



Big Tech's Big Con:

Rigging Digital Trade Rules to
Block Antitrust Regulation



Prepared by the Office of Senator Elizabeth Warren

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EXECUTIVE SUMMARY

For decades, U.S. trade officials have negotiated trade deals in secret, representing the interests of big corporations over workers, consumers, and small businesses. The Biden Administration has promised to change this approach and use trade policy to promote competition and advance a consumer- and worker-centered trade agenda that helps rein in abusive behavior by Big Tech and other multinational corporations.

But this new approach faces an important test, with U.S. officials from the Office of the U.S. Trade Representative (USTR) and the Commerce Department currently engaged in trade negotiations and discussions in numerous key digital trade areas affecting Big Tech: the European Union and other countries are developing legislation to control tech companies' monopolistic behavior; the U.S.-Mexico-Canada Agreement (USMCA), the successor to the North American Free Trade Agreement (NAFTA), is being implemented; and the U.S. has launched negotiations on the Indo-Pacific Economic Framework (IPEF) with 13 other countries.

At this critical time, Big Tech is working to undermine the Biden trade and competition agenda and instead push trade negotiators to pre-empt domestic and international regulatory efforts, hiring dozens of former government officials and lobbyists to gain insider access to U.S. trade officials and influence trade negotiations – and this report contains new evidence of the extent to which they have been effective. The report contains findings from a previously undisclosed tranche of email communications obtained under the Freedom of Information Act by Demand Progress and reviewed by Senator Warren's office between high-level U.S. trade officials and Big Tech firms. These emails reveal:

- **Big Tech’s revolving door hires are gaining behind-the-scenes access to U.S. Trade Representative Katherine Tai and other top USTR officials.** At both USTR and the Commerce Department, Big Tech lobbyists who previously left the federal government and went through the revolving door are granted access and familiarity unavailable to the public. New emails reveal numerous examples of Big Tech getting special access. Amazon hired former Deputy USTR and Ambassador to the World Trade Organization Michael Punke, who in June 2021 was asked for his availability to meet with Ambassador Tai “in your personal capacity” to discuss “your time in Geneva and how you approached the job.” Follow-up emails indicated that numerous substantive trade issues were discussed during the agenda planning for that meeting. A Google revolving door hire, former Deputy USTR Karan Bhatia, was personally thanked by email on July 1, 2022 by Ambassador Tai for his “ability to be candid” in a private meeting, and later, on October 8, 2021 was told in a previously unreleased email by Deputy USTR Jayme White that “I have no doubt I’ll ask you for some advice down the road.”
- **Big Tech uses its special revolving door access to furtively push for rigged trade policies.** The newly revealed emails provide numerous examples of Big Tech’s private communications with key U.S. trade officials – and those officials acting to address these special interest concerns. For example, former Deputy USTR and now Google lobbyist Karan Bhatia emailed USTR Tai on August 5, 2021 “to make sure you're aware of pending legislation in Korea to update the Telecommunications Business Act,” telling her that “we would be grateful for your attention to this issue and for raising those concerns with the Korean government.” USTR Tai wrote back on August 6, 2021, agreeing to “touch base with my counterpart(s) in Seoul,” and promising to “make sure we and our teams are in touch with any insights we are able to glean.” Similarly, when Amazon lobbyist and former USTR official Arrow Augerot emailed Deputy USTR Jayme White on October 5, 2021 regarding her concerns about European Digital Markets Act, asking for time “to do a deeper dive on the issues,” White

immediately agreed, replying quickly and telling Augerot to “just send me a calendar invite for whatever works for you next Wednesday morning with a Zoom link.”

- **USTR is granting special insider status to Big Tech lobbyists during every step of IPEF negotiations.** The newly released emails show that USTR is actively seeking private guidance from Big Tech as it seeks to negotiate the IPEF – access that is generally not provided to the public. In a January 2022 email to an Amazon lobbyist, a USTR official requested multiple meetings between Ambassador Bianchi and former USTR officials and current Amazon lobbyists Michael Punke and Jennifer Prescott “to get to know them better and discuss the Indo-Pacific economic framework.” In February, Ambassador Bianchi’s staff emailed an Amazon official again, to re-up their past meeting requests and “see if you could help” set up an additional meeting with former USTR official Arrow Augerot to discuss IPEF. Similarly, Ambassador Bianchi’s staff reached out to Google official Behnaz Kibria, herself a former USTR official, in February 2022 to request an “off-the-record” meeting “to get your thoughts and feedback on our IndoPacific Economic Framework strategy and to further discuss the digital element of the strategy.”

The new information revealed in this report shows that Big Tech is using its revolving door hires to gain backdoor access to key USTR and the Commerce Department officials, undermining the Biden Administration’s promises to end rigged trade deals and protect workers, consumers, and the environment.

