

# Congress of the United States

Washington, DC 20515

October 6, 2022

The Honorable Gina Raimondo  
Secretary  
Department of Commerce  
1401 Constitution Ave., NW  
Washington, DC 20230

Dear Secretary Raimondo:

We are writing today to follow up on our July 20 letter<sup>1</sup> to you regarding the revolving door between the Department of Commerce (Commerce, or the Department) and Big Tech firms,<sup>2</sup> and its potential impact on global digital trade rules.

We received a response from your staff last month. However, we remain concerned that Big Tech firms may be exploiting the revolving door with the Department.<sup>3</sup> The response did not provide information on which Commerce Department employees involved in negotiating free trade agreements were previously employed by Big Tech firms, and their roles in these negotiations, nor did it provide information on how you would address the untoward influence of Big Tech on free trade agreements. In fact, the response did not provide specific answers to seven of the eight questions we asked, merely reiterating that you and your staff are following the Biden Administration's ethics policies.<sup>4</sup> While these policies are a significant improvement over Trump-era policies,<sup>5</sup> they simply do not address our concerns about the revolving door that is in place between Big Tech and the Department of Commerce.

The influence of companies like Google, Amazon, and Meta at Commerce is particularly concerning given its participation in digital trade negotiations with the European Union and numerous Indo-Pacific countries.<sup>6</sup> Big Tech companies are lobbying for trade rules that will

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<sup>1</sup> Letter from Sen. Warren and Rep. Jayapal to Sec. Raimondo, July 20, 2022, <https://www.warren.senate.gov/imo/media/doc/2022.07.20%20Letter%20to%20Sec.%20Raimondo%20re.%20revolving%20door%20with%20Big%20Tech%20firms1.pdf>.

<sup>2</sup> The American Prospect, "Big Tech's Back Door to Digital Trade Rules," Mekedas Belayneh, June 14, 2022, <https://prospect.org/power/big-techs-back-door-to-digital-trade-rules-commerce-gina-raimondo/>.

<sup>3</sup> Letter from J.D. Grom, Senior Advisor for Legislative and Intergovernmental Affairs, Department of Commerce, to Sen. Warren and Rep. Jayapal, August 12, 2022, on file with the Office of Senator Elizabeth Warren.

<sup>4</sup> *Id.*

<sup>5</sup> Project on Government Oversight, "Here's Why Biden's Ethics Plan is Important," Dylan Hedtler-Gaudette, February 19, 2021, <https://www.pogo.org/analysis/2021/02/heres-why-bidens-ethics-plan-is-important>; Citizens for Responsibility and Ethics in Washington, "Biden, Trump and Obama ethics pledges, compared," Virginia Canter, February 9, 2021, <https://www.citizensforethics.org/reports-investigations/crew-reports/biden-ethics-pledge-compared-obama-trump/>.

<sup>6</sup> U.S. Department of Commerce, "U.S.-EU Joint Statement of the Trade and Technology Council," press release, May 16, 2022, <https://www.commerce.gov/news/press-releases/2022/05/us-eu-joint-statement-trade-and-technology-council>; The White House, "On-the-Record Press Call on the Launch of the Indo-Pacific Economic Framework," press briefing, May 23, 2022, <https://www.whitehouse.gov/briefing-room/press-briefings/2022/05/23/on-the-record-press-call-on-the-launch-of->

obstruct regulators' efforts to protect the digital rights of workers, consumers, and small businesses. Therefore, we write to underscore the dangers of Big Tech's digital trade agenda and to resubmit our questions about the role that former Big Tech employees now at Commerce and former Commerce officials now at Big Tech companies play in shaping digital trade policy.

