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US Trade Promotion Authority Expiry & the WTO

The Issue at Hand

Trade promotion authority (TPA), also referred to as 'fast track' authority, expired under US law on 1 July 2007. With this expiry went the authority that Congress grants the President to enter into certain trade agreements, and the authority for Congress to consider the agreements' implementing legislation under expedited procedures. Currently, the Administration is negotiating a number of trade agreements that have not been settled prior to TPA having expired. Not least of these is the pending yet elusive WTO Doha Agreement. With these trade pact activities unlikely to cease, future TPA renewal is going to be a proverbial 'hot potato' in US politics.

The current TPA is contained in the Bipartisan Trade Promotion Authority Act of 2002¹. A total of 10 free trade agreements (FTA's) have been negotiated under this 2002 authority. They are with Chile, Singapore, Australia, Morocco, Bahrain, Oman, the Dominican Republic, Korea, Panama, Peru and Colombia. The last three still await congressional consideration. It is notable that US exports to the countries which have implemented the FTAs since 2001 have increased nearly twice as fast as the global average of US exports, growing by 25% as opposed to 13% generally. The issue of labour rights in bilateral trade deals has been a key factor in the present reluctance of Congress to renew the authority.

TPA: more useful politically than technically

TPA is not technically necessary to conduct negotiations, but is crucial to ratify the resultant agreement. As a technical matter, the US negotiators do not need trade promotion authority until the agreement is fully negotiated. This being said very few trading partners are likely to be comfortable in closing a negotiated deal with the US, as absent of trade promotion authority there is a real risk to other

countries that the US will renege on negotiated commitments as Congress takes the draft deal apart in order to satisfy the proponents within the domestic political economy. This is equally valid for the pending Doha Round Agreement as it is for bilateral trade agreements.

In this vein the Bush Administration, through USTR Susan Schwab signed up the last (and a last minute) bilateral deal with South Korea on 30 June 2007. Twenty four hours later the President's authority to perform this type of transaction ceased through expiry. As such the Korea deal may be the last trade agreement that either President Bush or USTR Schwab are ever able to conclude. They can however rest in the knowledge that this is not an insignificant achievement in that the Korea FTA represents the greatest value of trade in a bilateral deal for the US, since concluding the North American Free Trade Agreement (NAFTA) in 1992. The incumbent administration now cannot conclude trade pacts, including the 'final' Doha Development Agenda, and 'fast track' them through Congress without amendment. This is may prove to be a hindrance to the construction of a final WTO Doha Agreement.

In reaction to the TPA's expiry USTR Schwab commented that:

'The United States must be in the game and not on the sidelines as other nations negotiate deals that disadvantage our businesses, farmers, ranchers and service providers. Our trading partners and competitors are already negotiating and closing trade deals around the world. The President – indeed every President – should have TPA to ensure that the United States can best advance our country's trade interests²'.

USTR Schwab is also on record after the recent G4 Potsdam collapse as taking the view that in the medium term, the G4 talks (and perhaps the subsequent July 2007 Modalities) collapse could actually bolster the argument for fast track's re-introduction as the collapse is proof to members of Congress that the Administration 'can be trusted' on trade, in that the USTR was unwilling to agree to any 'bad deal' in relation to US interests. In this thinking there is some business support with business chamber representatives conceding that TPA renewal is a 'long-term prospect' especially as there has not been a breakthrough in the Doha round negotiations.

¹ Title XXI of the Trade Act of 2002, P.L. 107-210.

² See: www.ustr.gov/Document_Library/Press_Releases/2007/June/Statement.html

However House Democrat leaders quashed the US trade negotiators' aspirations by indicating in their reaction to the expiry that TPA was not a legislative priority for them. This finds some resonance with related House legislation on the US Farm Bill, where there have been clear calls, pertinently from the cotton lobby, to draft US legislation for the US interest and not to satisfy WTO obligations. The instances considered together are perhaps a sobering indication of the relatively small, even insignificant role that international affairs have on US trade policy.

The said Democrats have not yet made specific indications as to their later approach to a Doha text if brought 'home' for ratification. However in their official statement the Democrats said they have other trade priorities than TPA renewal, which would inter alia include legislation dealing with the US trade imbalance with China. The statement also indicated that they will not sign implementing legislation for the pending free trade agreements with Panama and Peru until October 2007, with the proviso that those countries change their laws to comply with new worker rights, environmental protections and other provisions recently added to these FTA texts.