RECOMMENDATIONS

To address this ongoing corporate influence-peddling and ensure trade policymakers are working on behalf of the American people, the report makes four recommendations:

1. USTR and the Commerce Department must reject the Big Tech digital trade agenda and ensure that any IPEF digital trade rules complement – rather than conflict with – policymakers’ efforts to promote competition in the digital economy, regulate AI, and protect online privacy.
2. USTR should make IPEF texts public, eliminating the secrecy that Big Tech has used to furtively drive its agenda with key officials.
3. The Commerce Department and USTR should commit to transparency on all public engagement in order to combat Big Tech’s secret influence peddling, including visitor logs, public appearances, and informal modes of external engagement.
4. The Biden Administration and federal trade agencies should work to implement strong ethics reforms that will padlock the decades-long revolving door between large corporations and trade agencies, and Congress should pass Senator Warren’s Anti-Corruption and Public Integrity Act, which has critical guardrails that would address these problems at the source by boosting transparency, strengthening ethics rules and enforcement, and fixing federal open records laws.

INTRODUCTION

For decades, U.S. trade officials have negotiated trade deals in secret, representing the interests of big corporations over workers, consumers, and small businesses. This is in large part due to the continuing revolving door between large corporations and the agencies that negotiate trade policy – primarily the Office of the U.S. Trade Representative and the Department of Commerce – and the unfettered access granted to corporate lobbyists but denied to the public. This rigged process has produced rigged trade deals, which have rewarded offshoring and driven a global race to the bottom in labor, environmental, and other regulatory standards.

Now as lawmakers and regulators in the U.S. and other countries are looking at reining in Big Tech, tech lobbyists want to run the same play that many other industries have: use their insider connections to rig a trade deal to try to protect their interests – defending their monopolistic, self-dealing, discriminatory AI algorithms, and abuse of consumer and worker privacy. Their goal is to use trade deals to establish an international preemption for competition policy through binding international rules that would limit or even forbid governments from legislating or enforcing domestic policies related to Big Tech that threaten consumer rights and the economy.

Over the past decade, Big Tech - like other major industries – has intentionally pursued influence and access across the federal government. During the Obama and Trump Administrations, Big Tech used established trade organizations, lobbyists, and former government officials to embed itself in policy networks, using “multiple avenues for forming and deepening ties with public officials, ranging from formalized procedures, such as hearings, to informal ad hoc meetings, social appointments and appearances at public events.”[1] Since 2010, the influence of Big Tech companies and their lobbyists have progressed “to the point where lobbyists no longer react to trade policy, but rather, proactively shape it.”[2]

In a welcome break from a history of corporate trade deals and hands-off approach to Big Tech's abuses, President Biden has made historic commitments to a "whole-of-government" approach to promoting competition and to a worker-centered trade agenda.[3] And the Biden Administration has taken important steps towards achieving these goals, including President Biden's Blueprint for an AI Bill of Rights,[4] Executive Order on Promoting Competition in the American Economy,[5] and worker-centered Trade Policy Agenda,[6] alongside stepped-up enforcement of labor and environmental trade rules.

But Big Tech continues to work to undermine these Biden Administration efforts, and a set of emails, between USTR and Big Tech companies, newly obtained by Senator Warren, show the corporations' ongoing secret influence and access, and their continued efforts to rig U.S. trade policy and undermine efforts to promote competition in the tech sector. Other reports have also shown the access and revolving door ties between Big Tech and the Commerce Department,[7] which has played an increasing role in trade policy, including on digital trade.

As the Biden Administration makes decisions about enforcement of existing trade rules and negotiates new trade deals like the Indo-Pacific Economic Framework (IPEF), it must limit corporate influence and ensure U.S. trade negotiators are working in the public interest, not on behalf of Big Tech. The findings of this investigation reveal that there is still work to be done to live up to the Biden Administration's own policy agenda, break with past failed approaches, and course correct before the next round of IPEF negotiations.

FINDINGS

1. Big Tech Companies and Corporate Interests Have Wide-Ranging Access to and Influence Over Key USTR and Commerce Department Officials

Big Tech continues to exert tremendous influence over USTR and the Commerce Department behind the scenes even as the public is shut out. The blurring of lines between lobbying and consulting is evident throughout the emails reviewed in this investigation. Big Tech lobbyists, especially those with past ties to the agencies, are frequently called upon by USTR as consultants and partners, giving corporate interests a say in nearly every part of the trade policymaking process.

A. The Big Tech - USTR Revolving Door is Spinning Rapidly

Big Tech companies have hired scores of former USTR and Commerce officials to influence trade negotiations and enforcement. Amazon, which by 2021 had already hired nearly 250 former U.S. government officials,[8] has hired numerous former top-level USTR officials in its lobbying division, including former Deputy USTR and U.S. Ambassador to the World Trade Organization Michael Punke,[9] former senior policy adviser to the USTR David Roth,[10] and former Deputy USTR Arrow Augerot.[11]

Communications between Ambassador Punke's staff and USTR – newly obtained by Senator Warren – illustrate how these former government officials that are now industry insiders use the revolving door and their insider connections to secretly shape trade talks. Punke was frequently contacted for professional, political, and personal advice by current USTR staff. In one set of emails from June 2021, a USTR official reached out to Punke to ask for his availability to meet with Ambassador Tai “in your personal capacity” to discuss “your time in Geneva and how you approached the job.”[12] However, it is clear the meeting went beyond the personal, with an email

two weeks later from USTR to an Amazon lobbyist noting “we heard he’ll raise the issue of Mexico’s de minimis,” asking for advice on the specific issues Punke would raise relating to Mexico, and also asking if he would be “raising any of the other issues we’ve discussed, like customs brokers, port restrictions for certain products, [or] periodic payments?”[13] Months later, in February 2022, Punke was also called in to discuss the Indo-Pacific Economic Framework in a “1:1 meeting” with Deputy USTR Sarah Bianchi.[14]

