  
22 economy. What -- any parts of the economy that would not be  
23 affected if this Safe Harbor ruling stays in place?

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1           Mr. Meltzer. Most certainly, I think this point has been  
2 made and is worth reinforcing that this is very much an economy  
3 issue. This is not a digital economy issue. This is not an IT  
4 economy issue. The advanced economies of the United States and  
5 Europe are increasingly digital in their entirety, whether we are  
6 talking about manufacturing sector, services sector, and  
7 certainly the IT sector, the automobile sector, you name it. So  
8 there is no area that would not be affected by it.

9           Mr. Shimkus. Thank you, and I want to yield back my time.  
10 Thank you, Mr. Chairman.

11           Mr. Burgess. The gentleman yields back. The chair thanks  
12 the gentleman.

13           The chair recognizes the gentleman from Kentucky, Mr.  
14 Guthrie, 5 minutes for questions, please.

15           Mr. Guthrie. Thank you, Mr. Chairman. I appreciate you all  
16 being here. I was just in a meeting with our NATO Alliance  
17 members, Members of Congress, parliaments from NATO Alliance, and  
18 although we were talking about defense issues in our meetings,  
19 almost every time we were walking in or out or just coffee breaks,  
20 whatever, the European parliamentarians were very interested in  
21 talking about this issue. So it is important here, it is  
22 important there, and everybody is focused on that, so I would bring  
23 that up.

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1           But, Ms. Espinel and Mr. Murphy, I have a few questions. Do  
2 you have member companies that are headquartered in the E.U. but  
3 have operations, subsidiaries, or other investment vehicles in  
4 the U.S.? And if so, how has this decision impacted their  
5 business operations?

6           Ms. Espinel. We do have members that are headquartered in  
7 the United States, and we also have members with significant  
8 operations in the United States. But I would say for our members,  
9 regardless of where they are headquartered, the risks are the  
10 same. Our members, regardless of where they are headquartered  
11 and the customers that they serve, need data to be moving back  
12 and forth across borders. So I think regardless of where -- the  
13 world that we live in today, regardless of where you are  
14 headquartered, I think the risk of the Safe Harbor revocation or  
15 the risk of a world in which data cannot move freely back-and-forth  
16 are the same.

17           Mr. Guthrie. Thank you. And, Mr. Murphy?

18           Mr. Murphy. Just very briefly, we have many members that  
19 our U.S. affiliates of European multinationals, and they are just  
20 as concerned as the American companies. They see no upside in  
21 this. It doesn't provide some kind of a competitive advantage  
22 for them to have this kind of forced localization, which would  
23 be the worst possible outcome of the failure to renegotiate Safe



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1 Harbor. So there is common interest in securing a path forward  
2 here.

3 Mr. Guthrie. All right. So, Mr. Murphy, I will ask this  
4 to you then. So data localization proposals have been considered  
5 in a number of countries in the past 3 years. This topic was the  
6 focus of another meeting of this subcommittee. What has your  
7 experience been with the challenges these types of proposals pose  
8 to the economies in today's global marketplace? Cross data flows  
9 have international implications. Kind of elaborate what you were  
10 just saying, I guess.

11 Mr. Murphy. Yes. In more than a dozen countries around the  
12 world we have been active in trying to reach out to foreign  
13 governments to explain to them why data localization is not in  
14 their interest. As I mentioned earlier, there is nothing more  
15 common than receiving a head of state at the U.S. Chamber of  
16 Commerce who says we want to create our own Silicon Valley. The  
17 idea of putting up protectionist walls that are going to somehow  
18 force the location of servers in the country or the use of  
19 domestic-created technologies is really the worst possible  
20 prescription for them to be able to do that and do so in a globally  
21 competitive manner.

22 So there have been victories in the past couple of years.  
23 For instance, the Brazilian Government considered measures that

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1 they later rolled back after hearing from businesses around the  
2 world, and it has been quite a constructive relationship. But  
3 we continue to see these issues pop up in market after market.