Another question that arises is whether all the Democrats oppose TPA while all Republicans support it. The answer is certainly 'no' and this 'no' is premised upon the US Presidential race in 2008. At this the present juncture, it is unclear who will be the next US president. This uncertainty is giving rise to both Republican and Democratic members being reticent on extending fast track as neither wants to do a possible opposition president any favours, especially on the trade front.

There is an element of circular logic present with the interrelationship of between this stance and the Doha Deal, a classic chicken and egg scenario. This circular logic comes through clearly in a comment by Democrat Charles Rangel when he observed that absent a breakthrough in the Doha round there is no political risk for Democrats not to renew TPA. This leaves one to ponder how a Doha deal is possible without TPA, which will not be forthcoming without a Doha deal. The overriding sentiment seems to be that 'it is more important to get trade promotion authority done right than to get it done fast'.

The WTO View Point

Since the beginning of the Doha Round in November 2001, US Trade Promotion Authority has been used as a mechanism to try and spur negotiators to a timely

conclusion of the round. The reasoning adopted has been that negotiators would have little to no chance of concluding the Doha Round without the US having TPA in place. The looming expiry of TPA has thus been a veiled and ever present sanction, used to spur actions for an agreement before 1 July 2007, at the very latest. The question arises as to whether the current TPA expiry is really a calamity of global proportions for the WTO?

It is worth looking back to the early days of the Doha Round. Almost exactly 5 years ago back in July 2002, the US TPA was up for renewal, and this was successfully obtained by the Bush Administration. At that time the present World Bank chief incumbent, Robert Zoellick was the USTR. In response to the July 2002 TPA renewal, the then WTO DG, Mike Moore, commented that he 'warmly welcomed' the breakthrough achieved by the US Congress on the requisite legislation to grant President Bush the authority he needed to negotiate trade agreements. He considered that the agreement that was reached among Congressional leaders gave 'further momentum' to the Doha Development Agenda negotiations. He concluded that TPA renewal would keep the negotiations 'on course for completion by the 1 January 2005 deadline'. In this regard Moore was certainly sadly mistaken, and one may be tempted to venture whether TPA is that important after all. The more probing observation is perhaps whether the Round is really in trouble now, as if it has failed to progress this far with TPA – what are its future chances currently without any TPA?

To shed some light on this question in very recent times we have the TPA views of the present WTO DG, Pascal Lamy. He took great pains in addressing the US Chamber of Commerce in Washington on 23 April 2007 to encourage US law makers to renew their Trade Promotion Authority. He recognised that any 'contract' between the two branches of the US government is an internal US matter. This cannot be denied and it is clear, legally speaking, that having valid TPA will only be needed to enact the results of a Doha Round agreement, but does not prevent the Administration from negotiating a Doha deal with the WTO Members. However, many US trade partners, including those within the African contingent, consider that no movement on TPA means that the US has 'lost faith' in the Doha Round. Lamy refers to this perception as 'the US shifting gear from drive into park', which in his view will certainly have an impact on the dynamics of the negotiations.

There has been an expectation in Geneva that progress in the Doha Round and the prospects for a rapid conclusion of the negotiations would be taken into account by members of the US Congress as they discussed and considered the renewal of TPA. The DG's closing view was that there is no surprise in the reality that many WTO Members believe that a window of opportunity is closed unless there was clear progress to retain, or now resuscitate, TPA.

It is perhaps in recognition of this dynamic that the WTO has been completely silent on the actual expiry of the TPA. There is no doubt a swift change in tack now, playing down the relevance of TPA as opposed to the previous policy, practiced to date, of raising the TPA's profile as a negotiation driver.

Concluding Comment

The smooth progression of the Doha Agenda has been dealt a sideways glance with the expiry of US trade promotion authority on 1 July 2007. While fast track is not technically necessary to conduct negotiations, but is crucial to ratify the resultant agreement and this lacuna provides a definite confidence dilution within the credibility rankings of the US trade negotiators with other WTO Members.

There is still a chance, albeit slim, that a Doha breakthrough this July based on modalities friendly to US interests could see a limited extension of TPA just sufficient to ratify the Doha Deal. However as time elapses and events draw nearer to the US Presidential race, TPA and thus Doha will increasingly fade into a significantly diluted US priority imperative. The following statement by the incumbent USTR may prove prophetic: ***“Failure to renew TPA signals to the world that the US has lost faith in Doha.”***[USTR Susan Schwab – 12 February 2007].

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