The emails also reveal how current Amazon lobbyist and former Deputy USTR Augerot built relationships within the agency overseeing Amazon using secret back channel networks, including arranging a 5 PM meeting at a bar close to the USTR office in July 2021.[15] A case study of the corporate capture of digital trade found that this tactic, of “deliberately form[ing] ties with public officials for the purpose of gaining influence,”[16] helped reinforce the network ties that have allowed Big Tech and its allies to “embed themselves in policy networks [and] shape the premises of policy debates.”[17]



Ambassador Tai personally thanked Bhatia for his “ability to be candid” in private meetings

Google has similarly used the revolving door to hire high-level USTR officials to influence the agency, becoming a go-to resource for consulting on trade policy and priorities. The head of Government Affairs & Public Policy at Google, Karan Bhatia, previously served as Deputy USTR from 2005 to 2007.[18] Emails reviewed for this investigation found that Bhatia was frequently consulted by USTR officials. In July 2021, Ambassador Tai personally thanked Bhatia for his “ability to be candid” in private meetings, with Bhatia assuring Tai that Google officials “don’t take your support and advice lightly.”[19] In one email exchange that took place after 5 p.m. on a Friday in October 2021, Bhatia, after reaching out to Deputy USTR Jayme White, was told less than an hour later by White that “I have no doubt I’ll ask you for some advice down the road,” and then redirected to Deputy USTR Sarah Bianchi, with an introduction that highlighted that “Karan is a former DUSTR and now runs the Google operations in DC.”[20]

Similarly, industry-backed groups like the Computer & Communications Industry Association (CCIA) and the Coalition of Service Industries (CSI) – both of whom represent Big Tech companies Google, Meta, and Amazon[21] – have hired former USTR officials to further their messages at the agency. Jonathan McHale, former Deputy Assistant USTR for ICT Services and Digital Trade, started his new role as Vice President of CCIA in June 2022,[22] where he leads CCIA’s advocacy on digital trade.[23] Emails reviewed in this investigation show that just months before departing USTR for CCIA, McHale turned to Google lobbyists for advice,[24] providing them with insight into his expectations for issues that could arise in negotiations with Mexico and telling Google officials that it would be “good to know what you think the best response” would be should they arise.

B. The Big Tech - Commerce Department Revolving Door Continues to Turn

The Commerce Department also plays an important role in trade policy and has pushed a more corporate-friendly direction, including on digital trade.[25] The Commerce Department has long-standing revolving door issues that have provided Big Tech lobbyists the perfect opportunity to capture the agency. A 2019 report from the Congressional Research Service found that the Commerce Department had the highest percentage of officials who registered as lobbyists either before or after their government service, 18 percent.[26]

This problem has continued under current Commerce Secretary Gina Raimondo. An analysis of Secretary Raimondo’s meeting logs for her first seven months in the position shows that she “met with or spoke in front of 230 CEOs, top executives, or industry trade groups, an average of more than one meeting per day.”[27] According to watchdog group Public Citizen, “in the Biden Administration, Big Tech has made the greatest inroads with the U.S. Commerce Department.”[28] Raimondo, dubbed “tech’s favorite Biden official,”[29] has kept an open-door for Big Tech CEOs and lobbyists, meeting or holding calls with Apple CEO Tim Cook seven times, Amazon CEO Andy Jassy four times, Microsoft President Brad Smith three times, and Google CEO Sundar Pichai twice – in some cases, outnumbering her meetings with “almost every U.S. lawmaker.”[30]

As Senator Warren highlighted in July 2022, Big Tech-Commerce revolving door hires are numerous and their impact on trade policy is significant and highly concerning.[31] A notable Big Tech-Commerce revolver includes Christopher Hoff, the recent Deputy Assistant Secretary for Services, who previously worked at a corporate Big Law firm that represented Amazon,[32] and recently left Commerce for a top role at Microsoft. [33] Hoff's hiring, given his past advocacy for weak data regulation as recently as 2021, was a worrying sign for the U.S.' priorities in major trade negotiations.[34] Current Assistant Secretary of Commerce for Global Markets and Director General of the U.S. and Foreign Commercial Service Arun Venkataraman, who during the Obama Administration worked in the Department of Commerce as Director of Policy for ITA, spent the time in between Democratic Administrations lobbying for Visa against privacy protections.[35] And members of Secretary Raimondo's own staff – her deputy White House liaison and Deputy Chief of Staff – previously worked for Big Tech giants Amazon and Google respectively.[36] Luis Jimenez, a former Assistant USTR and Counselor to the USTR, left the government in 2017 to lobby for Google – only to return four years later as the Deputy Chief of Staff for the Commerce Department.[37]

1. Big Tech Uses its Special Access to Push for Rigged Trade Policies

Big Tech's unparalleled access to trade policymakers has serious implications for policy outcomes – including digital trade rules that could undermine efforts to enact commonsense tech regulation.