For too long, the U.S. has negotiated trade deals in secret, with corporate lobbyists weighing in behind closed doors while the public is left out, producing trade rules that reward offshoring and sell out middle-class Americans.<sup>7</sup> You and the Department are now at the center of discussions on international tech policy, engaged in both the U.S.-EU Trade and Technology Council (TTC) and the Indo-Pacific Economic Framework (IPEF) negotiations.<sup>8</sup> Members of Congress and civil society have raised concerns about these trade negotiations, including the lack of transparency around negotiations.<sup>9</sup> In June 2022, an analysis by the Revolving Door Project highlighted Big Tech's current influence within the Commerce Department, with several former employees for companies like Google and Amazon filling key Commerce roles, and another senior staffer having recently left the agency for Microsoft.<sup>10</sup> We are concerned about the role of these and similar individuals in shaping digital trade policy because Big Tech's digital trade agenda threatens protections for consumer privacy and worker safety and efforts to combat discrimination, misinformation, and disinformation.

Big Tech companies advocate an approach to digital trade that would limit governments' ability to safeguard their citizens' data privacy. For example, they often claim that rules guaranteeing the free, unrestricted flow of data across borders are "essential to the creation of global value chains that increase efficiency and permit companies of all sizes to access the global market."<sup>11</sup> But restricting the ability of governments to regulate the data flowing in and out of their jurisdiction has consequences for consumers and workers. Data about users' health, finances,

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[the-indo-pacific-economic-framework/](#).

<sup>7</sup> The Hill, "Secrecy, democracy and the TPP: trade transparency is what the public wants—and needs," Patrice McDermott and Emily Manna, September 12, 2016, <https://thehill.com/blogs/congress-blog/economy-budget/295365-secrecy-democracy-and-the-tpp-trade-transparency-is-what/>.

<sup>8</sup> U.S. Department of Commerce, "U.S.-EU Joint Statement of the Trade and Technology Council," press release, May 16, 2022, <https://www.commerce.gov/news/press-releases/2022/05/us-eu-joint-statement-trade-and-technology-council>; The White House, "On-the-Record Press Call on the Launch of the Indo-Pacific Economic Framework," press briefing, May 23, 2022, <https://www.whitehouse.gov/briefing-room/press-briefings/2022/05/23/on-the-record-press-call-on-the-launch-of-the-indo-pacific-economic-framework/>.

<sup>9</sup> Letter from Sen. Elizabeth Warren and colleagues to Sec. Raimondo on IPEF concerns, August 3, 2022, [https://www.warren.senate.gov/download/delauro\\_warren\\_ipef-letter-final\\_8122](https://www.warren.senate.gov/download/delauro_warren_ipef-letter-final_8122); Letter from 100+ civil society organizations to President Biden on transparency in IPEF, July 22, 2022, <https://www.citizen.org/wp-content/uploads/IPEF-transparency-letter-july-2022.pdf>; Letter from Sen. Elizabeth Warren to Sec. Raimondo on comments at U.S. Chamber of Commerce, December 15, 2021, <https://www.warren.senate.gov/download/20211214-warren-letter-to-raimondo-on-eu-tech-comments>.

<sup>10</sup> The American Prospect, "Big Tech's Back Door to Digital Trade Rules," Mekedas Belayneh, June 14, 2022, <https://prospect.org/power/big-techs-back-door-to-digital-trade-rules-commerce-gina-raimondo/>.

<sup>11</sup> U.S. Chamber of Commerce, "The Digital Trade Revolution: How U.S. Workers and Companies Can Benefit from a Digital Trade Agreement," February 2022, p. 18, [https://www.uschamber.com/assets/documents/Final-The-Digital-Trade-Revolution-February-2022\\_2022-02-09-202447\\_wovt.pdf](https://www.uschamber.com/assets/documents/Final-The-Digital-Trade-Revolution-February-2022_2022-02-09-202447_wovt.pdf); Bloomberg, "Big Tech Has a New Ally: The U.S. Chamber of Commerce," David McLaughlin, February 16, 2022, <https://www.bloomberg.com/news/articles/2022-02-16/big-tech-gets-new-ally-as-u-s-chamber-fights-biden-on-antitrust#xj4y7vzkg>.

