

ONE HUNDRED THIRTEENTH CONGRESS  
**Congress of the United States**  
**House of Representatives**

COMMITTEE ON ENERGY AND COMMERCE

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October 24, 2014

The Honorable Penny Pritzker  
Secretary of Commerce  
United States Department of Commerce  
1401 Constitution Avenue, N.W.  
Washington, D.C. 20230

The Honorable Michael Froman  
United States Trade Representative  
Office of the United States Trade Representative  
600 17th Street, N.W.  
Washington, D.C. 20508

Dear Secretary Pritzker and Ambassador Froman:

Last month, the House Energy and Commerce Subcommittee on Commerce, Manufacturing, and Trade held a hearing entitled “Cross Border Data Flows: Could Foreign Protectionism Hurt U.S. Jobs?” The Subcommittee received testimony from industry representatives detailing the impact of restrictive commercial data measures on global trade and U.S. jobs.

At the hearing, it became clear that there is a growing trend of foreign governments enacting data transfer laws and regulations that serve as non-tariff trade barriers in the international marketplace. Members of the Subcommittee raised concerns about the impact of proposed and enacted protectionist policies in countries around the world including Brazil, China, Mexico, Russia, South Korea, Switzerland, Turkey, and Vietnam.

There are legitimate privacy concerns about the government’s use of data. The U.S. and other governments around the world need to address how they collect, store, and use data from citizens and non-citizens alike. Several proposals before Congress attempt to reform U.S. surveillance practices, and this is an issue we must get right. But these important reforms should not be used as a tool to obstruct the uninterrupted flow of commercial data between countries. Interfering with cross-border commercial data flows puts global economic growth, fair competition, and U.S. jobs at risk.

The U.S. must support principles that prohibit protectionist policies in the Trans-Pacific Partnership (TPP), Transatlantic Trade and Investment Partnership (TTIP), and Trade in Services Agreement (TiSA). In addition, the U.S. must ensure that changes to the U.S.-E.U. Safe Harbor Framework update privacy initiatives without creating new trade barriers.

The impact of the Internet on global commerce is staggering. Two billion people in the world use the Internet today and that number will grow to 3 billion by 2016. The transfer of data across international borders allows for the continuous flow of information, goods, and services—benefiting consumers and creating jobs at home, and abroad. Cross-border data flows support businesses in every sector from traditional technology companies to manufacturers, agribusinesses, healthcare, energy, financial services, insurers, retailers, and advertisers. One report estimates that 75% of the impact of the Internet is being realized by traditional industry.

U.S. exports of digitally enabled services were \$357.4 billion in 2011—representing over 60 percent of U.S. services exported and 17 percent of total U.S. exports.<sup>1</sup> However, this number only represents data flows that are “traded between a seller and buyer at market price.” Two important categories of data flows are excluded from these figures: commercial data and services flowing between businesses (e.g. supply chain information, design information, and personnel data), and digital services provided to customers at no cost (e.g. search engine services, map services, social media, and email). In total, some reports put the annual value of e-commerce at \$8 trillion dollars. The economic impact of cross-border data flows will only rise as usage of and reliance on the Internet increases around the world.

In particular, with TPP chief negotiators set to meet in Australia this weekend and with meetings for the other trade agreements ongoing, this is a critical time for the U.S. to stand firm. Trade agreements must acknowledge and support the growth of international trade through e-commerce, and cross-border data flows are the backbone of this growth. We urge you to secure enforceable commitments to free and open cross-border data flows around the world, for the sake of U.S. businesses and for a prosperous global economy.

Sincerely,



Lee Terry  
Chairman  
Subcommittee on Commerce, Manufacturing,  
and Trade



Peter Welch  
Member  
Committee on Energy and Commerce

<sup>1</sup> <http://www.esa.doc.gov/sites/default/files/reports/documents/digitaleconomyandtrade2014-1-27final.pdf>