Over the past several years, there has been broad support for reining in Big Tech's privacy and monopoly abuses in the U.S.[38] Lawmakers from both sides of the aisle have highlighted Big Tech's power,[39] and introduced bills to crack down on insufficient data privacy,[40] failure to safeguard children from social media harms,[41] and abuses of monopoly power that force small businesses and creators to pay unreasonable fees.[42] While many of these efforts have been stymied by Big Tech's "army of lobbyists"[43] and blatant use of the revolving door,[44] reining in Big Tech's abuses is a priority for President Biden and key members of both parties.[45]

While the U.S. is still working to improve its regulation of Big Tech, these companies are already facing much stricter regulation abroad. Australia, Canada, the European Union, France, Germany, New Zealand, the United Kingdom, and other countries

have “passed new laws regulating online privacy and harmful content, commissioned reports on disinformation and journalism in the digital age, and levied steep fines against tech firms.”[46]

In order to counter regulatory momentum in the U.S. and abroad, Big Tech has landed on a familiar playbook: using trade policy to “excavate the policy space out from under Congress and the administration by locking the United States and its trade partners into international rules that forbid” strong regulation.[47] While U.S. regulators and lawmakers across the political spectrum work to crack down on Big Tech’s abuses, Big Tech companies have infiltrated the U.S. trade negotiation process, cozying up to the Commerce Department and USTR in an effort to pre-empt international and domestic regulation.

Big Tech’s tactic is nothing new, and was successfully used by Big Pharma in the 1990s to hamstring U.S. attempts to crack down on patent abuses.[48] Moreover, Big Tech has been pursuing this strategy for years. Indeed, Big Tech was particularly effective getting its anti-regulation digital trade agenda included in the U.S. Mexico-Canada Agreement (USMCA), which was negotiated by the Trump Administration and signed into law in 2020.[49] While Congressional Democrats were able to secure significant improvements to the labor and environmental protections in USMCA, the agreement is widely considered a “major tech victory,” due in large part to Big Tech companies’ maneuvering.[50] The Big Tech-friendly digital trade chapter severely limits regulators’ ability to screen AI algorithms for racial bias and other harms, attempts to label essential anti-monopoly policies as discriminatory illegal trade barriers, and bans governments from setting international limits on firms’ control of data, endangering data privacy and national security.[51]

Although many of President Biden’s actions promise a more just technology and trade policy,[52] long-standing corporate capture has continued to skew the work of trade agencies. Senator Warren has previously asked U.S. trade policymakers about actions that appear out of step with the Biden Administration and the American public. In November 2022, Ambassador Tai met with the Canadian Minister of International Trade, and discussed the Canadian Online News Act, legislation that would help rebalance the relationship between Big Tech companies and traditional news outlets. [53] Despite a similar bill garnering bipartisan support in the U.S. Senate,[54] according to USTR’s official readout, Ambassador Tai “expressed concern” about Canadian

regulation, warning that it could “impact digital streaming services and online news sharing and discriminate against U.S. businesses.”[55]

Unfortunately, emails reviewed in this investigation revealed that the USTR’s response to the Canadian Online News Act was just one example of how USTR’s corporate ties gave Big Tech lobbyists insider influence on how the agency reacted to regulatory efforts abroad, often pushing USTR to oppose regulation abroad that enjoys broad support in the United States.

A. Big Tech Attacks App Store Regulation Attempts

Big Tech companies Google and Apple have used their dominant app stores to boost their own content, squeeze new market entrants, and take outsized fees from competitors.[56] By promoting their own apps over those of competing companies, Apple and Google have tilted the playing field to lock consumers into their products and exact a heavy toll for competitors who want to stay on the platform. Apple and Google charge exorbitant fees on their platforms, up to 30% in some cases, using their market dominance to wring profits out of smaller competitors.[57]

Apple and Google’s abuse of their app stores has garnered bipartisan criticism on a state and federal level. Following a 16-month investigation from the House Judiciary Committee, Committee Democrats released a report finding that Apple’s “power over app distribution” constituted a monopoly and called for the company to be barred from entering “adjacent lines of business.”[58] Across the country, Republicans and Democrats have introduced bills at the state level to regulate Apple and Google’s app stores in Arizona, North Dakota, Minnesota, New York, Georgia, Massachusetts, Hawaii, and Illinois.[59] Apple and Google are also facing lawsuits from state attorneys general[60] and private companies.[61] The Biden Administration’s Commerce Department issued a report on Apple and Google’s app store monopolies, and accused the companies of stifling competition.[62]

While regulatory efforts against the Big Tech app store monopolies move through U.S. state and federal legislatures, South Korea has already taken action. In 2021, the South Korean legislature passed an amendment to the Telecommunication Business Act banning dominant platforms from forcing software developers on their app stores to use their payments systems.[63] The Korean regulation would affect both Google and

