

Congress of the United States

House of Representatives

COMMITTEE ON OVERSIGHT AND ACCOUNTABILITY

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March 4, 2024

The Honorable Katherine Tai
United States Trade Representative
600 17th Street NW
Washington, D.C. 20508

Dear Ambassador Tai:

The Committee on Oversight and Accountability is investigating the consultation process utilized by the Office of the United States Trade Representative (USTR) leading to its decision to stop supporting key commitments protecting U.S. workers and global Internet freedom. The Committee seeks to understand interactions that may lead to necessary reforms, including legislation Congress could pursue setting new transparency requirements for USTR in forming negotiating positions.

On November 30, 2023, a bipartisan group of 32 U.S. Senators led by Senate Finance Committee Chairman Ron Wyden (D-Ore.) and Ranking Member Mike Crapo (R-Idaho) wrote to express profound concern about the lack of adequate consultation process by USTR with other federal agencies, the public, and Congress in USTR reaching a decision to abandon “longstanding and bipartisan positions” on digital trade during a meeting of the World Trade Organization’s (WTO) Joint Statement Initiative (JSI) on e-commerce.¹ As the Senators’ letter explained, promoting the free flow of data, combating forced data localization practices, preventing forced technology transfers, and protecting the principal of non-discrimination in markets for digital goods and services represents “bipartisan principles” which USTR’s decision has abandoned. The Senators’ letter explained how USTR’s new position “creates a policy vacuum that China and Russia will fill.”

Over the same period of time in 2023, new documents brought forward through a Freedom of Information Act (FOIA) request shed light on robust and sometimes clandestine engagement efforts made by USTR officials through their cozy relationships with former colleagues who work as ideological advocates outside of government.² Some of these individuals are associated with efforts to advance the interests of favored businesses over

¹ See Press Release, U.S. Senate Finance Committee, 32 Bipartisan Senators Call on White House to Reverse Course on Digital Trade and Stand Up to China, Support American Workers and Human Rights, (Nov. 30, 2023).

² U.S. Chamber of Com., *U.S. Digital Trade Priorities* (Jan. 9, 2024), <https://www.uschamber.com/assets/documents/USTR-FOIA-Digital-Trade-Redacted-Documents.pdf>.

competitors and consumer welfare.³ Disturbingly, the pattern of these shady engagements suggest they influenced your controversial decision to abandon longstanding U.S. commitments in promoting digital freedom and U.S. competitiveness in digital markets.

Open Markets Institute

In email correspondence with USTR on January 11, 2023, Open Markets Institute (OMI) Executive Director Barry Lynn describes USTR Senior Advisor Elizabeth Baltzan as “a good friend.”⁴ Unstated in the correspondence, Baltzan also previously worked for over two years as a fellow at Open Markets Institute.⁵ In February 2023, Baltzan sent Lynn a copy of remarks noting, “We didn’t publish them, so please keep close, but you’ll see where I talked about competition and trade.”⁶ In April, an OMI colleague of Lynn’s sent Baltzan a note pointing her to writing on, “the trade policy of the fascist Italian government” and “how fascist governments used trade to expand their power, and the importance of considering the relative power dynamics between countries in analyzing trade.”⁷ In June, OMI featured you in an event on U.S. trade policy and emails indicate other frequent conversation between agency officials and OMI.⁸

Media reports have highlighted that OMI “declines to disclose its donors, saying only that the roster of donors does not include for-profit corporations.”⁹ But Lynn himself has acknowledged OMI, while declining contributions from corporations, finds ways to work alongside them against the interests of other businesses:

Walmart will come to us and say, can you help us deal with Amazon? We’ll have NewsCorp come and say, can you help us deal with Google and Facebook? Our response is always, we can’t take any money from you, but to the extent that our interests align, let’s walk the path together.¹⁰

In the same interview, Lynn also described the threat of fascism as an active concern in digital markets:

We look around at Trump and say, ‘Oh, he’s a fascist.’ But actually, the kind of fascism that we should really fear is when you have a pyramid of power in which the super large investor and the super large corporation executives

³ The Editorial Board, *The Story behind Biden’s Trade Failure*, THE WALL ST. J., (Feb. 13, 2024).

⁴ E-mail from Barry Lynn, Exec. Director, Open Markets Inst., to Stoneman (Jan. 11, 2023, 06:15 CST) (on file with author).

⁵ Elizabeth Baltzan, LinkedIn, <https://www.linkedin.com/in/elizabeth-baltzan-2b19b7141> (last visited Feb. 11, 2024).

⁶ E-mail from Elizabeth Baltzan, USTR, to Lynn (Feb. 1, 2023, 08:46 CST) (on file with author).

