

Congress of the United States
Washington, DC 20515

March 9, 2018

The Honorable Robert E. Lighthizer
United States Trade Representative
Office of the United States Trade Representative
600 17th Street N.W.
Washington, D.C. 20006

Dear Ambassador Lighthizer:

We are writing to request information about any non-public communications between the Office of the United States Trade Representative (USTR) and Carl Icahn, a close associate of President Trump.

Last Friday, it was reported that Mr. Icahn began selling more than \$31 million worth of Manitowoc Company stock on February 12, just days before President Trump announced that he was planning to impose a 25% tariff on steel imports.¹ Mr. Icahn reportedly undertook these transactions after holding these stocks for three years. Four days later, Secretary of Commerce Wilbur Ross announced publicly his recommendation that the President consider three alternative remedies for addressing the steel import issue, one of which was a “global tariff of at least 24% on all steel imports from all countries.”² After the tariffs were publicly announced, the stock that Mr. Icahn sold—like those of other steel-dependent companies—lost 6% of its value.³

If Mr. Icahn had knowledge of the impending steel tariffs through conversations with officials in USTR or the Trump Administration—or with President Trump himself—he may have violated federal securities laws, which prohibit trading securities on the basis of “material nonpublic information.”⁴

¹ Securities and Exchange Commission, Schedule 13D for High River Limited Partnership et al. (Feb. 21, 2018) (online at www.sec.gov/Archives/edgar/data/61986/000081376218000018/ntwsch13da04022218.htm). See also *Shortly Before Trump Announced Tariffs, His Former Adviser Dumped Millions in Steel-Related Stocks*, Washington Post (Mar. 2, 2018) (online at www.washingtonpost.com/news/business/wp/2018/03/02/shortly-before-trump-announced-tariffs-his-former-adviser-dumped-millions-in-steel-related-stocks/).

² Department of Commerce, *Secretary Ross Releases Steel and Aluminum 232 Reports in Coordination with White House* (Feb. 16, 2018) (online at www.commerce.gov/news/press-releases/2018/02/secretary-ross-releases-steel-and-aluminum-232-reports-coordination).

³ *U.S. Steel, Aluminum Stocks Jump on Tariff Announcement*, Reuters (Mar. 1, 2018) (online at www.reuters.com/article/us-usa-trade-stocks-steel/u-s-steel-aluminum-stocks-jump-on-tariff-announcement-idUSKCN1GD58E).

⁴ 17 C.F.R. § 240.10b4-2 (2000) (online at www.ecfr.gov/cgi-bin/text-idx?mc=true&node=se17.4.240_110b5_62&rgn=div8).

We previously raised concerns about Mr. Icahn's conflicts of interest when he served as a "special adviser to the president on overhauling federal regulations."⁵ As we warned in a letter to the White House on April 21, 2017:

Mr. Icahn has been advising President Trump while simultaneously serving as the Chairman of the Board and majority shareholder of Icahn Enterprises, a "diversified holding company." Ethics watchdogs have called Mr. Icahn's arrangement "the purest definition of a conflict of interest you can get."⁶

On May 16, 2017, we questioned why the White House had treated Mr. Icahn as an "informal advisor, allowing him to avoid complying with basic ethics requirements that apply to other federal employees, such as requirements to disclose conflicts of interest, recuse himself from participating in issues on which he has conflicts, or divest from financial assets that pose potential conflicts."⁷ On July 25, 2017, we requested information from the White House to clarify whether Stefan Passantino, the White House's designated ethics official, had violated ethics rules in working on matters involving Mr. Icahn, his former client in private practice.⁸

Mr. Icahn left his position with the Trump Administration in August 2017.⁹ Three months later, Icahn Enterprises disclosed that "federal prosecutors [were] looking into the role played by Carl C. Icahn ... in advising the Trump Administration on regulatory issues that had the potential to affect the finances of a company he owns."¹⁰ There has been no further public disclosure regarding this investigation.

The White House has not denied having contact with Mr. Icahn before the steel tariffs were announced. According to NPR, the White House merely issued a general dismissal of the claim:

⁵ *Trump Names Carl Icahn as Adviser on Regulatory Overhaul*, Wall Street Journal (Dec. 21, 2016) (online at www.wsj.com/articles/trump-to-name-icahn-as-adviser-on-regulatory-overhaul-1482354552).

⁶ Letter from Ranking Member Elijah E. Cummings, House Committee on Oversight and Government Reform, Senator Elizabeth Warren, Senator Sheldon Whitehouse, Senator Thomas R. Carper, and Senator Patrick Leahy to Stefan C. Passantino, Deputy White House Counsel (Apr. 21, 2017) (online at www.warren.senate.gov/files/documents/2017_04_21_%20Passantino_Letter_on_Icahn.pdf).