communications, movements, interests, and more are collected, stored, and sold – often without their knowledge.<sup>12</sup> Individuals have little to no insight into who has access to their data, where it is going, and what it is being used for.<sup>13</sup>

The numerous massive data leaks that have occurred over the past few years have demonstrated both the extent of the personal data companies collect and the lack of insight the public has into what is done with it.<sup>14</sup> Unchecked data flows means Big Tech companies can send detailed, deeply personal data to countries with weaker data privacy, security, and usage protections.<sup>15</sup> The free flow of data has negative consequences for workers too: with unchecked cross-border data flows, companies can more easily offshore jobs (e.g., customer service jobs in call centers) to countries with lower wages and worse labor standards.<sup>16</sup> Voters and their elected officials want to strengthen data protections,<sup>17</sup> and Big Tech companies should not be able to write digital trade rules to stop these efforts.

Big Tech firms have also fought against standards and policies that protect workers, claiming that they amount to discriminatory trade practices. Having gone relatively unregulated since their inception,<sup>18</sup> these companies have developed exploitative business models that have resulted in a race to the bottom in terms of labor rights. Big Tech firms have fought against policies in other countries that would provide gig workers like Uber and Lyft drivers with much-needed job and retirement security,<sup>19</sup> or require short-term rental platforms to meet basic worker and consumer safety standards.<sup>20</sup> Some digital trade proposals by Big Tech even limit governments' ability to require them to comply with basic industry- or even economy-wide standards, including labor, health and safety, civil rights, competition, and consumer protections.<sup>21</sup> Labor and other

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<sup>12</sup> New York Times, “The State of Consumer Data Privacy Laws in the US (And Why It Matters),” Thorin Klosowski, September 6, 2021, <https://www.nytimes.com/wirecutter/blog/state-of-privacy-laws-in-us/>.

<sup>13</sup> Office of U.S. Senator Elizabeth Warren, “Warren Leads Senators Blasting Data Brokers for Collecting and Selling Cell Phone Location Data of People Who Visit Abortion Clinics,” press release, May 18, 2022, <https://www.warren.senate.gov/oversight/letters/warren-leads-senators-blasting-data-brokers-for-collecting-and-selling-cell-phone-location-data-of-people-who-visit-abortion-clinics>.

<sup>14</sup> CSO, “The 15 biggest data breaches of the 21st century,” Michael Hill and Dan Swinhoe, July 16, 2021, <https://www.csoonline.com/article/2130877/the-biggest-data-breaches-of-the-21st-century.html>.

<sup>15</sup> Communications Workers of America, “Why Shipping Call Center Jobs Overseas Hurts Us Back Home,” April 2017, <https://www.cwa-union.org/sites/default/files/why-shipping-call-center-jobs-overseas-hurts-us-back-home-april-2017.pdf>.

<sup>16</sup> See e.g., The Guardian, “No other way to fight back’: Philippines call center workers battle unfair quotas,” Michael Sainato, November 21, 2018, <https://www.theguardian.com/business/2018/nov/21/no-other-way-to-fight-back-philippines-call-center-workers-battle-unfair-quotas>.

<sup>17</sup> Morning Consult, “More Than Half of Voters Back a National Data Privacy Law,” Chris Teale, January 12, 2022, <https://morningconsult.com/2022/01/12/federal-data-privacy-legislation-polling/>.

<sup>18</sup> Brookings, “A focused federal agency is necessary to oversee Big Tech,” Tom Wheeler, February 10, 2021, <https://www.brookings.edu/research/a-focused-federal-agency-is-necessary-to-oversee-big-tech/>.

<sup>19</sup> TechCrunch, “Europe lays out a plan to flip the odds on gig economy exploitation,” Natasha Lomas, December 9, 2021, <https://techcrunch.com/2021/12/09/eu-gig-economy-proposal/>.