4 Mr. Guthrie. Thanks. I have one more question for you, and  
5 if Ms. Espinel will comment as well.

6 So first, Mr. Murphy, how would you describe the FTC as an  
7 enforcement agency for the Safe Harbor? And how do FTC  
8 enforcement actions modify business behavior in the U.S.? And  
9 do you see any differences in E.U. system that we should be aware  
10 of? And, Ms. Espinel, if you will comment after he goes.

11 Mr. Murphy. Yes. Well, the U.S. has one of the strongest  
12 systems of enforcement led by the FTC, and it has powers and  
13 penalties that are significantly stronger than its counterparts  
14 in the European Union, including 20-year consent decrees. We  
15 think that many of our friends in the European Union don't take  
16 that into account, and in particular, don't take into account how  
17 these laws are actually enforced, whereas with some other  
18 countries that may replicate an E.U. member state law, they would  
19 accept their practices as somehow superior to those of the United  
20 States, even if enforcement is not nearly on the same level.

21 Mr. Guthrie. Thanks. Ms. Espinel?

22 Ms. Espinel. I would just say, you know, I think at a  
23 fundamental level the systems and certainly the focus on privacy

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1 between the United States and Europe are not that different, but  
2 one of the things that is different about our system is the  
3 enforcement authority of the FTC. And I would say on behalf of  
4 the software sector we have seen the FTC increasing its  
5 enforcement authority and using it in ways -- and we think that  
6 those are positive steps.

7 We do think, as has been alluded to earlier today, that there  
8 may not be a full understanding on the other side of the Atlantic  
9 of the improvements that have been made in our privacy system,  
10 including FTC enforcement. I think that is something we need to  
11 collectively try to address.

12 But to your basic question, we are supportive of FTC  
13 enforcement, and we have been seeing more of that over recent  
14 years, and we think that is a good development.

15 Mr. Guthrie. Thank you. And I yield back the balance of  
16 my time. I appreciate it.

17 Mr. Burgess. The gentleman yields back. The chair thanks  
18 the gentleman.

19 The chair recognizes the gentleman from Mississippi, Mr.  
20 Harper, 5 minutes for questions, please.

21 Mr. Harper. Do you need to say Mississippi again, Mr.  
22 Chairman? Did you get that?

23 Mr. Burgess. [Nonverbal response.]

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1           Mr. Harper. Thank you. And thanks to each of you for being  
2 here today. This is a critically important topic, and to discuss  
3 this is very important.

4           And, Ms. Espinel, if I could ask you first, can you explain  
5 how the United States can make the case that we offer essential  
6 equivalence in terms of data protection currently?

7           Ms. Espinel. So, as I was saying, I think -- I would say  
8 a couple of things. You know, I think in terms of -- as we said  
9 before, I think our immediate goal is to try to get a new Safe  
10 Harbor, and I think that is a step that the European Commission  
11 can take if they choose to do so. And we are optimistic that they  
12 will choose to do so.

13           But in looking at the long term, essential equivalence or  
14 the appropriate standing for privacy protection, that is  
15 something that is going to continue to evolve, so that is our  
16 opinion, as laws and practices change around the world. And so  
17 what we need for the long term is we need a system that is flexible  
18 enough. We believe we need a system that is based on principles  
19 as opposed to prescriptive regulations. And we need a system that  
20 recognizes the importance of privacy. And again, I don't think  
21 the differences there between the United States and Europe are  
22 that great, but also creates a framework so that a person's  
23 personal data will attract the same level of detection as it moves

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1 around the world. I think that is something that is important  
2 to the United States, as well as Europe.

3 And we need to be able to find the right balance. We need  
4 to let law enforcement do the job that it has to do. And you will  
5 not be surprised to hear, on behalf of the business community large  
6 and small, we need to have a system that will reduce the legal  
7 uncertainty of the situation that we face today.

8 Mr. Harper. Okay. And of course the challenge for us is  
9 to make sure that the rules and regulations don't get in the way  
10 of the technology that seems to move at a much faster pace on  
11 occasion. So it is a challenge for all of us to go there.

