
Biden Will “Hit Ground Running” on Trade

President-elect Joe Biden today will introduce his latest picks for key Administration posts, including House Ways and Means Committee trade counsel Katherine Tai to be the next US trade representative.

Mr. Biden also has selected Tom Vilsack to reprise the role of Agriculture Secretary, a position he held throughout the Obama Administration.

In announcing Ms. Tai’s nomination yesterday, the President-elect said that her experience – which includes serving at the US Trade Representative’s Office as chief counsel for China Trade Enforcement – will allow him “to hit the ground running on trade, and harness the power of our trading relationships to help the U.S. dig out of the COVID-induced economic crisis and pursue the President-elect’s vision of a pro-American worker trade strategy.”

If her nomination is approved, Ms. Tai will be the first Asian American to hold the USTR post.
Popular on Capitol Hill

Ms. Tai is highly popular on Capitol Hill, where there is anger that the Trump Administration has chosen to negotiate “mini” trade deals negotiated without Congressional input and not needing Congressional approval.

Her current boss, Ways and Means Committee Chairman Richard Neal (D-Mass) pushed the Biden team hard for her nomination. She played a key behind-the-scenes role in Democrats’ effort to improve the US-Mexico-Canada Agreement, Rep. Neal said yesterday. She also is expected to take a tough stance on China. “As the United States seeks to repair strained relationships with our partners around the world and address increasingly perilous challenges from China, Katherine will be an honorable and effective representative for this nation, our people, and our interests.”

House Democratic Leader Steny Hoyer (Md) also praised the nomination. “America’s trade relationships and enforcement of fair trading rules will be crucial to ensuring that American businesses and workers can emerge from this pandemic with the tools necessary to compete, succeed and prosper,” he commented. “Her work ensuring that the US-Mexico-Canada trade agreement incorporated fixes to address the concerns of organized labor and working families proved critical in securing its overwhelming approval by Congress, and I know she will continue to fight every day for trade policies that advantage American workers and prevent our competitors from breaking the rules.”

No One Misses AB, Lighthizer Says

US Trade Representative Robert Lighthizer yesterday defended the Administration’s decision to effectively kill the World Trade Organization’s Appellate Body, saying that “no one’s really missed” it.

A majority of WTO members have been pushing all year to restore the AB, but the United States continues to block the appointment of any new panelists. At this point, there are no panelists remaining on what is supposed to be a seven-member body.

The lack of an Appellate Body has had no impact on global trade, Mr. Lighthizer said in remarks to the Milken Institute Asia Summit. “The Appellate Body isn’t necessary,” he stated.

The AB – by setting judicial precedent – has stifled negotiations at the WTO. “People are not negotiating, they are just litigating,” Mr. Lighthizer said.

He offered no proposals for reforming the WTO dispute settlement system, instead suggesting that it is not really necessary.

In other remarks, Mr. Lighthizer dismissed the recently concluded Regional Comprehensive

Economic Partnership Agreement of Asian countries, including China. He called RCEP “a third tier public relations thing.” The RCEP is a low standard trade deal that is not going to have any impact on US trade and limited impact on trade in Asia, he said.

The Trump Administration’s two biggest legacies on trade are that it reoriented US trade policy toward US workers and farmers and away from multinational corporation and convinced both Congress and US allies of the economic threat posed by China, Mr. Lighthizer said.

TRIPS Waiver Talks to Continue

Geneva – Despite continued differences between a handful of industrialized countries led by the United States and a large majority of developing countries on the proposed waiver for suspending crucial TRIPS obligations to combat the COVID-19 pandemic, World Trade Organization members yesterday agreed to continue ongoing negotiations to find a common solution, WTD has learned.

At the WTO’s Trade Related Aspects of Intellectual Property Rights Council meeting yesterday, Chair Ambassador Xolelwa Mlumbi-Peter from South Africa urged members to find “common ground.” She suggested that there is an emerging agreement for sending a factual and neutral communication to the General Council that would reflect the state of play of discussions and the lack of consensus at this juncture, said a negotiator who asked not to be quoted.

The GC is expected to meet December 16-17 and the recommendation from the TRIPS Council would be considered at that meeting.