<sup>20</sup> Trade Justice Education Fund, “Comments on the Digital and Emerging Technologies-Related Issues in an Indo-Pacific Economic Framework,” April 9, 2022, [https://149754478.v2.pressablecdn.com/wp-content/uploads/TJEF\\_Commerce\\_IPEFComments\\_040922.pdf](https://149754478.v2.pressablecdn.com/wp-content/uploads/TJEF_Commerce_IPEFComments_040922.pdf).

<sup>21</sup> Trade Justice Education Fund, “Comments on the Digital and Emerging Technologies-Related Issues in an Indo-Pacific Economic Framework,” April 9, 2022, [https://149754478.v2.pressablecdn.com/wp-content/uploads/TJEF\\_Commerce\\_IPEFComments\\_040922.pdf](https://149754478.v2.pressablecdn.com/wp-content/uploads/TJEF_Commerce_IPEFComments_040922.pdf).

standards protect American jobs and lift up workers overseas,<sup>22</sup> and must not be undermined in our trade agreements because Big Tech firms label them unfair “barriers to trade.”

Big Tech has also opposed governments’ domestic regulatory ability in artificial intelligence (AI). Big Tech firms have advocated for the treatment of source code and algorithms as “trade secrets” to prevent countries, including the U.S., from detecting potential discriminatory practices.<sup>23</sup> Algorithms are increasingly used to make decisions that are critical to people’s lives, such as home loans and medical treatments.<sup>24</sup> And reports indicate that these algorithms can discriminate based on specific data; for example, “Hiring algorithms can penalize applicants for having a Black-sounding name, mentioning a women’s college, and even submitting their résumé using certain file types. They can disadvantage people who stutter or have a physical disability that limits their ability to interact with a keyboard.”<sup>25</sup> Yet if these algorithms are shielded from oversight through stringent new trade secrets protections, neither the government nor the public may have the tools necessary to identify illegal discrimination and hold tech companies accountable. Big Tech firms should not be allowed to weaponize trade agreements to hand themselves special protections for their algorithms when biases in those algorithms prevent marginalized groups from receiving a necessary medical treatment, a fair mortgage, or a job.

Finally, Big Tech firms have sought to escape accountability for the content on their platforms through vague and overly broad content liability waivers in trade agreements.<sup>26</sup> Amazon,<sup>27</sup> Google,<sup>28</sup> Meta,<sup>29</sup> and others have come under fire for their roles in propagating misinformation and race-based and other hateful content that stokes violence and promotes illicit activity. Tech corporations should not be allowed to escape accountability for allowing or promoting the spread of such content on their platforms, and trade agreements must not become a vehicle for them to do so.

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<sup>22</sup> Center for Strategic and International Studies, “Work That Pays Off: The Strategic Dimension of Labor Obligations in Trade Agreements,” Jack Caporal, June 1, 2020, <https://www.csis.org/analysis/work-pays-strategic-dimension-labor-obligations-trade-agreements>.

<sup>23</sup> Bloomberg, “Amazon Sued Over Crashes by Drivers Rushing to Make Deliveries,” Spencer Soper, November 12, 2021, <https://www.bloomberg.com/news/features/2021-11-12/amazon-com-algorithms-blamed-in-crash-that-paralyzed-aspiring-doctor>; Vox, “Why algorithms can be racist and sexist,” Rebecca Heilweil, February 18, 2020, <https://www.vox.com/recode/2020/2/18/21121286/algorithms-bias-discrimination-facial-recognition-transparency>.

<sup>24</sup> Trade Justice Education Fund, “Comments on the Digital and Emerging Technologies-Related Issues in an Indo-Pacific Economic Framework,” April 9, 2022, [https://149754478.v2.pressablecdn.com/wp-content/uploads/TJEF\\_Commerce\\_IPEFComments\\_040922.pdf](https://149754478.v2.pressablecdn.com/wp-content/uploads/TJEF_Commerce_IPEFComments_040922.pdf).

<sup>25</sup> Wired, “Feds Warn Employers Against Discriminatory Hiring Algorithms,” Khari Johnson, May 16, 2022, <https://www.wired.com/story/ai-hiring-bias-doj-eecc-guidance/>.