12 Mr. Murphy, if I could ask you, and I know following up on  
13 what has been discussed, what you have mentioned, the ECJ ruling  
14 puts some European businesses who transfer data to American  
15 companies at risk as well. Could you discuss further whether  
16 European businesses have any incentive to put pressure on the U.S.  
17 and the Commission to come to an agreement on the Safe Harbor,  
18 and if so, how?

19 Mr. Murphy. Well, thank you for that question. Many of our  
20 sister associations on the other side of the Atlantic are hard  
21 at work reaching out to the European Commission and to member state  
22 governments urging them to find a path forward as well. If there  
23 is one thing that businesses of all sizes dislike, it is

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1 uncertainty, and the reach of the ruling that came out in early  
2 October was significantly further than anything that was  
3 anticipated. And the absence of any kind of a clear transition  
4 plan, guidance to companies on how they should behave in the  
5 interim while -- plus, potentially, this new Safe Harbor agreement  
6 is concluded, has caused real concern across companies in Europe  
7 as well. So we have encouraged them to make their voices heard  
8 in Europe, as we are doing here.

9 Mr. Harper. Thank you, Mr. Murphy.

10 With that, I yield back, Mr. Chairman.

11 Mr. Burgess. The gentleman yields back. The chair thanks  
12 the gentleman.

13 The chair recognizes the gentleman from Texas, Mr. Olson,  
14 5 minutes for questions, please.

15 Mr. Olson. I thank the chair. And welcome to all four  
16 witnesses.

17 In many ways, Europe is following Rahm Emanuel's -- President  
18 Obama's first chief of staff -- lead. He said, "you never want  
19 a serious crisis to go to waste." The difference is this is not  
20 a serious crisis. It is a problem. Again, it is not a serious  
21 crisis. It is a problem that will be a crisis unless we fix it  
22 by January 31 of next year.

23 Mr. Murphy, Ms. Clarke brought up the BCRs, the binding

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1 corporate rules, also the model contract clauses. Companies have  
2 those in effect right now. How are they impacted by the ECJ  
3 decision with their data?

4 Mr. Murphy. How --

5 Mr. Olson. How are they impacted? How are the contract  
6 clauses and the binding corporate rules -- companies have those.  
7 Their data, how is it impacted by the ECJ's ruling?

8 Mr. Murphy. Well, these mechanisms were not invalidated by  
9 the ruling. However, they are practically out of reach for so  
10 many different companies. And as was mentioned earlier, the  
11 expense of \$1 million and the time it takes, 18 months, to  
12 negotiate a new one has made them really impractical for many  
13 companies to consider this as an alternative. And you might think  
14 that in the wake of this ruling that many companies are considering  
15 whether and how they can enter into more of these. And it appears  
16 that in the case of some large companies, they are definitely  
17 examining some of these alternatives going forward. But for the  
18 smaller companies, it simply isn't tenable.

19 Mr. Olson. Ms. Espinel, care to comment on that issue, the  
20 BCRs, the MCCs with your members?

21 Ms. Espinel. So many of our members are looking at various  
22 mechanisms to address this, but I would echo what Mr. Murphy said.  
23 Despite the fact that the European Court of Justice opinion does

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1 not speak directly to things like the model contract clauses, they  
2 are first out of reach for many, many businesses around the world.

3 And second, to us, they do not represent sort of long-term  
4 solution that we need to have, and that is why we continue to focus  
5 on the fact that, while we think it is immediate and vital to have  
6 a new Safe Harbor in place and then have some time for companies  
7 to come into compliance with that, we need to have a long-term  
8 solution that moves beyond things like model contract clauses so  
9 that we do not find ourselves in this situation again a year or  
10 two down the road.

11 Mr. Olson. One final question for all witnesses, the ECJ's  
12 decision may open up liability for data transfers from Europe to  
13 America for the entire period of the 15 years of Safe Harbor. A  
14 Bloomberg article says we may be exposed to liability. My  
15 question is, is that real, Ms. Espinel? Is that a real issue out  
16 there? Can 15 years be thrown away with this court decision,  
17 exposed liability, American companies, European companies?