The Chair underscored the need to find “common ground in regard to the subject matter of the waiver request, including in relation to scope and substance, as indicated by proponents in order to achieve the common objective you all share.”

Members agreed to keep the waiver proposal on the agenda for the upcoming TRIPS Council meetings to continue further discussions. An oral status report will be presented at the upcoming General Council meeting indicating the need for further discussions on this issue, the negotiator said.

Waiver Proposal Gains Support

In less than two months, the waiver proposal by South Africa, India, Kenya, Eswatini, Pakistan, Mozambique and Bolivia being the latest signatory, has gained momentum with many developing countries joining the ranks for an early approval to ensure that TRIPS obligations do not create a maze of hurdles for combating the COVID-19 pandemic, said another negotiator who asked not to be quoted.

The waiver calls for suspending TRIPS obligations relating to copyrights, patents, industrial designs and undisclosed information for fighting the COVID-19 pandemic that has cost more than a million lives, said a negotiator who asked not to be quoted.

The dominant pharmaceutical industry-led-countries such as the United States, European Union, Switzerland and Japan among others are using every option to block the negotiations by constantly shifting the goalposts, the negotiator said.

During separate interventions, the proponents along with many countries highlighted the institutional and legal difficulties in using the existing TRIPS flexibilities to gain access to needed COVID-19 medicines, including a vaccine.

South Africa and India, which have spearheaded negotiations with the opponents of the waiver, called on members to work together to ensure that patents, industrial designs, copyright and protection of undisclosed information do not create barriers to timely access to affordable medical products including vaccines and medicines or to scaling-up of research, development, manufacturing and supply of medical products essential to combat COVID-19, according to negotiators present at the meeting.

South Africa said that an effective response to the pandemic requires rapid access to affordable medical products – diagnostic kits, medical masks, other personal protective equipment and ventilators, as well as vaccines and medicines. But the outbreak has led to a swift increase in global demand with many countries facing shortages, constraining the ability to effectively respond to the outbreak.

Given the worsening global shortages of these products, South Africa argued that putting the lives of health and other essential workers at risk has led to many avoidable deaths while prolonging the pandemic.

It questioned the assertion that the IP system is responsible for the delivery of vaccines in record

time, suggesting that “credit should be awarded to the heroic efforts of ordinary people, researchers, scientists and government support and funding – not companies, but ordinary people who have generously donated the skills and efforts to enable global collaboration.”

South Africa drew attention to “the irony underlying the fact that many people volunteering in developing countries to participate in vaccine trials and putting their lives at risk for the greater good of mankind will probably be denied priority access to the COVID 19 vaccine despite the enormous sacrifices made.”

South Africa said while COVID-19 vaccines were developed in record-time, these efforts remain “insufficient and not enough to address the needs and underlying problems”

“As vaccines are being rolled out in the developed world, developing countries and LDCs cannot but wonder when equitable and timely access will become a reality, taking into account that more than 90 percent of all future production of vaccine candidates being reserved for rich developed countries,” the South African delegate suggested.

Global Solution Needed

India said the time has come for agreeing on a global solution for a global pandemic, where every country is equally affected, according to negotiators present at the meeting.

The Indian delegate challenged the assertion that the IP system provides sufficient tools to ensure swift and equitable access to vaccines and medical products for all, arguing that availing TRIPS flexibilities on a case-by-case basis entails many problems.

India said the waiver, once implemented, would provide greater certainty to manufacturers by providing them freedom to operate.

Eswatini highlighted the concerns raised by a large number of developing countries in relation with the compulsory licensing mechanisms stated in TRIPS Article 31 bis, challenging the argument of developed countries that the IP system provides the necessary incentives for development and commercialization of the product.

Eswatini suggested that the R&D for emerging infectious diseases has typically been dependent on public funding and not the IP system. It argued that COVID-19 is no different, with billions of dollars of public funds spent on R&D and the manufacture of vaccines.

The Eswatini delegate indicated that AstraZeneca has gone so far as to state that the development of the vaccine will have no financial implications for the company since expenses to progress the vaccine are anticipated to be offset by funding from governments and international organizations.

