

Clinton Faces Tough Road Ahead With TPP Opposition

By Alex Lawson

Law360, New York (July 7, 2016, 7:28 PM ET) -- Presumptive Democratic presidential nominee Hillary Clinton's soft opposition to the Trans-Pacific Partnership — a deal she formerly championed — has placed her in a difficult position, given the rising anti-trade sentiment from both her Republican opponent and from influential voices in her own party.

Clinton spent years extolling the virtues of the nascent TPP while heading up the State Department under President Barack Obama, leading most observers to think she will eventually walk back her criticisms. But getting back to a position where she can fully endorse the deal will not be easy, according to Georgetown University professor Marc L. Busch.

Busch noted that Clinton has kept the specifics of her opposition to the TPP largely vague, leaving the door open for her to reverse course if certain portions of the deal are improved. But he says that will do little to cool the political flames surrounding the 12-nation accord, which was wrapped up last fall and now requires approval from both houses of Congress to take effect.

"It is daunting," Busch told Law360 about Clinton's likely TPP pivot. "I don't know what the Hillary strategy would look like, but it's almost impossible to imagine finding a [TPP] provision that would be the magic bullet and then explaining that to the public at large."

Since announcing her opposition to the TPP last October, the Clinton camp has remained mostly quiet on the issue, with the candidate floating the idea of an alteration of the deal's rules of origin for cars in March.

In fact, Clinton's official slate of issues on her campaign website contains only passing references to trade at all, primarily in the context of ramping up enforcement efforts to reclaim U.S. jobs lost to foreign competition.

The strategy stands in stark contrast to presumptive Republican nominee Donald Trump, who has continually battered the last two decades of U.S. trade policy throughout the primary campaign and more recently advocated for withdrawal from the TPP in a sweeping trade speech last week in Pennsylvania.

Busch says that between Trump's shirking of the conservative party line on trade and the staunch anti-TPP record of Clinton's former foil Sen. Bernie Sanders, I-Vt., it is easy to see why Clinton has kept her cards close to her chest on trade.

“The reality is there’s no incentive for her to say one thing or another,” Busch said. “She can only really go to the left of Trump if she’s going to say something public, and why bother alienating those who raised their eyebrows at [Trump’s] Pennsylvania speech.”

A July 1 draft of the official Democratic Party platform, which will be finalized at the party’s convention in Philadelphia later this month, contains a brief mention of the TPP and the need for high standards in the deal. But Sanders and his surrogates are vigorously pressing for harsher language that would oppose the deal outright, creating further pressure on the Clinton camp.

The uncertain fate of the TPP also does no favors for Clinton. While many observers have held out hope that the agreement could be ratified by lawmakers in the lame-duck congressional session after the elections in November, Mayer Brown LLP partner Timothy J. Keeler says it is looking increasingly likely that the deal will slip to the next administration.

“It’s difficult to imagine a scenario where they would be able to get a sufficient number of votes in the lame-duck,” he said.

If the agreement were to be approved and Clinton were to be elected in November, she would enter the White House with little choice but to honor the agreement’s terms or execute a very controversial withdrawal. But in the increasingly likely scenario that she arrives at the Oval Office with an unratified trade accord, she will have to begin the arduous task of smoothing out the most troubling parts of it.

But that tactic carries its own peril, Keeler warns, noting that the message from the Obama administration and the other TPP nations has been that the talks are definitively closed and cannot be renegotiated.

“I tend to think that if other countries have a choice between no TPP and a negotiated TPP, then they will take a renegotiation,” he said. “But it’s possible that trying to renegotiate kills it too because people walk away.”

Even if the other TPP nations don’t walk away from the negotiating table out of frustration, re-opening the talks also raises the specter of a death by attrition as the talks languish, a fate that befell the Doha Round of trade talks at the World Trade Organization.

The intrigue over Clinton’s views on the TPP will heighten now that Obama has joined her on the campaign trail amid his push to ratify the deal before he leaves office. Top Cabinet officials, like Commerce Secretary Penny Pritzker, have already taken shots at Clinton’s change of heart on the agreement.

“I don’t understand that conclusion,” Pritzker told MSNBC in April when she was confronted with Clinton’s calls to reshape TPP. “Because frankly, having looked at this agreement, studied this agreement, it is the gold standard. It is the toughest trade agreement out there in the world.”

--Editing by Rebecca Flanagan and Kelly Duncan.