18 Ms. Espinel. I think there is a real risk there. However,  
19 I would echo what you said. I think what we are facing right now  
20 is a significant problem, not a crisis, and I say that in part  
21 because we are confident that the United States and Europe will  
22 be able to come to a sensible resolution and conclude a Safe Harbor  
23 and avoid that situation.



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1 Mr. Olson. Dr. Meltzer, your comments, sir?

2 Mr. Meltzer. Let me just say briefly on your question about  
3 BCR and contracts, I agree with what the panelists have said. It  
4 is worth noting that data protection authorities in Germany have  
5 specifically said that they do not think that BCRs and contracts  
6 are legally viable mechanisms any longer. The concern obviously  
7 is that the structural problems that the European Court of Justice  
8 has found with the privacy regime here in the United States is  
9 broadly applicable to contracts and BCRs as well. So the issues  
10 there make these other mechanisms also unstable.

11 Mr. Olson. Thank you. Mr. Rotenberg, the question about  
12 liability thrown out for --

13 Mr. Rotenberg. Yes, Mr. Olson, I don't think there would  
14 be retroactive application of the Safe Harbor decision for prior  
15 data transfer, so the short answer is I don't think that risk  
16 exists.

17 However, I think there is another risk to be aware of, which  
18 is that this January 2016 deadline that people are talking in terms  
19 of presumes that the Article 29 Working Party can keep all of the  
20 data protection officials in Europe in check. And all of those  
21 national officials have independent authority, so it is actually  
22 possible that at any time over the next few months there could  
23 be an enforcement action after the Schrems decision became final.

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1           Mr. Murphy, data for the last 15 years of our Safe Harbor,  
2 some sort of liability for those?

3           Mr. Murphy. I don't have an answer for you, but certainly,  
4 this is precisely the sort of uncertainty that alarms corporate  
5 counsel and companies across the country.

6           Mr. Olson. I thank the witnesses. I ask unanimous consent  
7 to enter the article from Bloomberg in the record. And, Chairman,  
8 I yield back.

9           Mr. Burgess. Without objection, so ordered.

10           [The information follows:]

11

12           \*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

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1           Mr. Burgess. The chair recognizes the gentleman from  
2 Kansas, Mr. Pompeo. Thank you for your forbearance, and you are  
3 recognized for 5 minutes for questions.

4           Mr. Pompeo. Thank you, Mr. Chairman.

5           I want to try and clear away some of what I think are the  
6 underlying facts. We have talked a lot about policy. I want to  
7 make sure we have got, as best I can, some basic facts in place.

8           Ms. Espinel, maybe we will start with you. Your companies'  
9 data, if the data belongs to a U.S. person or a non-U.S. person,  
10 do your companies treat that data any differently?

11          Ms. Espinel. Our companies put the highest level of  
12 protection and security on all of their customers' data,  
13 regardless of the nationality.

14          Mr. Pompeo. Right. So they treat it identically. Mr.  
15 Murphy, same for yours? It doesn't matter whether a U.S. person  
16 or -- the data is treated identically?

17          Mr. Murphy. Absolutely.

18          Mr. Pompeo. The same protections? We could go look at the  
19 record. I have heard the word privacy concerns uttered maybe 50  
20 times this morning. Concerns are one thing. Ms. Espinel, is  
21 there any evidence of abusive practices from U.S. companies with  
22 respect to handling PII of either U.S. persons or non-U.S.  
23 persons? We have data breaches, we have data get out. I get

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1 that. But yes, to you.

2 Ms. Espinel. So I will speak on behalf of my members. Our  
3 members are not abusing the data of their customers.

4 Mr. Pompeo. Right. They are doing their best to protect  
5 it. Mr. Murphy, I assume yours are as well?

6 Mr. Murphy. That is certainly my impression. And the  
7 potential reputational damage from failure to do so is, I think,  
8 a powerful factor in their consideration.

