

United States Senate

July 1, 2020

The Honorable Robert Lighthizer
Office of the United States Trade Representative
600 17th Street NW
Washington, DC 20508

Dear Ambassador Lighthizer:

On June 14, Bloomberg reported that two employees of the Office of the United States Trade Representative (USTR) who had been intimately involved in negotiating the U.S.-Mexico-Canada Agreement's (USMCA) rules of origin, while still on USTR payroll, had approached private companies offering to serve as paid advisers after they leave government service.¹ When asked about this in a June 17 hearing before the Senate Finance Committee, you suggested that the two employees had sought approval from USTR's ethics office to engage in such conduct and that, "career employees – as opposed to political employees – can do things like this". These allegations and your public comments raise questions about USTR's efforts to prevent and monitor potential conflicts of interest that may arise when the government employees who negotiate our country's trade policy simultaneously seek future employment advising private firms.

In order to better understand the facts of this case, please respond to the following:

1. On what date did these two employees first seek approval from USTR's ethics office to solicit future consulting work from clients that may have had business before USTR? On what date did USTR's ethics office provide such clearance? Please provide copies of any written ethics advice USTR's ethics office provided to these employees.
2. On what date and from which specific subject matters or activities did these employees recuse themselves? Please provide any written documentation of these recusals if any exist. If they had recused themselves from any work, what functions were they assigned to following those recusals?
3. On what date did you become aware that these employees had recused themselves from future work on USMCA automotive rules of origin or other issues, as applicable? On what date did you become aware of the ethics advice provided by USTR's ethics office to these employees?
4. At any point during their employment, did these employees use any government time or resources to solicit future business?
5. 18 USC 207(b) bars executive branch employees who participated personally and substantially in any ongoing trade or treaty negotiation from aiding or advising any other person on an ongoing trade negotiation for one year after employment with the United States terminates. Does this restriction apply to these two employees? If not, please provide a legal justification, including an explanation as to whether they have participated in an ongoing trade negotiation within the past year and whether any trade negotiation they participated in within the past year is no longer "ongoing."

¹ <https://www.bloomberg.com/news/articles/2020-06-15/u-s-trade-officials-sought-consulting-work-on-rules-they-wrote>

6. Please clarify whether the two employees will have a one-year cooling off period under 18 USC 207(b) even after USMCA negotiations cease to be “ongoing” or if the one-year cooling off period imposed by 18 USC 207(b) automatically extinguish once the USMCA goes into effect.
7. Are these employees still employed at USTR? If so, are they still permitted to make similar outreach to companies about post-USTR work?

This example also raises broader questions about ethics policies and procedures at USTR. In order to better understand current USTR ethics practices, please respond to the following:

8. How many current USTR employees are operating under circumstances that could allow them to solicit future private business while still at the agency? Of those employees, how many have used government resources to solicit business for personal ventures?
9. 18 USC 207(b) bars executive branch employees who participated personally and substantially in any ongoing trade or treaty negotiation from aiding or advising any other person on an ongoing trade negotiation for one year after employment with the United States terminates. Does this restriction apply to all current USTR employees with respect to USMCA and negotiations between the United States and the European Union, United Kingdom, China, Japan, and Kenya? If not, please provide a detailed explanation, including the circumstances by which a trade negotiation ceases to be “ongoing” under 18 USC 207(b).
10. In your testimony before the Committee, you stated that “career employees – as opposed to political employees – can do things like this”. Please provide a detailed legal explanation of the statute or USTR guidance that permits career officials to simultaneously pursue personal business interests involving clients that may have business before USTR.
11. Have political appointees sought and/or received approval for engaging in similar consulting work? If so, please provide copies of any written ethics advice USTR’s ethics office provided to these employees.
12. Please explain whether the USMCA negotiations and negotiations between the United States and the European Union, United Kingdom, China, Japan, and Kenya are considered particular matters involving specific parties for purposes of 18 USC 207(a).

Americans deserve to know that their trade policy is made in the public interest and not for private gain. Given the urgency of the issues raised in the recent press reports, please provide answers to the above questions by July 15. Thank you in advance for your timely response.

Sincerely,



Robert Menendez
United States Senator



Sherrod Brown
United States Senator