⁷ E-mail from Audrey Steinon, Open Markets Inst., to Baltzan (Apr. 19, 2023, 11:32 AM) (on file with author).

⁸ *The next World System: Can US Trade Policy Make Us More Secure, Democratic, & Prosperous?* Open Markets Institute, (Jun. 15, 2023).

⁹ Nancy Scola, *How a Liberal Think Tank Is Driving 2020 Dems to Crack down on Big Tech*, POLITICO (Jun. 14, 2019).

¹⁰ Mark Benjamin, *Barry Lynn on the Fight Against Monopolies and Big Tech*, RAIN (Sept. 15, 2020).

are afraid to speak out about what Google is doing, what Facebook is doing, what Amazon is doing.¹¹

American Economic Liberties Project

In early 2020, Sarah Miller departed OMI to found and lead the American Economic Liberties Project (AELP).¹² Like OMI, AELP does not fully disclose donors but a media report from 2020 noted, “The organization is aiming to spend \$3 million in its first year, funded by philanthropic organizations including the Omidyar Network, linked to eBay founder Pierre Omidyar.”

An email dated February 27, 2023, from a staff member of AELP’s Rethink Trade initiative to support staff at USTR states that Lori Wallach, the Director of Rethink Trade, and your recently departed Chief of Staff Heather Hurlburt “chatted over Signal this weekend.”¹³ Signal, an audio and text messaging app, touts its “end-to-end encryption” that ensures “We can’t read your messages or listen to your calls, and no one else can either.”¹⁴ According to Hurlburt’s LinkedIn profile,¹⁵ prior to working for USTR she worked for several years at advocacy organization New America alongside Lynn before his departure to found OMI.¹⁶

The email correspondence between AELP and USTR staff attempting to work out scheduling for Hurlburt and Wallach to formally connect does not include specific descriptions of the meeting purpose sought by Wallach but followed her sending USTR a 21-page memo addressed to you complaining that some past “digital rules must never be replicated in future pacts, while others require significant modification”¹⁷ and February correspondence urging that USTR not move forward with digital trade text “as-is.”¹⁸

Discussion over Signal chat about either trade policy or consultation opportunities would be a federal record, and USTR should have taken steps to preserve such a record from a non-official communications channel.¹⁹ However, no such record appears to have been disclosed in response to the aforementioned FOIA request. Failure to properly preserve this record would constitute a violation of the Federal Records Act.

On September 13, 2023, one month before USTR controversially dropped longstanding U.S. digital trade positions at the WTO JSI on e-commerce, Wallach emailed Baltzan and

¹¹ *Id.*

¹² David McCabe, *She Wants to Break up Big Everything*, N. Y. TIMES (Feb. 11, 2020).

¹³ E-mail from Taylor Buck, RethinkTrade., to Keziah (Feb. 27, 2023, 3:26 PM) (on file with author)

¹⁴ Signal, <https://signal.org/> (last visited Feb. 4, 2024).

¹⁵ Heather Hurlburt, LinkedIn, <https://www.linkedin.com/in/heather-hurlburt-78a3584/> (last visited Feb. 12, 2024).

¹⁶ Kenneth Vogel, *New America, a Google-Funded Think Tank, Faces Backlash for Firing a Google Critic*, N. Y. TIMES (Sept. 1, 2017).

¹⁷ Memorandum from Lori Wallach to Tai, Bianci, “For IPEF and Other Pacts, the Administration Must Create New “Digital Trade” Rules to Preserve Government Policy Space to Regulate Data Flows for Privacy and Security and to Achieve Anti-Monopoly, Civil Rights, and Pro-Worker Goals (Jan. 2023).

¹⁸ E-mail from Lori Wallach, RethinkTrade., to Baltzan (Feb. 22, 2023, 17:03 CST) (on file with author)

¹⁹ *Records Management Regulations, Policy, and Guidance*, NAT’L ARCHIVES (Aug. 15, 2016).

Assistant USTR for Services and Investment Kenneth Schagrin asking, “Would it be possible for my colleague Daniel and I to connect with you on JSI Ecommerce issues?”²⁰ After some back and forth on scheduling, Schagrin offered a window and added, “I’m adding Jillian DeLuna from USTR who has been leading the JSI negotiations. Thanks for your patience in trying to schedule something!”²¹

USTR’s Ideological Whitelist

On October 12, 2023, this Committee wrote to you seeking documents relevant to discussions about the IndoPacific Economic Framework (IPEF) and the Trade and Technology Council (TTC), including input from the Federal Trade Commission (FTC) and the Department of Justice (DOJ) regarding competition and digital trade provisions subject to negotiation.²² To date, the vast majority of the Committee’s information requests have still not been fulfilled.