9 Mr. Pompeo. I completely agree. And let's talk about  
10 reputational damage actually. Mr. Rotenberg in his written  
11 testimony in the summary said "transatlantic data transfers  
12 without legal protections were never safe." Mr. Murphy, do you  
13 think that is true? Do you think these data transfers have been  
14 performed in an unsafe manner?

15 Mr. Murphy. No, I think that it has been a 15-year record  
16 of success and really comparable in success to that related to  
17 data transfers within Europe between member states.

18 Mr. Pompeo. Ms. Espinel, would you agree with that?

19 Ms. Espinel. Speaking for the members that I represent,  
20 yes, I would agree with that.

21 Mr. Pompeo. So I think it is that kind of hyperbole that  
22 has caused the European elected officials to have no backbone on  
23 this issue. I get the politics, I get the protectionism. I

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1 completely understand how they have all watched the Snowden  
2 hearings and decided they could get elected but didn't defend the  
3 privacy actions that are taken by your companies. We have had  
4 talk today about Section 702. Mr. Murphy, do any of your clients  
5 ever collect data under Section 702?

6 Mr. Murphy. I just have no information on that.

7 Mr. Pompeo. Yes. Ms. Espinel, do you know?

8 Ms. Espinel. I don't. But what I would say is that we have  
9 made this point in the hearing before. I think one of the things  
10 that is crucial here is that there is a real lack of understanding  
11 on both sides of the Atlantic, but I think the Europeans, both  
12 on privacy regimes but also, as was touched on earlier, the  
13 complications of our various surveillance regimes. And one thing  
14 that I don't think has been done but I think be very useful is  
15 to have a comprehensive analysis of the surveillance regimes  
16 across the European Union states because I don't think there is  
17 a good and clear understanding, and I think that has led to a lot  
18 of confusion, you know, deliberate or not.

19 Mr. Pompeo. Yes, I think that is not lack of understanding.  
20 I think that is willful ignorance. But maybe we disagree.

21 Mr. Rotenberg, I want to make sure I understood something  
22 you said. You talked about Section 702 a bit. I know a little  
23 bit about it but maybe you know more. Is it your position that

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1 U.S. persons and non-U.S. persons should be treated identically  
2 with respect to the U.S. Government collection of information?

3 Mr. Rotenberg. I think under the Foreign Intelligence  
4 Surveillance Act there is a clear distinction --

5 Mr. Pompeo. No, I am asking if you think. You have  
6 suggested a modification to U.S. law. That is U.S. law. I guess  
7 my question is, is it your position or your organization's  
8 position that U.S. persons and non-U.S. persons should be treated  
9 identically with respect to government information collection?

10 Mr. Rotenberg. As a general matter, yes. And most of U.S.  
11 privacy law takes that position, particularly on the commercial  
12 side. There is no distinction in our commercial privacy law --

13 Mr. Pompeo. Yes.

14 Mr. Rotenberg. -- between U.S. persons and non-U.S.  
15 persons.

16 Mr. Pompeo. Fair enough. Just so know, that would be  
17 ahistoric. You could very well be right about it being proper,  
18 but no nation has ever behaved that way with the collection of  
19 data for their own citizens as against the others. There is  
20 always a wrinkle. There is always an exception. There is always  
21 a Section 1233, executive order. There is always a way that  
22 nations have, in their efforts to provide national security for  
23 their own people, have behaved that way. And I actually think

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1 the United States has done a remarkable job of protecting citizens  
2 all around the world and protecting their data in their efforts  
3 to keep us all safe. I think that is important.

4 Mr. Rotenberg. Sir, may I ask, do you think that the Office  
5 of Personnel Management has done an excellent job protecting the  
6 records of the federal employees --

7 Mr. Pompeo. Well, no, sir. There are errors all along the  
8 way. I am asking --

9 Mr. Rotenberg. Twenty-one-and-a-half million records --

10 Mr. Pompeo. -- about policy. I am asking about policy and  
11 --

12 Mr. Rotenberg. SF-86, those --

13 Mr. Pompeo. Yes.

14 Mr. Rotenberg. -- are the background investigations --

15 Mr. Pompeo. Very familiar with that. I filled one out and  
16 I think mine was released as well, sir, so I am intimately familiar  
17 with that. I didn't say we didn't have errors and mistakes. I  
18 am simply talking about policy.