Apple, but would also crack down on abuses from Korean app distributor One Store. [64] Despite U.S. lawmakers and regulators on every level calling for similar regulations, emails between USTR officials and Big Tech lobbyists show that USTR officials, after receiving pressure from corporate interests, committed to “raising” the issue with their Korean counterparts at the highest levels and pushing the interests of Apple and Google. In a secret August 2021 exchange between Google lobbyist Karan Bhatia and Ambassador Tai, Bhatia warned that South Korea’s proposed amendment to the *Telecommunications Business Act* would discriminate against American companies and ask for Tai to provide “attention to this issue and [raise] those concerns with the Korean government”:

Separately, I just wanted to make sure you're aware of pending legislation in Korea to update the Telecommunications Business Act in a way that is narrowly scoped to target the operations of two US technology companies (Google and Apple). This legislation would have the effect of prohibiting US business models and advantaging local providers. Given that these efforts are transparently intended to discriminate against US companies, we would be grateful for your attention to this issue and for raising those concerns with the Korean government if there is an opportunity. [65]

Tai appears to have done exactly what Bhatia wanted, agreeing to “touch base with my counterpart(s) in Seoul,” and promising to “make sure we and our teams are in touch with any insights we are able to glean.”[66] Bhatia thanked her in advance, saying he “very much appreciate[d] your engagement with counterparts in Seoul.”[67]

B. Big Tech Attacks the E.U.’s Digital Markets Act

The European Union’s Digital Markets Act (DMA) is legislation set to go into effect in 2024 that would protect internet users and “establish a level playing field to foster innovation, growth, and competitiveness.”[68] The objectives of the Digital Markets Act mirror the bipartisan American Innovation and Choice Online Act (AICOA) introduced in June 2021.[69] Furthermore, these goals are similar to those outlined by President Biden and other administration officials, with Biden Administration officials supporting the AICOA and President Biden urging Congress to pass Big Tech antitrust legislation in his 2023 State of the Union Address.[70] President Biden’s Executive Order on Promoting Competition in the American Economy states that the

Administration's policy is "to enforce the antitrust laws to meet the challenges posed by new industries and technologies, including the rise of the dominant Internet platforms" and encourages the Federal Trade Commission to use its rulemaking authority to better regulate "unfair competition in major Internet marketplaces."^[71] Similarly, the Digital Markets Act would address competition issues around "dominant Internet platform," including U.S. Big Tech companies, by treating these companies as "gatekeepers," and ensuring they are not blocking access to a fair market for all competitors.^[72]



Tai appears to have done exactly what Bhatia wanted, agreeing to "touch base with my counterpart(s) in Seoul"

Despite the alignment of the Biden Administration's goals and the EU Digital Markets Act, both USTR and the Department of Commerce have acted to weaken or oppose the Act. At the Chamber of Commerce's Transatlantic Business Work Summit in 2021, Secretary Raimondo expressed "serious concerns" that the Digital Markets Act would "disproportionately impact U.S.-based tech firms, and their ability to adequately serve EU customers, and uphold security and privacy standards."^[73] Big Tech has continued to push this line of defense, despite the fact that the DMA would designate at least three European companies as gatekeepers as well.^[74] As Senator Warren wrote last summer, these comments defend "the market share and profits of giant multinationals" at the expense of American workers, taxpayers, and consumers who have been harmed by the actions of Big Tech companies.^[75]

Alarming, emails reviewed as part of this investigation show U.S. Trade Representative Katherine Tai and top USTR officials privately expressing doubts about the Digital Markets Act to representatives of those same Big Tech companies. In an email exchange in August 2021 between Ambassador Tai and Google lobbyist Karan Bhatia, Tai wrote that Europe was "a partner that has taken many steps already (about which we may have mixed feelings and reactions)," and asking Bhatia if he "ha[d] thoughts" to share on these issues.^[76] Bhatia, in return, emailed the next day and asked to meet with the Ambassador or her team to talk about working through

“both opportunities and challenges given the aggressive (and sometimes divergent) agenda on technology that Europe is pursuing,” including working on “principles like non-discrimination, due process, and privacy/security.”[77]

Amazon lobbyist Arrow Augerot’s emails with USTR officials regarding the DMA are similarly concerning. In October 2021, Augerot wrote to Deputy USTR Jayme White, whose nomination was opposed by fair trade advocates due to his pro-corporate views, [78] sharing a pro-Big Tech paper on the Digital Markets Act, saying “it was great catching up today,” and asking for another time to “do a deeper dive on issues,” which White granted, telling Augerot “just send me a calendar invite for whatever works for you next Wednesday morning with a Zoom link.”[79]

3. Big Tech is Secretly Attempting to Rig Secret IPEF Digital Trade Negotiations.

Senator Warren has repeatedly warned trade policymakers that “a rigged process produces a rigged outcome,” and early signals show that IPEF may fall into the same trap.[80]

President Biden and Ambassador Tai have correctly recognized the U.S.’s history of rigged and unfair trade agreements.[81] In particular, the U.S. withdrew from the lobbyist-written Trans-Pacific Partnership (TPP) in 2017, and the Biden Administration has rightly rebuffed industry calls to rejoin it.[82] While Ambassador Tai has emphasized that IPEF will be different than TPP,[83] pro-TPP corporate interests are embedding themselves in the drafting process using the same playbook, hoping that they can shape IPEF into TPP 2.0, or at least TPP Lite.[84] The U.S. Chamber of Commerce, for example, noted that “in the absence of a return to the TPP, important elements in the administration’s Indo-Pacific Strategy could be achieved through the IPEF,”[85] and the Coalition of Service Industries—which includes Amazon, Google, and Meta—called for IPEF to be an “equally substantial alternative” to rejoining TPP. [86]

