

**Rep. Schakowsky: Don't let 'Big Tech' use trade rules to stymie regulation**

1/10/24

The Biden administration was right to pull its support of certain digital trade provisions that could hinder efforts to regulate “Big Tech” companies, including key data privacy legislation being considered in Congress, Rep. Jan Schakowsky (D-IL) said on Wednesday.

Schakowsky, ranking member of the House Energy and Commerce innovation, data and commerce subcommittee, said during a press briefing organized by Rethink Trade that the American Data Privacy and Protection Act was approved by the full Energy and Commerce Committee with bipartisan support.

“But Big Tech has other ideas when it comes to international work,” she said, arguing that the digital trade rules such companies are pushing for would threaten nascent congressional efforts such as ADPPA as well as the administration’s antitrust and anti-monopoly work.

Rethink Trade is an initiative of the anti-monopoly group American Economic Liberties Project.

Schakowsky praised the move by the Office of the U.S. Trade Representative last year to withdraw U.S. support from proposals on data flows, data localization, source code and nondiscrimination in the plurilateral World Trade Organization negotiations on e-commerce. The U.S. had previously suspended talks on those issues in its Indo-Pacific Economic Framework. The agency cited a need for “policy space” to allow domestic debates on the issues to play out.

USTR Katherine Tai, Schakowsky added, has been an “advocate” for consumer rights, including privacy.

Other progressive lawmakers – notably, Senate Finance Committee member Elizabeth Warren (D-MA) – also have praised the USTR

decision, as have civil society groups and some smaller business coalitions.

However, the move has drawn strong opposition from large business groups and some members of Congress, including Finance leaders Ron Wyden (D-OR) and Mike Crapo (R-ID). They argue that such rules are integral to how businesses operate and say the U.S. is creating a leadership vacuum on digital trade that will be filled by China.

But it's false to suggest that all businesses oppose the decision, Amanda Lewis, co-founder of the Responsible Online Commerce Coalition, said during the same briefing. Lewis noted that members of ROCC rely on Amazon or other large e-commerce platforms for their businesses and, accordingly, support provisions that would enforce "fair play."

The language the U.S. withdrew its support for at the WTO "risks serving the interests of the Big Tech monopolists at the detriment of everyone else," she argued.

She and Yelp Vice President of Public Policy David Segal cited in particular the provision on nondiscrimination that had been proposed at the WTO during the previous administration. The proposed language was aimed at protecting the largest technology companies rather than at true nondiscrimination, Segal argued. Provisions that prevent protectionist measures are good, he added, but it should not end up applying to neutral laws targeting the largest platforms – most of which happen to be U.S.-based – as the WTO proposal would have.

Lewis cited the European Union's Digital Markets Act, which applies additional scrutiny and rules to companies designated "gatekeepers," which [so far include](#) U.S. companies Meta, Amazon, Apple, Microsoft and Alphabet (Google) as well as China-based ByteDance. The nondiscrimination provision would have been "a real threat" to the DMA, she said.

Asked about what the next steps for the administration should be, Lewis argued that any future language or position on this front should be signed off on by the heads of the Justice Department's antitrust division and the Federal Trade Commission, which deals with antitrust law.

“I think I am cautiously optimistic that the right people are in the room and weighing in,” she added.

Rethink Trade Director Lori Wallach pointed to [Tai’s remarks at the Aspen Security Forum last month](#), when the USTR said it would be “malpractice” for her agency to get out ahead of Congress or other domestic efforts on this issue.

“She’s gotten a lot of credit in Congress for not doing what some other USTRs have done” by imposing policy decisions on the U.S. via trade agreements, Wallach contended.

Participants in the plurilateral WTO e-commerce initiative announced the “[substantial conclusion](#)” of the talks last month. Even if the U.S. had not withdrawn support from proposals on data localization, data flows, source code and nondiscrimination, those proposals were not close to consensus among the participants, several trade officials in Geneva have previously told *Inside U.S. Trade*.

Wallach noted that the U.S. and other WTO members could choose to revisit these issues in Geneva at a later date after more direction from Congress or other U.S. agencies, calling it “likely an issue of sequencing.” -- *Hannah Monicken* ([hmonicken@iwpnews.com](mailto:hmonicken@iwpnews.com))