19 Let me ask one more question. Mr. Murphy, you talked about  
20 this million-dollar cost for private solutions, these BCRs or  
21 other delegated methodologies. Is there any way to drive that  
22 cost down? Is there any way to make that a  
23 hundred-thousand-dollar cost instead of a million-dollar cost?

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1           Mr. Murphy. Not substantially. And I think that as we look  
2 at some of these alternatives like BCRs to the degree that they  
3 do continue to be relevant going forward, it is a field day for  
4 lawyers. And I suppose there is some job creation in that. But  
5 that is clearly not the intention of the policy.

6           Mr. Pompeo. Thank you. I am past my time. Thank you for  
7 bearing with me, Mr. Chairman. I yield back.

8           Mr. Burgess. The chair thanks the gentleman. The  
9 gentleman yields back.

10           The chair recognizes the gentleman from Florida, Mr.  
11 Bilirakis, 5 minutes for your questions, please.

12           Mr. Bilirakis. Thank you, Mr. Chairman. I thank the panel  
13 for testifying.

14           This issue arose quickly, and I am glad we are addressing  
15 it today so that some certainty can be given to the numerous  
16 businesses seeking answers as they tried to continue the pursuits  
17 in a global marketplace.

18           Ms. Espinel and Mr. Murphy, I know you touched on this a bit,  
19 but what challenges are companies facing as they evaluate and even  
20 implement the other mechanisms in the E.U. that permit data  
21 transfers to countries outside the E.U.?

22           Ms. Espinel. So one specific challenge that companies are  
23 facing, big companies and small companies, is the processing of



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1 their payroll and making sure that their employees get time. If  
2 there is not a resolution of the Safe Harbor, that is something  
3 that could be at risk. And that is obvious business disruption,  
4 but it is also disruption to the lives of human beings that are  
5 employed by those companies.

6 Let me mention one thing that I haven't mentioned before.  
7 We did a survey last year, which I would be happy to share, where  
8 we talked to the CEOs and senior executives of companies in the  
9 United States and Europe in terms of what data meant to them and  
10 how valuable it was to their business. And one of the things that  
11 was really surprising to me is really small companies, companies  
12 that have less than 50 employees, already today find data  
13 enormously important to going into new markets, serving their  
14 customers, developing new products. What I found less surprising  
15 is that that is true on both sides of the Atlantic. So for U.S.  
16 companies and for European companies the ability to move data back  
17 and forth in order to do business is critically important.

18 Mr. Bilirakis. Thank you, Ms. Espinel.

19 Mr. Murphy?

20 Mr. Murphy. Well, a little to add but I would just -- to  
21 recapitulate one point, the morning the ruling came out I think  
22 many of us were just disappointed at the lack of any guidance that  
23 came out from the European Commission. And there has been a

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1 little more since then, but that is exactly the kind of uncertainty  
2 that serves as a wet blanket on the economy at a time when not  
3 only is the U.S. economy not growing as rapidly as we would like,  
4 but in Europe, far worse. And it is the last thing that the global  
5 economy overall needs right now.

6 Mr. Bilirakis. Well, thanks so much. Another question for  
7 you, Mr. Murphy. What impact does the European Court of Justice  
8 ruling have on the negotiations of other large-scale  
9 international trade agreements like the TPP and the T2?

10 Mr. Murphy. So the United States and the European Union are  
11 2 years into negotiating a comprehensive Transatlantic Trade and  
12 Investment Partnership agreement. These negotiations are still  
13 at a relatively early stage despite the length of time involved.  
14 This kind of a ruling, though, it does certainly put a damper on  
15 the mood in the room. After all, the TTIP, as that negotiation  
16 is called, is intended to safeguard not just the movement of goods  
17 and services across international borders but also data as a trade  
18 issue.