The United States launched IPEF negotiations in May 2022 with Australia, Brunei Darussalam, Fiji, India, Indonesia, Japan, Korea, Malaysia, New Zealand, the Philippines, Singapore, Thailand, and Vietnam.[87] The pillars include 1) Trade; 2)

Supply Chains; 3) Clean Energy, Decarbonization, and Infrastructure; and 4) Tax and Anti-Corruption.[88] The trade pillar is of critical interest to Big Tech: it includes a chapter on the digital economy and digital trade, including “building an environment of trust and confidence in the digital economy; enhancing access to online information and use of the Internet; facilitating digital trade; addressing discriminatory practices; and advancing resilient and secure digital infrastructure and platforms.”[89]

Secretary Raimondo and Ambassador Tai are co-chairing the U.S. team leading IPEF negotiations, with USTR leading the pillar on trade – including its digital trade chapter, with input from the Commerce Department. IPEF negotiation rounds took place in February and March of 2023, with the next round scheduled for the second week of May 2023.[90]

A. Big Tech is Mobilizing to Sway IPEF

Big Tech, following their success of including anti-regulatory language in the USMCA digital chapter, has mobilized to sway IPEF towards corporate-friendly policies on AI, antitrust, and data privacy. In comments submitted to USTR and the Department of Commerce, Big Tech industry groups have laid out a blueprint for making IPEF into another corporate-friendly deal that will insulate them from domestic and international regulation.

The Coalition of Services Industries (CSI) – representing[91] companies like Microsoft, Amazon, AT&T, Google, and MasterCard – submitted a 16-page[92] comment letter to the Commerce Department and USTR. The Computer & Communications Industry Association (CCIA), a group that advocates for “open markets, open systems, and open networks in the computer and telecommunications industry”[93] – representing[94] companies like Amazon, Apple, Google, and Facebook – submitted a 15-page[95] comment letter. These public comments spell out what these Big Tech groups want to see in IPEF and make clear that if Big Tech gets its way, it will come at the expense of privacy, national security, and consumer protections.

Both groups, in response to rising calls for antitrust concerns around Big Tech, are calling for overly broad provisions that would help large tech firms evade competition policies by claiming these policies constitute illegal trade discrimination against

American companies.[96] Their goal is to establish an international preemption for competition policy through binding international rules that would limit or even forbid governments from legislating or enforcing domestic policies related to Big Tech that threaten our rights and economy. This would allow them to evade any domestic regulations that threaten their monopoly size and power by claiming “discrimination” if a country passes a law that contradicts these international rules. Big Tech has used this playbook before, in pushing USTR to oppose the Canadian *Online News Act*,[97] lobbying against the EU’s Digital Markets Act,[98] and attacking South Korean legislation to crack down on dominant app platforms.[99]

Industry groups and tech lobbyists are also calling for trade rules that ban governments from prescreening or conducting reviews of AI code or algorithms.[100] Big Tech companies are increasingly outsourcing important decisions to AI, often without adequate oversight – even as it is increasingly clear that AI tools can discriminate on a massive scale. Limiting government regulation of AI will leave marginalized communities vulnerable to harms caused by the unchecked use of AI tools, such as allowing life-altering employment or financial decisions to depend on whether an applicant has a “Black-sounding name”[101] and subjecting communities of color to increased surveillance and over policing.[102] Both the executive and legislative branches recognize the need for regulation in this space: the Biden Administration put forward an AI Bill of Rights[103] and Congress is drafting legislation to regulate AI. [104] A sweeping international ban would hinder these regulatory attempts and would go well beyond any reasonable attempt to protect trade secrets.

Finally, Big Tech is pushing for the inclusion of trade rules that would allow sensitive personal data to be stored, processed, and moved wherever the company chooses, threatening proposed U.S. legislation on data privacy, economics, and national security. [105] This data can include medical records, business secrets, and biometric data. As policymakers take steps protect private and national security-related data, it is critical that trade rules not undermine those efforts by giving Big Tech companies a blanket license to ship and store that data anywhere in the world, regardless of the sensitivity and security.

B. USTR is Inviting Big Tech’s Revolving Door Hires to Provide Secret Advice on IPEF

Behind the scenes, USTR is giving Big Tech lobbyists – who are often former USTR employees – access to nearly every stage of the IPEF negotiation process. From January to March 2022, more than two months before the public got their first glimpse of what would be included in IPEF,[106] a staffer from the office of Deputy USTR Bianchi, whose role overseeing both Asia and Services for the agency makes her the highest-ranking official for both the IPEF region and digital trade, reached out to Big Tech lobbyists to invite them to provide secret input on IPEF priorities. In a January 2022 email to an Amazon lobbyist, a USTR official requested multiple meetings between Ambassador Bianchi and former USTR officials and current Amazon lobbyists Michael Punke and Jennifer Prescott “to get to know them better and discuss the Indo-Pacific economic framework.”[107] In February, Ambassador Bianchi’s staff emailed Amazon again, to re-up their past meeting requests and set up an additional meeting with former USTR official Arrow Augerot:

