

**Opening Remarks of Commissioner Edith Ramirez
Federal Trade Commission Workshop on
Enforceable Codes of Conduct: Protecting Consumers Across Borders
Washington, DC
November 29, 2012**

Good morning, everyone, and welcome. Before I begin, I would like to take this opportunity to thank Keith Fentonmiller, Hui Ling Goh, and Stacy Feuer for organizing today's event.¹

Earlier this week we had "Cyber Monday," the 21st century online shopping extravaganza that complements Black Friday. Cyber Monday is a distinctly American phenomenon, but it illustrates our interconnected, global marketplace. On that day, consumers from all over the world can, and do, purchase goods from online American merchants. And, of course, many of the goods themselves – clothing, home appliances, and electronics – are produced abroad. Thanksgiving may be an American holiday, but Cyber Monday – and, more broadly, modern commerce – is an increasingly global enterprise.

But where there is trade, there is a need for consumer protection. Consumers want the goods they purchase to be safe, no matter where they were produced. They want an effective remedy if a merchant sends an item that does not work, whether the merchant is across the street or across the globe. Businesses, too, need safeguards as they seek to manage their relationships with a complex chain of partners in far-flung places. And they want easy ways to resolve disputes with foreign companies and customers.

But it can be a challenge for governments to regulate businesses operating outside their borders. There is no global body that issues comprehensive consumer protection

¹ The agenda and materials related to the workshop can be found at <http://www.ftc.gov/bcp/workshops/codesofconduct/>.

requirements for cross-border commerce. And, of course, there is no global Uniform Commercial Code.

The absence of any such institution or legal standards can have a real impact on consumers. In 2011 alone, the Federal Trade Commission received over 132,000 cross-border fraud consumer complaints through its Consumer Sentinel system. Over 45,000 complaints between 2009 and 2011 were submitted through Econsumer.gov, a multilingual portal for consumers to file cross-border complaints. The FTC has a robust international consumer protection and privacy program, but neither the FTC nor any other single agency can do all of the heavy lifting when it comes to protecting consumers across borders. The sheer volume of complaints, the complexity of issues, as well as the legal, practical, and financial obstacles, are simply too great.

Fortunately, there are ways to alleviate this burden. Domestically, the FTC views robust self-regulation as an important tool for consumer protection that potentially can respond more quickly and efficiently than government regulation. We have encouraged self-regulatory efforts in areas such as national advertising, food marketing to children, the marketing of violent entertainment to kids, alcohol marketing, and privacy. But our support for self-regulation is not at any price. Self-regulation, to be effective, must be the product of a transparent process and must impose meaningful standards subject to strict enforcement. And these programs must not be a pretext for barriers to entry.

In today's program, we are moving beyond a focus on the use of domestic self-regulation as a tool for protecting consumers to explore the full span of arrangements that governments, international organizations, civil society groups, standards organizations, and self-regulatory bodies are developing to supplement traditional legal regimes.

These arrangements, which we have bundled under the “cross-border codes” label, include industry codes of conduct, third-party certification programs, guidelines developed through multi-stakeholder processes, codes of conduct that include governmental enforcement, and legislative schemes that incorporate third-party standards. They are being developed not only in consumer protection and privacy contexts, but also in other areas, such as financial services, labor, environment, insurance, Internet governance, and even human rights.

Some may question the rise of such systems and whether they are necessary in light of increased governmental cooperation on regulatory and enforcement matters. We will start today’s forum with a panel of experts who will address this issue and provide other insights on the rise of codes of conduct in international commerce and their potential for advancing consumer interests.

Others, looking at our domestic experience, may be concerned about whether such cross-border codes pose antitrust concerns. We are fortunate that former FTC Chairman Bill Kovacic, a leading scholar and expert on international competition law, will join us to share his thoughts.

Still others may ask whether these newer types of arrangements can make up for a real or perceived gap in government oversight of transnational commerce, especially in emerging areas of the law, such as online privacy. Codes of conduct that are developed and implemented through a transparent multi-stakeholder process that includes industry, civil society, and government and incorporate strong monitoring and enforcement provisions may take us part, if not all, of the way in overcoming these deficits.

The APEC Cross-Border Privacy Rules System is the product of just such a process. The APEC Cross-Border Privacy Rules, on which we will have a panel this morning, are an attempt to create a voluntary and interoperable system of meaningful protection for consumer data. Despite the differences in privacy and legal regimes across the vast Asia-Pacific region, APEC members have developed a system that reflects a consensus on what constitutes sound cross-border data protection. This approach – of agreeing on common rules to which companies can pledge their adherence that are then enforceable across jurisdictions – has immense potential.

The APEC model holds great promise and may be transferable to other areas. One purpose of this forum is to examine what those areas might be and what form those systems should take. To this end, this forum will also look at the operation of codes, guidelines, and standards in areas that the FTC does not traditionally regulate, such as corporate social responsibility and toy and food safety. The government, business, and civil society experts in these areas have much to teach the FTC and other government agencies about the potential rewards and downsides of an oversight system developed and overseen by multiple stakeholders.

As a result of today's program, we would like to have a better sense of the range of code- and standards-based systems, and an appreciation for what works well and what does not. Our goal is to articulate a set of best practices and metrics to judge these systems. Some have already begun this task, notably the final panelists, who will look at the core indicators of legitimacy and effectiveness as well as how to measure and compare code-based systems.

The FTC is well-suited to synthesize the knowledge being developed around the world on cross-border codes of conduct. We have broad expertise in, and authority over, a wide range of consumer protection issues in the United States. With that expertise, as well as the extensive networks in which our Office of International Affairs participates, I believe the FTC is well-positioned to take a leadership role in exploring transnational, enforceable codes of conduct and promoting best practices that I hope will emerge from today's program.

To conclude, I would like to turn back to the shopping frenzy that occurred a few days ago. Whether purchases are made in a brick and mortar store or online, commerce will only continue to become more global. Wherever consumers and merchants happen to be, economic activity should be marked by secure transactions instead of vulnerabilities, clarity instead of misrepresentations, and, especially on occasions like Cyber Monday, deals instead of scams.

I am confident that today's discussion of cross-border codes will help bring us closer to that goal. Thank you all for joining us in that endeavor.