19 U.S. trade agreements, including the TPP, have strong  
20 measures to prohibit the forced localization of data. And of  
21 course, privacy regimes coexist with those trade obligations.  
22 And privacy obligations are not undermined by the trade  
23 agreements.

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1           But the situation we have right now with the invalidation  
2 of the Safe Harbor agreement certainly has led some to question  
3 the seriousness with which we can move forward in those  
4 negotiations.

5           Mr. Bilirakis. So there are some national security concerns  
6 until the Safe Harbor agreement is signed?

7           Mr. Murphy. Well, certainly for commercial data and the  
8 ability to move it across border, that is very much a concern.

9           Mr. Bilirakis. Thank you. Thank you.

10          Dr. Meltzer, what impact has the global reach of the internet  
11 had on small and medium-sized businesses? You mentioned in your  
12 testimony that they are underrepresented in international trade.  
13 Is this just a function of their size or can we incentivize small  
14 and medium-sized businesses in international trade agreements  
15 going forward?

16          Mr. Meltzer. Traditionally, SMEs have not made big plays  
17 in the international economic landscape. It has been for a  
18 variety of reasons to do with cost and capacity. The internet  
19 has certainly changed that for them. The International Trade  
20 Commission did an interesting study which found that access to  
21 information, for instance, about overseas markets has been one  
22 of the key barriers for small and medium-sized enterprises. In  
23 just thinking about going global, the cost of getting that

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1 information is obviously now close to zero. That is just one  
2 example of the many ways that internet and internet platforms are  
3 now providing new opportunities for SMEs to be part of the global  
4 economy.

5 Mr. Bilirakis. Thank you. I yield back, Mr. Chairman. I  
6 appreciate it.

7 Mr. Burgess. The gentleman yields back. The chair thanks  
8 the gentleman.

9 The chair recognizes the gentlelady from Indiana, Mrs.  
10 Brooks, 5 minutes for questions.

11 Mrs. Brooks. Thank you, Mr. Chairman.

12 My home State of Indiana has a large contingent of  
13 pharmaceutical and device companies who depend on the Safe Harbor  
14 to transfer, and I believe we have talked about the issues of big  
15 data and those companies that are using big data. Companies like  
16 Eli Lilly use the cloud-based software for the users, can share  
17 of medical images with other departments and centers and countries  
18 around the world to improve the product design, to allow for nearly  
19 instantaneous interpretation and diagnosis of medical records,  
20 and compile records for clinical studies.

21 And we certainly know that the utilization of cross-border  
22 data enables all of our life sciences companies in the country  
23 to use these data sets so we can get treatments and that we can

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1 improve faster development of treatments and diagnoses and better  
2 health care for not just those in the U.S. but for the world. So  
3 I certainly recognize the anxiety everyone is having at this point  
4 in time based on the ECJ decision.

5 But I am curious, what do you think we should be watching  
6 in these next few months as this January 2016 deadline is  
7 approaching? What should we be watching and what -- there has  
8 been dialogue about this with our government and with the E.U.  
9 members for years now. I actually participated in one of those  
10 discussions in late 2013 in Brussels with some other Members of  
11 Congress, a bipartisan delegation, but yet, it does not seem as  
12 if we have bridged the gap of either trust or of understanding.  
13 And I am curious what you all believe we need to be doing a better  
14 job of doing to either get to a Safe Harbor agreement 2.0.

15 And my second question is why do we believe that the court  
16 will even agree or why do we believe it would even be upheld and  
17 not challenged immediately again? And I guess I would like to  
18 hear each of your comments. Ms. Espinel?

19 Ms. Espinel. So in the short-term, as you say, I think we  
20 need to focus on concluding the Safe Harbor. The kind of  
21 discussion that you were having with your European counterparts  
22 I think is really important. I think having hearings like this  
23 that focus on the issue is really important. I think if we are

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1 going to be able to make progress both in terms of concluding in  
2 the short term the negotiations and the longer-term solution, we  
3 need to have a constructive political environment. And part of  
4 the way that we get there is by having Congress in contact not  
5 just with the Administration but also with your European  
6 counterparts both to help them understand our privacy system  
7 better and understand the improvements that have been made in that  
8 privacy system. I think that is a really important role that  
9 Congress can play both in the short term and over the longer term.