Hi Arrow, I hope that you are well, I wanted to loop you with [...] Amb. Bianchi's office to see if you could help him with a few things. First, Amb. Bianchi is hoping to have a meeting with Amb. Punke on the Indo-Pacific Economic Framework in the near future. She is also hoping to have a meeting with you and Jennifer on the same topic, is this something you could help facilitate?[108]

Additionally, Ambassador Bianchi’s staff reached out to Google official Behnaz Kibria, herself a former USTR official, in February 2022 to request an “off-the-record” meeting on IPEF strategy:

Hello Behnaz, [...] I serve as Confidential Assistant to Deputy United States Trade Representative, Ambassador Sarah Bianchi. We wanted to speak with experts like yourself to get your thoughts and feedback on our IndoPacific Economic Framework strategy and to further discuss the digital element of the strategy. This intended conversation would be off-the-record. If you're amenable, the Ambassador would love to meet with you for 30-minutes via Zoom sometime this week. Does 11:00AM ET, 11:30AM ET, or 4:30PM ET on Friday, 3/4 work for you? If so, I'm happy to send over a Zoom link.[109]

While most outside experts and advocates were limited to submitting public comments on IPEF, these tech lobbyists were being asked to provide secret strategy and advice, conducting backdoor conversations with USTR officials to shape IPEF from its earliest stage and pushing for rules that undermine the public interest.

Later, as USTR drafts and updates classified IPEF negotiating text, Big Tech lobbyists will be among the corporate-dominated ranks of cleared advisors who have been able to view it and provide detailed feedback.



We wanted to speak with experts like yourself ... off-the-record

Meanwhile, the public has only been able to see a half-page summary of IPEF digital trade negotiations, published months after USTR had already shared that text with Big Tech advisors and then begun negotiations on it.[110] While the barebones summary includes a reference to allowing IPEF members to “address legitimate public policy objectives in the digital trade area,”[111] it contains no detail on what regulatory actions will be considered “legitimate,” raising serious concerns about whether Big Tech is succeeding in wielding its insider influence to rig yet another trade deal. But the text remains classified, with Big Tech having access but the public only able to view it after the deal is signed, as soon as November of this year.

CONCLUSION & RECOMMENDATIONS

The findings of this investigation show that despite taking significant steps to give labor and environmental interests a voice in trade negotiations, USTR and the Commerce Department are still providing a backdoor to Big Tech companies through the revolving door. Big Tech is using its influence to stymie transnational regulatory efforts and pre-empt further regulation at home and abroad through trade negotiations. In advance of the next round of IPEF negotiations starting May 8, the Biden Administration should act immediately to rebalance the scales before locking the U.S. into a skewed and fundamentally unfair deal.

1. USTR and the Commerce Department Should Reject the Big Tech Digital Trade Agenda

This report shows that Big Tech is using its insider influence to try to rig digital trade rules and use them to attack commonsense tech regulation at home and overseas. USTR and the Commerce Department must reject Big Tech's digital trade agenda and ensure that any IPEF digital trade rules complement – rather than conflict with – policymakers' efforts to promote competition in the digital economy, regulate AI, and protect online privacy. That means making crystal clear in any non-discrimination language that it is commonsense and not “illegal trade discrimination” for the U.S. government or any of our trading partners to regulate the largest tech platforms like Google, Meta, Apple, Microsoft, and Amazon, just because they happen to be headquartered in the U.S.[112] It means rejecting digital secrecy terms that could thwart regulators' attempts to investigate and address AI algorithms that create inhumane and unsafe working conditions, make life-altering employment decisions, reject loan applicants for having Black-sounding names, or misidentify women of color in police footage.[113] And it means protecting Americans' sensitive medical records, business secrets, or critical national security information from being shipped overseas where unnecessary and dangerous, instead of protecting Big Tech firms' right to exercise unlimited, global control over all our data.[114]

2. USTR Should Make IPEF Texts Public

The findings of this report show that Big Tech and other corporate actors are already given extra, secret opportunities – formal and informal – to influence IPEF, while the public, legal scholars, and policy experts are routinely shut out. USTR needs to publicly release the proposed text that will be discussed at the negotiations, not just provide insufficient public summaries after the fact.[115] As a preliminary step, if USTR is unwilling to provide full and detailed public summaries, the agency should, at minimum, rebalance who is able to see the text and provide significantly more details to policymakers and the public. Ambassador Tai previously committed to ensuring that more transparency is built into the system by providing public summaries of proposals, and this is an essential step to ensuring IPEF works for the American people.[116]

3. Improve Transparency and End Big Tech's Secret Influence

The emails reviewed for this investigation similarly show that Big Tech companies are using informal meetings and communications to further their agenda. To combat this influence, the Commerce Department and USTR should commit to transparency for data on all public engagement, including visitor logs, public appearances, and informal modes of external engagement. And USTR and Commerce officials should avoid all informal and formal secretive discussions with Big Tech lobbyists and advisers – especially those that have passed through the revolving door and are using the knowledge and influence they gained while on the public payroll to instead lobby for Big Tech's priorities.