In light of the new documents disclosed through FOIA, the Committee notes that the joint input from DOJ and FTC came from two current federal employees with longstanding ties to OMI. U.S. Assistant Attorney General for the Antitrust Division Jonathan Kanter, as a private practice lawyer in 2017, publicly praised Lynn in founding OMI²³ and FTC Chair Lina Khan worked at both New America,²⁴ and OMI.²⁵

The Committee seeks to understand USTR’s policies and practices for engaging, briefing, and seeking input on negotiation positions from Congress, other federal agencies, the public, as well as groups and individuals favored by USTR officials. We are troubled that these practices appear to have offered special access and insights to ideologically radical factions while keeping the public and many public officials who do not subscribe to these radical views in the dark through a non-transparent process.

Like the bipartisan group of Senators who wrote to you on November 30, we support U.S. policies that have led to a free and open Internet as well as the economic rewards for innovation that have disproportionately benefited the U.S. economy. We also reject your agency’s decision to embrace and afford special treatment to individuals associated with a hateful group whose leadership has likened both perceived political opponents and successful American businesses to fascists and favor heavy-handed European style regulation of economies as superior to American principles of limited interference.

To comply with your obligation to our oversight, please provide the Committee the following documents and information no later than March 18, 2024:

²⁰ E-mail from Lori Wallach, RethinkTrade., to Schagrin (Sept. 13 2023, 9:47 AM) (on file with author)

²¹ E-mail from Kenneth Schagrin, USTR, to Hettinga (Sept. 21, 2023, 3:44 PM) (on file with author)

²² Press Release, *Comer Probes Lack of Transparency from USTR in Indo-Pacific Trade Negotiations*, U.S. H. Comm. On Over. & Account. (Feb. 13, 2024).

²³ Danny Vinik, *Inside the New Battle Against Google*, POLITICO (Sept. 17, 2017).

²⁴ Lina Khan. n.d. New America. Accessed February 13, 2024. <https://www.newamerica.org/our-people/lina-khan/>.

²⁵ Lina M. Khan. 2021. Federal Trade Commission. June 15, 2021. <https://www.ftc.gov/about-ftc/commissioners-staff/lina-m-khan>.

1. Copies of the Signal chat between Heather Hurlburt and Lori Wallach in February 2023 preserved to comply with FRA legal obligations.
2. All other 2023 communications from Heather Hurlburt that utilized Signal or other non-official communications channels (such as personal email) for official business and were preserved to comply with Federal Records Act obligations.
3. All 2023 correspondence between USTR employees and individuals at the following organizations:
 - a. Open Markets Institute
 - b. American Economic Liberties Project (including Rethink Trade)
 - c. New America
 - d. Public Citizen
 - e. Center for Digital Democracy
4. All 2023 notes, memos, and internal correspondence mentioned related to individuals at organizations or organizations themselves in request #3.
5. All 2023 inputs and written consultation related to digital trade sent to or received by federal agencies.
6. All 2023 memos, notes, and internal correspondence related to USTR's efforts to engage Congress on digital trade positions and negotiation.
7. All 2023 memos, notes, and internal correspondence related to discussion of any potential public comment periods on or relating to digital trade matters.
8. All documents, notes, drafts, and correspondence showing how USTR assessed and arrived at its October 25 action withdrawing the U.S. position at the WHO JSI on e-commerce.
9. All 2023 documents, notes, and correspondence capturing or reporting reaction to USTR's October 25 withdraw action or positioning on digital trade.
10. Provide documents responsive to all unfulfilled requests from the Committee's October 12, 2023, oversight request letter, including:
 - a. All correspondence with the DOJ and/or FTC relating to the digital trade provisions in IPEF;
 - b. All correspondence with the DOJ and/or FTC relating to the EU's Digital Markets Act, Digital Services Act, or any other EU laws, regulations or policies regarding digital markets; and

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- c. All correspondence between USTR and the White House regarding IPEF negotiations and digital trade.

Attached are instructions for producing the documents and information to the Committee. If you have any questions, contact the Committee on Oversight and Accountability Majority staff at 202-225-5074.

The Committee on Oversight and Accountability is the principal oversight committee of the U.S. House of Representatives and has broad authority to investigate “any matter” at “any time” under House Rule X. Thank you in advance for cooperating with this inquiry.

Sincerely,

A handwritten signature in black ink that reads "James Comer". The signature is fluid and cursive, with the first name "James" and last name "Comer" clearly distinguishable.

James Comer

Chairman

Committee on Oversight and Accountability

cc: The Honorable Jamie Raskin, Ranking Member
Committee on Oversight and Accountability