⁷ Letter from Ranking Member Elijah E. Cummings, House Committee on Oversight and Government Reform, Senator Elizabeth Warren, Senator Sheldon Whitehouse, Senator Thomas R. Carper, and Senator Patrick Leahy to Walter Shaub, Director, Office of Government Ethics (May 16, 2017) (online at https://www.warren.senate.gov/files/documents/2017_05_15_OGE_Passantino.pdf).

⁸ Letter from Ranking Member Elijah E. Cummings, House Committee on Oversight and Government Reform, Senator Elizabeth Warren, Senator Sheldon Whitehouse, Senator Thomas R. Carper, and Senator Patrick Leahy to Don McGahn, White House Counsel (July 25, 2017) (online at www.warren.senate.gov/files/documents/2017_07_25_McGahn_Letter_Passantino.pdf).

⁹ *Icahn Fired by Trump as Advisor, Then Resigns*, New York Magazine (Aug. 18, 2017) (online at <http://nymag.com/daily/intelligencer/2017/08/icahn-fired-by-trump-as-advisor-then-resigns.html>).

¹⁰ *Prosecutors Are Examining Carl Icahn's Role as Trump Adviser*, New York Times (Nov. 8, 2017) (online at www.nytimes.com/2017/11/08/business/carl-icahn-trump-ethanol-subpoena.html).

On Friday, a White House spokesman dismissed the idea that the president would have fed Icahn any insider information, pointing to the fact that Trump has long said both publicly and privately that he wanted to impose tariffs.¹¹

On March 5, 2018, when asked whether the President had spoken with Mr. Icahn about the planned tariffs, Press Secretary Sarah Huckabee Sanders stated:

I'm not aware of any of their—of a recent conversation between the two of them so I'd have to verify and get back to you, but I'm not aware of any conversations.¹²

Two days later, on March 7, 2018, Icahn Enterprises released a statement:

We don't generally comment on rumors, but the recent media speculation regarding our sale of Manitowoc stock calls for a response. We state for the record: Any suggestion that we had prior knowledge of the Trump administration's announcement of new tariffs on steel imports is categorically untrue. We reduced our position in Manitowoc for legitimate investment reasons having nothing to do with that announcement.¹³

Despite this announcement, we have additional questions. If Mr. Icahn had access to nonpublic information about the announcement of the steel tariffs, and traded on that information, that would raise serious questions about how the Trump Administration controls the disclosure of nonpublic information to outside individuals and entities—and what measures it takes to ensure that this information is not used for improper financial gain.

Request for Information

We are requesting that you produce by March 23, 2018, the following documents and information:

1. Documents referring or relating to any instance in which USTR officials or employees had contact or communications with Mr. Icahn from August 2017 to March 2018, including dates of each discussion, identities of all participants, and the content of discussion;
2. all policies or procedures governing USTR officials' disclosure of nonpublic information to outside individuals and entities; and

¹¹ *Before Trump Announced Tariffs, Icahn Sold Off Millions In Steel-Related Stocks*, NPR (Mar. 3, 2018) (online at www.npr.org/2018/03/03/590583598/before-trump-announced-tariffs-icahn-sold-off-millions-in-steel-related-stocks).

¹² The White House, *Press Briefing by White House Press Secretary Sarah Huckabee Sanders* (Mar. 5, 2018) (online at www.youtube.com/watch?v=ctmgkGEOkI4).

¹³ Icahn Enterprises, *Statement Regarding Manitowoc* (March 7, 2018) (online at <http://carlicahn.com/statement-regarding-manitowoc/>).

3. all policies or procedures prohibiting using nonpublic information from the USTR for financial gain.

If you have any questions about this request, please contact Janet Kim with Ranking Member Cummings' staff at (202) 225-5051, Brian Cohen with Senator Warren's staff at (202) 224-4543, Joe Gaeta with Senator Whitehouse's staff at (202) 224-2921, or Julie Babayan with Ranking Member Pallone's staff at 202-225-3641.

Thank you for your consideration of this request.

Sincerely,



Elijah E. Cummings
Ranking Member
Committee on Oversight and
Government Reform
U.S. House of Representatives



Elizabeth Warren
United States Senator



Sheldon Whitehouse
United States Senator



Frank Pallone, Jr.
Ranking Member
House Committee on
Energy and Commerce
U.S. House of Representatives

cc. The Honorable Trey Gowdy, Chairman
House Committee on Oversight and Government Reform

The Honorable Greg Walden, Chairman
House Committee on Energy and Commerce