Opponents

The United States, which is fiercely opposing the waiver proposal, said the IPR system plays a key role in developing partnerships with respect to manufacturing, transportation and distribution.

Washington said that these partnerships can help to facilitate access to innovative products in particular voluntary agreements or mutually agreed terms and conditions have effectively served to advance access to key innovations throughout this pandemic.

The US delegate suggested that manufacturing capacities and problems with supply chains remain the most significant concerns, especially for vaccines.

Raising extraneous arguments that WTO members should be concerned about the pandemic creating the opportunity for an increase in counterfeit health and safety related products, the United States refused to budge from its earlier positions, said a negotiator who asked not to be quoted.

Washington also drew attention to exclusive voluntary licensing agreements signed by one company with generic pharmaceutical manufacturers based in Egypt, India and Pakistan to manufacture its drug for distribution in 127 countries. The co-sponsors of the waiver proposal are countries that will benefit from these arrangements, the United States said.

Washington called for paying more attention “to other factors that are relevant to the access question, include pricing and procurement policies, taxes mark-ups and tariffs and other national policies that result in higher costs for consumers and for health systems.” It complained that some countries continue to apply tariffs of up to 20 percent on pharmaceuticals and 10 percent on vaccines – an issue that it is not explored in their proposal elaborated by South Africa.

Despite sharp concerns expressed by several EU parliamentarians about the hurdles posed by IPRs, Brussels reiterated that the IP system as it stands now is part of the solution to the challenge of

universal and equitable access to vaccines and COVID-19 treatments.

According to the EU, the development of vaccines was largely due to the unprecedented work done in collaboration among governments, pharmaceutical innovators foundations and researchers.

The European delegate said suspending the relevant IP rights, collaboration and manufacturing will not be enhanced – to the contrary, it would slow it down, or even lower it to the detriment of all.

Despite growing disparities in access to the new COVID-19 vaccines, the EU highlighted that many pharmaceutical companies have committed publicly and are already working closely with governments to ensure that the vaccines will be available and affordable to all who need them.

Norway emphasized that the debate on the waiver over the past two months has been promising, arguing that it is ready to continue deliberations in a constructive mode. It asked the proponents whether they are considering presenting a revised proposal given that the chances of achieving consensus on the basis of the original proposal do not seem to be realistic.

Canada defended the TRIPS flexibilities, particularly 31bis, suggesting that solutions can be found within the TRIPS provisions.

Around the Globe

- Reuters news service reported that the European Union and the United States should work together to stand up to coercive Chinese diplomacy and coordinate with other countries in the region on the disputed South China Sea, the EU ambassador to China said on Thursday.

U.S. President-elect Joe Biden, due to take office on Jan. 20, has spoken of the need to revitalize alliances with like-minded democracies as a core source of strength in dealing with China.

EU Ambassador Nicolas Chapuis, speaking at an energy forum in the Chinese capital, said the EU hoped to reach agreement with the new U.S. administration on policy towards China. “Let’s cooperate with China as much as we can, when we can, when China is ready to cooperate. And let’s disagree when we must,” Chapuis said. “We need to have a common understanding to say ‘no’ to bullying and intimidation, coercive diplomacy, ‘wolf-warrior’ diplomacy,” he said, referring to China’s increasingly assertive foreign policy.

- The U.K. government fears that its post-Brexit trade deal with Canada will not come into force in time to prevent tariffs being imposed between Britain and its 12th-largest trading partner from Jan. 1, Bloomberg news service reported. The agreement is yet to be approved by the Canadian parliament which rises for its recess on Friday, and that is causing deep concerns among U.K. officials, according to a person familiar with the matter, speaking on condition of anonymity.

Britain and Canada announced an accord in principle in November, agreeing to roll over the terms of the EU-Canada free-trade agreement which the U.K. benefited from when it was a member of the bloc. Without the continuity deal, bilateral trade worth about 20 billion pounds (\$27 billion) would face World Trade Organization tariffs, starting next month.