10 Mrs. Brooks. So I attended with the chair of the House  
11 Intelligence Committee, Chairman Rogers and the ranking member,  
12 Ranking Member Ruppertsberger, in this delegation meeting. Are  
13 you familiar with other conversations? That was in 2013. And  
14 are you familiar with other conversations that Members of Congress  
15 have had or that -- because it is clear to me that what the  
16 negotiations and the discussions between the Administration  
17 officials, it is not working.

18 Mr. Rotenberg. Right --

19 Mrs. Brooks. So where are we falling down?

20 Mr. Rotenberg. Let me begin by saying I actually think  
21 Congressman Sensenbrenner deserves a lot of recognition --

22 Mrs. Brooks. Yes.

23 Mr. Rotenberg. -- for the work that he has done on this

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1 issue. I think it is one more demonstration of how privacy really  
2 does cross the aisle. And I know he has expressed concern about  
3 making changes to 702, and that is one of the issues that we think  
4 does need to be addressed.

5 But I think it is also important in the context of this  
6 hearing to understand that there is a difference between the  
7 political negotiation that takes place between the U.S. Commerce  
8 Department and the European Commission and a judicial decision  
9 from the top court in Europe. I mean this really is a game  
10 changer, and it impacts what even the European Commission can do  
11 in its negotiation with the United States. So to your question,  
12 I think it will be very interesting to see over the next few months  
13 how this change in European Union law, which is what has happened,  
14 will influence the privacy officials across Europe. They may  
15 decide to take enforcement actions.

16 Mrs. Brooks. Mr. Murphy?

17 Mr. Murphy. I think one of the most important things that  
18 Members of Congress can do is to educate their European  
19 counterparts on the importance of these data flows. And coming  
20 back to your example about medical devices, just yesterday, we  
21 were hearing from one of our member companies that manufactures  
22 medical devices, and some of these such as different scanners,  
23 CAT scanners, PET scanners, MRIs are very large, expensive,

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1 sophisticated pieces of equipment. In some smaller E.U. member  
2 states there may be only a very small handful of them around. And  
3 they are often maintained and used remotely. That is another  
4 example of the kind of data which needs to flow.

5 And, you know, talk about taking the whole to date to a very  
6 personal level, that the ability to get this kind of medical  
7 information, the idea that it could be impeded by a failure to  
8 arrive at a new Safe Harbor agreement is something that I think  
9 all of us find concerning.

10 Mrs. Brooks. Thank you. I yield back.

11 Mr. Burgess. The gentlelady yields back. The chair thanks  
12 the gentlelady.

13 The chair would just ask, are there any other Members seeking  
14 time for questions?

15 Seeing none, I do want to thank our witnesses for being here  
16 today. Before we conclude, I would like to submit the following  
17 documents for the record by unanimous consent: a statement from  
18 the International Trade Administration at the United States  
19 Department of Commerce, a letter from the Direct Marketing  
20 Association, a statement from the Information Technology and  
21 Innovation Foundation, a statement from the American Action  
22 Forum, a joint letter from the Auto Alliance, American Automotive  
23 Policy Council, and Global Automakers, and a list of all of the



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1 4,400 United States companies who are active beneficiaries of the  
2 Safe Harbor agreement. I will not read them unless asked.

3 [The information follows:]

4

5 \*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

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1           Mr. Burgess. Pursuant to committee rules, I remind Members  
2 they have 10 business days to submit additional questions for the  
3 record. I ask the witnesses to submit their responses within 10  
4 business days of the receipt of those questions.

5           Without objection, the subcommittee stands adjourned.

6           [Whereupon, at 12:17 p.m., the subcommittees were  
7 adjourned.]