4. Strengthen Ethics Rules to Ensure USTR and Commerce officials Are Working in the Public Interest

Finally, the Biden Administration and federal trade agencies should work to implement strong ethics reforms that will padlock the decades-long revolving door between large corporations and trade agencies. The Biden Administration can act decisively to crack down on conflicts of interest by implementing longer cooling-off periods for former government officials and requiring additional disclosure of communications between

senior government officials and the corporations impacted by their work. Senator Warren's Anti-Corruption and Public Integrity Act has critical guardrails that would address these problems at the source by boosting transparency, strengthening ethics rules and enforcement, and fixing federal open records laws.

In order to make our trade system fair and equitable, the Commerce Department and USTR need to increase transparency regarding potential conflicts of interest. Despite sending multiple letters to Secretary Raimondo regarding Big Tech revolving door hires at the Commerce Department, the Secretary has refused to give a full accounting of the Department's policies and procedures to prevent conflicts of interest.[117]

Americans deserve to know what trade negotiators are up to and that they are working in the public interest. This report urges USTR and the Commerce Department to take these additional critical steps to ensure the Biden Administration lives up to its commitments to a worker-centered trade policy and a whole-of-government approach to promoting competition in the U.S. economy.

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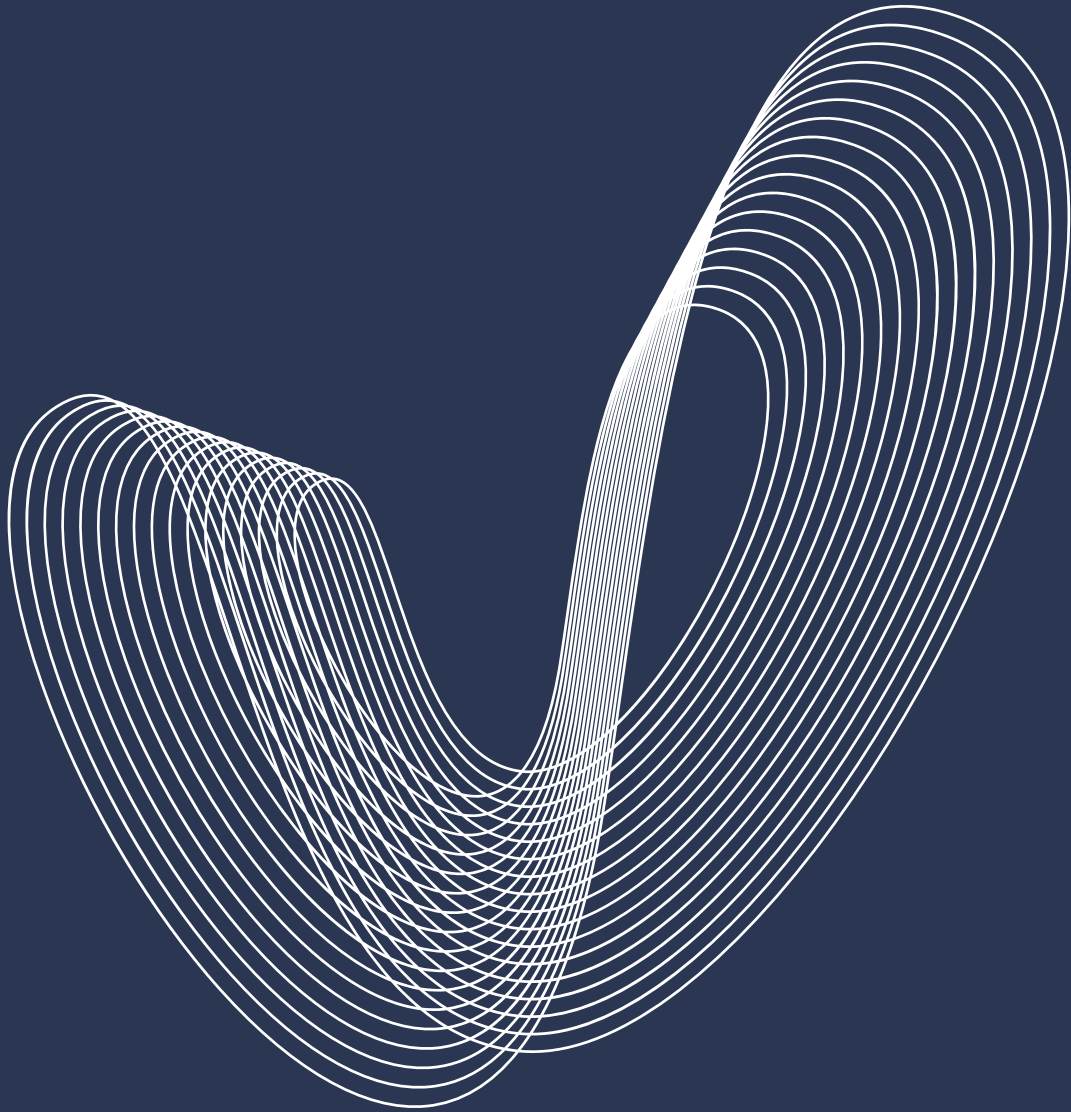
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