Canadian Trade Minister Mary Ng introduced the bill in the legislature on Wednesday. However, the House of Commons’ last scheduled sitting day is Friday, according to its schedule, leaving just two days for parliamentarians to debate and pass the proposed deal. If lawmakers in the House manage to approve the deal by Friday, it then needs to be approved by the Senate before it can become law. The Senate’s last sitting day is scheduled for Dec. 18, according to its calendar.

- CNN reported that British Prime Minister Boris Johnson and European Commission President Ursula von der Leyen have agreed to extend foundering Brexit trade talks until Sunday. After in-person discussions in Brussels that lasted hours, both sides said Wednesday evening that they remained far apart on key issues and a decision on the future of the talks would be made by the end of this weekend.

For months, the European Union and the United Kingdom have been trying to agree on a trade deal before the Brexit “transition period” ends on December 31. Earlier this week, a joint statement by Johnson and von der Leyen cited three “critical” sticking points: fishing rights, the UK’s ability to diverge on EU standards, and legal oversight of any deal. The last-ditch effort to propel talks forward on Wednesday began with a meeting and continued over dinner. In a statement after the meeting, von der Leyen said negotiators would resume work immediately.

A senior No. 10 source also told CNN that “very large gaps remain between the two sides and it

is still unclear whether these can be bridged” but that the Prime Minister “does not want to leave any route to a possible deal untested.”

- The U.K. has signed a free trade deal with Singapore covering trade worth 17.6 billion pounds (\$23.4 billion,) the latest in a series of trade pacts that Britain is seeking to secure around the world post-Brexit, Bloomberg news service reported. International Trade Secretary Liz Truss, who was in Singapore for the ceremony, said Thursday the deal was the second-biggest that Britain has signed in the Asia-Pacific region.

The agreement came as British and European Union officials make a final push to break a deadlock over the U.K.’s future trade relationship with the bloc. The two sides emerged from a Wednesday meeting saying significant differences remain in the way. Britain left the EU on Jan. 31, but remains in its economic structures until a transition period ends on Dec.31. The Singapore deal largely mirrors one that the Asian city-state already has with the EU, and effectively allows trade to continue as before after Jan. 1.

— **TRIG** —

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On the Web.....

Agriculture

World Production. Agriculture Department report on world agricultural production. (Available at: <https://apps.fas.usda.gov/psdonline/circulars/production.pdf>) issued: 12/10/20.

World Supply and Demand. Agriculture Department report on world agricultural supply and demand. (Available at: <https://www.usda.gov/oce/commodity/wasde/wasde1220.pdf>) issued: 12/10/20.

Developing Countries

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Digital Trade

Taxes. Congressional Research Service in focus report on Section 301 investigations on foreign digital services taxes. (Available at: <https://crsreports.congress.gov/product/pdf/IF/IF11564>) issued: 12/10/20.

Transition

Nominations. President-elect Biden announcement of nominations of Katherine Tai to be US Trade Representative and Tom Vilsack to be Secretary of Agriculture. (Available at: <https://buildbackbetter.gov/uncategorized/president-elect-biden-announces-key-members-of-his-administration/>) issued: 12/10/20.

US Trade Representative

Tai Nomination. House Majority Leader Hoyer statement on President-elect Biden's

announcement of nomination of Katherine Tai to be US Trade Representative. (Available at: <http://www.majorityleader.gov>) issued: 12/10/20.

Tai Nomination. House Ways and Means Committee Chairman Neal statement on President-elect Biden's announcement of nomination of Katherine Tai to be US Trade Representative. (Available at: <http://waysandmeans.house.gov>) issued: 12/10/20.

Tai Nomination. Sen. Brown statement on President-elect Biden's announcement of nomination of Katherine Tai to be US Trade Representative. (Available at: <http://brown.senate.gov>) issued: 12/10/20.

World Trade Organization

Boeing/Airbus. Congressional Research Service in focus report on the World Trade Organization dispute between the United States and European Union on subsidies to Boeing and Airbus. (Available at: <https://crsreports.congress.gov/product/pdf/IF/IF11364>) issued: 12/10/20.

Investment Facilitation. World Trade Organization release on investment facilitation negotiators wrapping up a productive year. (Available at: https://www.wto.org/english/news_e/news20_e/infac_08dec20_e.htm) issued: 12/10/20.