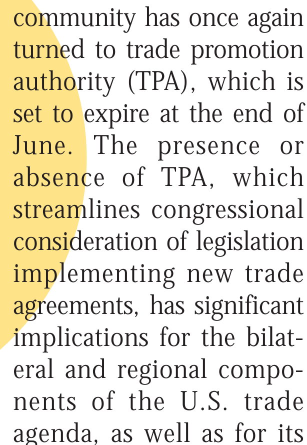
Trade
agreements

TRADE PROMOTION AUTHORITY, AGAIN

By John R. Magnus



THE ATTENTION OF WASHINGTON'S POLICY community has once again turned to trade promotion authority (TPA), which is set to expire at the end of June. The presence or absence of TPA, which streamlines congressional consideration of legislation implementing new trade agreements, has significant implications for the bilateral and regional components of the U.S. trade agenda, as well as for its pending multilateral trade negotiations—the World Trade Organization (WTO) "Doha Round."

Some argue that TPA is essential to U.S. participation in various worthy trade initiatives and should be extended with no lapse or restrictions. Others argue that TPA smooths the enactment of flawed trade policies, trims congressional prerogatives excessively, and should die unlamented.

This is a well-rehearsed debate. But the context this year has important new elements. Decision makers should take several new lessons and factors into account.

First, trying to use TPA expiration as an "action-forcing event" to drive pending negotiations toward closure has not worked well and has a downside risk that is now manifesting itself. Implicitly, this tactic endorses the notion that TPA is something extraordinary—a precious, wasting asset—when, since 1974, TPA has lapsed only during the latter years of the Clinton presidency (an extraordinary period in many ways).

Trade supporters do not really believe this; they see TPA as something ordinary, a normal part of organizing the government. TPA is, after all, procedural at its core, a tweaking of the debate rules in each chamber of Congress.

Trade opponents traditionally have sought to turn TPA renewal into a substantive battlefront. Now, the U.S. negotiators' oft-repeated warning that "TPA will be difficult to renew in 2007" looks like a self-fulfilling prophecy.

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Second, congressional maneuvering appears to be undercutting TPA's political rationale. Traditionally, TPA's no stalling/no amendment procedures have been considered necessary to move big trade agreements—which contain a lot of pain along with gain—through Congress. It now appears that the two most congressionally controversial items in the Doha Round—farm subsidy cuts and immigration changes—will have to be enacted (if at all) the old-fashioned way, not as part of a TPA-advantaged implementing bill.

Agriculture subsidies are to be dealt with in a farm bill and any immigration law changes (allowing more entries for foreign service workers) through regular legislation. The remaining political rationale for TPA seems limited to easing changes in antidumping law, whose defenders may wonder why changes in their area of interest should be "fast tracked" when other parts of the implementing package are not.

Third, TPA has contributed to America's share of a worldwide proliferation of regional and bilateral initiatives now often cited as a threat to the multilateral trading system. Having pressed reluctant legislators to enact TPA, the Bush administration was eager to use it once Congress approved it in 2002.

It quickly became clear—at the breakup of the 2003 WTO Ministerial Conference in Cancun (if not before)—that on the multilateral front, restoring TPA was not the only hurdle to great achievements. This realization helped fuel a "competitive liberalization" strategy that has yielded several smaller agreements but has not (so far) noticeably motivated Japan, Brazil, and others to move seriously in WTO talks.

Fourth, TPA rests on an up-front approach to implementing trade obligations that is increasingly troublesome. The basic idea is that we can make all the changes necessary to implement new trade obligations in one fell swoop, through an implementing bill enacted after a pact's signature and before its entry into force. This premise today looks more and more like a conceit.

By one count, recently published by the Office of the U.S. Trade Representative, there have been 33 WTO dispute settlement cases against the United States that succeeded on core issues, with U.S. measures found to violate WTO obligations. Even subtracting cases involving newer measures, this means there were a lot of errors

in the 1994 Uruguay Round Agreements Act—mainly, a lot of measures we didn't think we needed to amend or repeal but were later told we did.

The up-front approach makes adverse rulings hard to swallow because they reflect a stark difference of opinion (between the U.S. implementers and the WTO adjudicators) over what the United States really agreed to. When told that our implementers made *dozens* of serious errors, we suspect that the problem may often lie with the adjudicators. The up-front approach is also poorly suited to ensuring conformity over time with certain kinds of obligations, such as the obligation not to harm trading partners through subsidization.

Discarding the current TPA structure in favor of some alternative scheme would be risky, but those of us who want to keep TPA's essentials still need some updated talking points. It would be useful to detoxify TPA, much as we tried a few years ago to detoxify "normal trade relations," previously called "most favored nation" status. (TPA is itself a new moniker replacing "fast track," but the rebranding has not completely succeeded.)

TPA is a power-sharing arrangement between two branches of the government that have to cooperate somehow. It is not anomalous and should not be seen as temporary or extraordinary. We should identify other, sounder techniques to force the tempo of pending trade talks. We should find better ways to prevent overreaching in dispute settlement cases so that TPA implementing bills are not slowly shredded through adjudication. And we should use the TPA mechanism as it was designed to be used, by bringing together in one legislative vehicle all the elements of an implementing package.

Following these suggestions will not clear the path to TPA extension. That depends on finding new compromises on substantive issues such as what kinds of negotiating objectives should be articulated on trade-and-labor and trade-and-environment, and on procedural issues such as better congressional consultation as new trade initiatives are planned and negotiated. But the issues noted above are important as well—not just for getting TPA renewed, but for ensuring that, once extended, TPA's potential is fully realized. ✦

NEW U.S.-KOREA FREE TRADE AGREEMENT

By Constance Kim

THE U.S.-KOREA FREE TRADE AGREEMENT (KORUS) would reduce trade barriers and expand U.S. trade with South Korea, the world's tenth-largest economy. South Korea, with an annual gross domestic product approaching $1 trillion, is the United States' seventh-largest export market. It was the third-largest U.S. trading partner, after China and Japan, in 2005, when bilateral trade was valued at about $72 billion.

U.S. exports to South Korea include agriculture products, aircraft, machinery, and organic chemicals. South Korean exports to the United States include cars, telecommunications equipment, and electrical machinery. According to the U.S. International Trade Commission, an accord could increase exports to South Korea by $19 billion, and Korean exports to the United States by $10 billion. KORUS is perceived to be central to Washington's strategy of stemming the loss of economic influence in Asia to China; for South Korea, the FTA would increase exports and serve as a catalyst for economic reform.

After eight rounds of negotiations, KORUS was finalized on April 1, 2007—the last day to submit for congressional review under the "fast track" trade promotion authority that allows the president to negotiate trade agreements for expedited congressional consideration (*see* article page 12). Both countries must still ratify the agreement for it to go into effect.

If KORUS enters into force, nearly 95 percent of bilateral trade in consumer and industrial products becomes duty-free within three years, including digital products imported electronically or physically. Tariffs on other consumer and industrial goods will be eliminated within ten years—but within five years for items such as liquid crystal display panels, computer monitors, digital televisions, chemicals, and cosmetics. KORUS will provide additional export and investment opportunities for U.S. firms involved in remanufactured products, such as medical equipment, machinery, and auto parts. Both countries also agreed to an increased regulatory transparency and competition policy.

Previously, South Korea demanded revision of U.S.