

Opinion **Trade Secrets**

US Congress shares the blame for its own impotence over trade

The Biden administration may be shooting from the hip but Capitol Hill is hampered by shortsightedness and special interests

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Katherine Tai, US Trade Representative, arrives for a House Ways and Means committee hearing. Lawmakers complained the administration's trade pacts were bypassing congress © Jim Watson/AFP/Getty Images

Alan Beattie 7 HOURS AGO

There are few things more indignant than members of the US Congress prevented from throwing their weight about, and defence of their amour propre is on full display over the Biden administration's habit of making trade agreements without asking them.

On Tuesday, the two highest-ranking Democratic lawmakers on trade policy, Oregon senator Ron Wyden and Massachusetts congressman Richard Neal, attacked the White House's new agreement with Japan on securing critical minerals. The deal has little binding content: it is essentially a trick to meet the letter of Congress's requirement for countries to have a trade agreement with the US to access electric vehicle subsidies under the Inflation Reduction Act.

Last week, Katherine Tai, US trade representative, was given an even tougher time in a [hearing on Capitol Hill](#). Lawmakers from both parties and both houses complained that the administration has failed to ask Congress for the "trade promotion authority" needed to put trade deals to a straight up-or-down vote, and has neglected the World Trade Organization.

These critiques are largely accurate. The Biden administration has given up on signing substantive binding trade deals requiring congressional authorisation. It's

stayed out of the Trans-Pacific Partnership (TPP), for which the US led negotiations under George W Bush and Barack Obama but then abandoned under Trump. As a replacement, it has invented a frankly rather feeble [“Indo-Pacific Economic Framework”](#) based on soft co-operation agreements.

The Biden administration certainly has policies affecting trade. It’s spending large amounts to build domestic green tech and semiconductor supply chains, and is rapidly expanding sanctions on Russia and controls on tech exports to China. But many are implemented directly using various executive powers or interpretative leeway without reference to Congress, and as such have a shoot-from-the-hip quality which alarms Capitol Hill — and often US allies too. Even if you approve of the general drift of Biden’s interventions, it looks risky to further expand the Trumpian precedent of a largely unconstrained executive improvising trade policy with whatever tools come to hand.

For Congress to complain about this, however, ignores recent history and its own role in undermining [US trade](#) strategy. As Kathleen Claussen, law professor at Georgetown University and former USTR associate general counsel, [points out](#), mini-deals didn’t start with Biden or even with Donald Trump — though Trump’s “phase 1” deal with China, which included ineffectual Chinese promises to buy US exports, certainly publicised them.

Claussen notes that there are already more than 1,200 “trade executive agreements” stretching back decades. Legally they exist in a somewhat fuzzy area outside the formal process where the administration negotiates deals and Congress approves them. The pressure for more such agreements has come partly because exports increasingly encounter non-tariff regulatory barriers such as food safety, access to energy pipelines or rules on medical devices, which traditional trade deals have struggled to address. But Congress hasn’t helped matters by allowing itself to be captured by special interests which hold agreements hostage to tiny corners of the US economy and treat international law as an optional extra.

As Claussen says, the House and Senate have managed to pass precisely one major formal trade agreement over the past decade — the updating of the Nafta deal with Canada and Mexico in 2020. They failed to approve TPP, a far more important deal, after the text was signed under the Obama administration in 2016 following eight years of negotiations.

TPP was designed to project a US model of trade and development across a high-growth region in competition with Chinese influence. But even before Trump pulled

the US out, the deal had stalled on Capitol Hill over short-sighted special interests, having been blocked by the pharmaceutical and tobacco industries over provisions they didn't like.

TPP was itself a Plan B after the failure of the so-called "Doha round" of trade talks, the death of which was hastened by the congressional satraps of American agriculture (farming amounts to a mighty 0.7 per cent of US GDP) demanding politically unfeasible access to export markets in countries like India. Congress also, in effect, prevented the US complying with WTO rulings on issues like cotton subsidies for years on end.

As for standing up to the executive, Congress failed to muster the courage to rein in Trump and his destructive unilateral trade war with China. Complaints from Pennsylvania senator Pat Toomey, who later stood down from Congress — there's nothing as brave as a retiring lawmaker — got too little support from colleagues.

The rapidly changing nature of globalisation and an increased role for geopolitics and security were always going to be a strain on the US's slow, deliberative means of striking trade deals. But the system sliding quite so quickly into one driven by unconstrained White House action represents a failure of Congress as well as a power-grab by the executive. Recent history suggests the US either risks having a trade policy that shoots from the hip or having no trade policy at all.