

Senate Scorn Suggests Election Strife For Biden On Trade

By Jennifer Doherty

Law360 (April 17, 2024, 10:17 PM EDT) -- Two White House announcements on Wednesday aimed at girding the U.S. industrial sector against Chinese competition did little to quell senators' frustrations over President Joe Biden's resolve to tackle unfair trade practices, adding pressure to Biden's reelection bid.

A day after House Republicans attacked U.S. Trade Representative Katherine Tai's testimony on the Biden administration's 2024 trade agenda as vague, the Senate Finance Committee's top Democrat made similar criticisms on Tai's second day testifying.

Committee chair Ron Wyden, D-Ore., joined ranking member Mike Crapo, R-Idaho, in saying they approved of the administration's decision to examine allegations of unfair trade practices purportedly boosting China's maritime, logistics and shipbuilding sector.

However, the lawmakers said that the move does not make up for what they called the administration's failure to enforce trade commitments over the previous three years, such as by self-initiating similar investigations, challenging China's trade practices at the World Trade Organization or invoking enforcement mechanisms in the Phase One Agreement, the Trump-era deal that concluded escalating tit-for-tat tariffs between the U.S. and China. Wyden also reiterated his complaints that USTR has lacked transparency in trade negotiations, including concerns over just how hard the administration is pushing to lower tariffs on U.S. agricultural products.

"The American people deserve to know what the government's priorities are with regard to trade policy. Unfortunately, I have strong concerns that this administration has moved away from working with Congress and, as a result, is keeping the American people in the dark," Wyden said.

The president also called for USTR to triple existing levies on steel and aluminum products Wednesday as part of the agency's ongoing review of tariffs former President Donald Trump placed on \$300 billion worth of Chinese goods. Tai demurred during the Senate hearing when asked about her timeline for completing the review.

While Wyden has made no secret of his displeasure with USTR's work on various projects including the Indo-Pacific Economic Framework, digital trade policy and deals with Japan and Taiwan that skirted Congress' input, such party infighting may sit heavier as Biden heads into an election campaign against his predecessor.

"What I don't think the Biden administration has done so far is an effective job of explaining its position in a way to get Congress on-side," said Hogan Lovells partner and former White House trade official Kelly Ann Shaw. "Inevitably there will be issues that the Hill and the president disagree on, and it's really about how do you navigate through those."

Allowing disagreements with influential lawmakers such as Wyden and his Finance Committee colleague Sen. Sherrod Brown, D-Ohio, to pile up has left the administration with "no silver bullet," as Shaw put it, to improve relations with the Hill as Biden endeavors to convince voters that the economy is in good hands.

Tai and Biden's signature "worker-centered trade" approach has also done little to build bridges across the aisle, as demonstrated by the litany of mostly GOP House and Senate lawmakers from rural districts who used their time this week to alternately plead and demand that Tai do more to open new markets for their constituent farmers.

The administration's focus on reinvigorating the U.S. manufacturing sector to protect both U.S. jobs and defend against supply chain threats linked to outsourcing has left the U.S. with little to offer, even if Tai were to embrace the tariff-eliminating free trade deals of the recent past, according to Joseph Damond, chair of Crowell & Moring International's global life sciences division.

"It's very difficult to ask for market access in just one sector if you're not putting other sectors on the table," said Damond, who was a USTR negotiator for over a decade.

At the same time, the president's consistent attention to blue-collar workers could more than make up for alienating farmers come November, as the highly unionized heavy industries Biden has championed have a large footprint in battleground states including Pennsylvania, Michigan and Wisconsin.

Meanwhile, the tech workers likely to be disgruntled by USTR's recent retreat from established digital trade policy positions are concentrated in deep blue coastal regions, while agricultural districts tend to vote red.

That is not to say that USTR or Biden are indifferent to farmers' reliance on exports, as Tai strove again to prove on Wednesday, repeatedly citing the \$21 billion of new market access for U.S. products her office has opened up over the past three years.

At the same time, the U.S. remains one of the world's most open markets in many ways with average duties in the single digits.

"It's very challenging in today's world where so many countries enjoy trade surpluses with the United States to get those countries to agree to meaningful, market-opening deals," said King & Spalding LLP partner and former USTR general counsel Stephen P. Vaughn. "That's going to be a challenge for U.S. policymakers."

Vaughn attributed concerns raised by both parties to "a growing consensus" that trade policy from the mid-1990s to 2010s "did not work for most Americans."

Faced with the current trend toward regulation over liberalization and contemporary geopolitical concerns, doubling down on labor remains the surest path forward for Biden, according to Mark Heusel, East Asia practice group chair at Dickinson Wright PLLC.

"It resonates. It's tough on China. It's supportive of the union. 'We're creating jobs for Middle America' plays into the overall theme," he said. "Of course. Why wouldn't you see that in the last six months of a national election?"

--Editing by Brian Baresch and Dave Trumbore.

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