<sup>26</sup> Bloomberg Law, “Tech Liability Shield Has No Place in Trade Deals, Groups Say,” Anna Edgerton, May 27, 2021, <https://news.bloomberglaw.com/tech-and-telecom-law/tech-liability-shield-has-no-place-in-trade-deals-groups-say>.

<sup>27</sup> Letter from Senator Elizabeth Warren to Amazon CEO Andy Jassy, September 7, 2021, <https://www.warren.senate.gov/imo/media/doc/2021.9.7%20Letter%20to%20Amazon%20on%20COVID%20Misinformation.pdf>.

<sup>28</sup> Slate, “Google Needs to Defund Misinformation,” Noah Giansiracusa, November 18, 2021, <https://slate.com/technology/2021/11/google-ads-misinformation-defunding-artificial-intelligence.html>.

<sup>29</sup> National Public Health Emergency Collection, “Facebook’s ethical failures are not accidental; they are part of the business model,” David Lauer, June 5, 2021, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8179701/>.

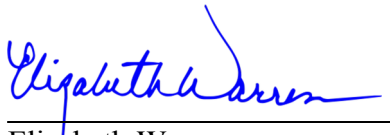
If Big Tech firms can successfully incorporate these troubling loopholes into trade agreements, the consequences for workers and consumers will be significant. Given Commerce's involvement in negotiating trade pacts like IPEF with digital trade components, we continue to be deeply concerned that the Department's revolving door with Big Tech firms will provide those companies the avenue they need to push their proposals across the finish line. Therefore, we ask that you respond to the questions from our July 20 letter, which we restate below, by November 4, 2022:

1. What policies and procedures does the Commerce Department have in place to guard against conflicts of interest for employees who formerly worked for – or may work in the future for – Big Tech and other companies with business impacted by Commerce Department decisions?
2. Are you considering any policy changes to address ongoing concerns about the revolving door between Big Tech and the Commerce Department resulting in Big Tech firms having undue influence over trade policy?
3. How many Commerce Department officials and staff involved in digital trade policy, negotiations, and agreements (including issues like data privacy and security, data localization, etc.) have left the Department since January 20, 2021 and have since been employed, or are currently employed, by Big Tech companies or the law firms or lobbyists representing them?
4. How many Commerce Department officials and staff involved in digital trade policy, negotiations, and agreements (including issues like data privacy and security, data localization, etc.) since January 20, 2021, worked for one or more Big Tech companies (including Alphabet, Amazon, Apple, Meta, Microsoft, Netflix, Oracle, Twitter), or law firms or lobbyists representing them, in the four years prior to their current tenure at the Department?
5. For each of the Commerce Department officials in questions #3 and #4, please provide the following information:
  - a. When they came to the Commerce Department and when they departed, if applicable;
  - b. What Big Tech company or law firm or lobbyist that they went to or came from; and
  - c. What position(s) they served in the Commerce Department, and what their specific responsibilities were in those positions, including any matters they worked on that may have affected their former or future Big Tech employers.
6. With respect to digital trade policy, negotiations, and agreements (including issues like data privacy and security, data localization, etc.), did any of the Commerce Department officials and staff identified above:
  - a. Participate in meetings with Big Tech companies, or lobbyists or law firms representing them;
  - b. Participate in meetings with their former or future employer; or

- c. Help prepare for or follow up on any such meetings?
7. For each of the meetings in question #6, please provide the following information:
- a. The date and time;
  - b. The participants; and
  - c. The content of discussion.
8. To what extent are the Commerce Department officials and staff identified above involved in the:
- a. Indo-Pacific Economic Framework;
  - b. U.S.-EU Trade and Technology Council; and
  - c. Any other digital trade initiatives overseen by the Commerce Department?

Thank you for your attention to this matter.

Sincerely,



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Elizabeth Warren  
United States Senator



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Pramila Jayapal  
Member of Congress