

Report for Congress

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Trade Promotion Authority (Fast-Track): Labor Issues (Including H.R. 3005 and H.R. 3009)

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Mary Jane Bolle
Specialist in International Trade
Foreign Affairs, Defense, and Trade Division

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Summary

Since trade promotion authority (TPA), formerly called “fast-track negotiating authority” expired in 1994, Congress has been unable to agree on language for its reauthorization. Under TPA, Congress agrees to consider trade agreements which the President has negotiated, on a fast-track basis – without amendment and with limited debate. TPA facilitates the adoption of trade agreements in that it arguably reassures negotiating partners that their carefully crafted concessions will not be changed when Congress votes on the implementing legislation for the agreement.

A key issue in current efforts to reauthorize TPA is the extent to which Congress will allow labor and environment provisions in new trade agreements considered under fast-track procedures. This report traces the congressional TPA-labor debate since 1994 when the previous fast-track authority expired, and compares H.R. 3005 (Thomas), the *Bipartisan Trade Promotion Authority Act of 2001*, reported by the House Ways and Means Committee on October 16, 2001 (H.Rept. 107-249), H.R. 3019 (Rangel/Levin), the *Comprehensive Trade Negotiating Authority Act of 2001*, and H.R. 3009, the Senate-passed bill which includes TPA.

H.R. 3005 was passed by the House on December 6, along party lines, by a vote of 215-214. The Senate bill, H.R. 3009, which includes TPA legislation along with trade adjustment assistance, the Andean Trade Preference Act, and extension of certain preferential trade treatment and other provisions, including the Generalized System of Preferences, was passed by the Senate on May 23, 2002, by a vote of 66 to 30. This report will be updated as events warrant.

By way of record, this report also compares H.R. 3005 with H.R. 3019, which was offered as a substitute to H.R. 3005 in the House Ways and Means Committee.

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Trade Promotion Authority (Fast-Track): Labor Issues (Including H.R. 3005 and H.R. 3019)

Since trade promotion authority (TPA), formerly called “fast-track negotiating authority” expired in 1994,¹ Congress has been unable to agree on language for its reauthorization. Under TPA, Congress agrees to consider trade agreements which the President has negotiated, on a fast-track basis – voting them up or down without amendment and with limited debate. TPA or fast-track authority facilitates the adoption of trade agreements in that it arguably reassures negotiating partners that their carefully crafted concessions will not be changed when Congress votes the implementing legislation for the agreement up or down.

A key issue in TPA reauthorization has been whether or not, and more recently the extent to which Congress will allow provisions relating to labor and the environment in trade agreements destined for fast-track consideration.

This report focuses on TPA labor issues.² After summarizing some key questions for Congress, it traces the congressional debate on the worker rights issue since 1994 when the previous fast-track authority expired. Then it compares provisions in two current bills to extend that authority, in terms of how the worker rights issue would be treated by each. These bills are: H.R. 3005 (Thomas), the *Bipartisan Trade Promotion Authority Act of 2001*, (H.Rept. 107-249), and H.R. 3019 (Rangel/Levin), the *Comprehensive Trade Negotiating Authority Act of 2001*. H.R. 3005 was approved as amended under Rules Committee Resolution H.R. 306 (H. Rept. 107-323) and passed by the House on December 6, 2001 along party lines, by a vote of 215-214.

In the Senate, H.R. 3005 was approved by the Senate Finance Committee by a vote of 18-3 on December 12, and was ordered reported on December 18, 2001, after Members had had a chance to offer amendments.

A related issue is whether to try to garner additional support for TPA legislation by linking its passage to legislation which would expand trade adjustment assistance

¹ This authority was included in the *Omnibus Trade and Competitiveness Act of 1988* (P.L. 100-418).

² For an issue brief on TPA in general, see *Trade Promotion Authority (Fast-Track Authority for Trade Agreements): Background and Developments in the 107th Congress*, CRS Issue Brief IB10084, by Lenore Sek. For a summary of environmental issues, see Grimmert, Jeanne. *Environment in Fast Track*. CRS Electronic Briefing Book on Trade: [<http://www.congress.gov/brbk/html/ebtra23.html>].

(TAA). S. 1209, ordered reported on December 4, 2001, would be that companion legislation. It would expand the TAA program to offer benefits to those who lose their jobs because their plant relocates abroad.

Previously, benefits under the program have been limited to those who lose their jobs because of increased imports. However, a related program under the North American Free Trade Agreement (NAFTA), called the NAFTA Transitional Adjustment Assistance Program (NAFTA-TAAP), has from the beginning offered benefits both to those who lose their jobs because their plant relocates to Mexico or Canada and to those who lose their jobs because of increased imports from Mexico or Canada. Max Baucus, Chairman of the Senate Finance Committee, has indicated that if fast track is to be taken up on the Senate floor, he will use “every legislative option at my disposal to ensure that TAA and fast track are joined.”³

This report will be updated as events warrant.

Key Questions for Congress

Within the labor-TPA issue in fast-track reauthorization, two key questions seem to be getting the most attention as Congress focuses in on the reported H.R. 3005 and compares its provisions with those of the expired TPA:

1. What should be the goal of trade agreements in promoting labor provisions (worker rights provisions, defined in table 1)?
 - a. Should they be subject to the same enforcement procedures as other provisions? (If the answer is “yes,” they would typically be included in the body of the agreement rather than in a side agreement);
 - b. How (with what provisions) should labor/worker rights be promoted?
2. Should the TPA authority promote a working party in the WTO to discuss the link between worker rights and trade?

A comparison of how the expired TPA authority and H.R. 3005 address these questions follows, together with some responses to these differences. A lengthy discussion of provisions in H.R. 3005, and a table comparing the provisions of H.R. 3005 and H.R. 3019 are included toward the back of this report.

³ Byrd Pushes Panel into Rushed Markup of Fast-Track Bill. *CQ Daily Monitor*, December 13, 2001, p. 11.

Table 1. Worker Rights Defined

While there is no single official list of worker rights agreed upon by interested parties all over the world, there are two similar lists that are most commonly used. One is “*internationally recognized worker rights*” which is defined in U.S. trade law. The other is “*core labor standards*,” which is a slightly different list identified by the International Labor Organization (ILO), a United Nations organization founded more than 80 years ago to promote and protect the rights of workers around the world.

Key elements of both worker rights lists are: (a) the right of association ; (b) the right to organize (into unions) and bargain collectively; (c) prohibition of forced labor; and (d) minimum age for the employment of children (i.e., prohibition of child labor). The two lists differ in their 5th item. The U.S. list includes as (e) acceptable working conditions regarding minimum wages, maximum hours, and occupational safety and health protection. The ILO list includes as (e) freedom from all types of employment discrimination (i.e., on the basis of sex, race, age, religious preference, etc.)

The worker rights goal of trade agreements under the old TPA was to promote respect for worker rights without specifying details about how (through what provisions) worker rights should be promoted, or whether worker rights provisions should be subject to the same enforcement (dispute resolution procedures) as other provisions.

H.R. 3005 includes specifics in each of these areas. Under H.R. 3005, one principal negotiating objective is promotion of worker rights through self-enforcement: “to ensure that parties do not fail to enforce their own labor laws.” However H.R. 3005 also includes caveats to this requirement which would also be objectives for inclusion in a trade agreement. The caveats would be for parties to retain discretion in the reallocation of resources in enforcement, and for protection of U.S. exports from labor policies that discriminate against them.

Under H.R. 3005, one principal negotiating objective for enforcement is to seek provisions that treat U.S. primary negotiating objectives “equally” with other negotiating objectives.

The seeking of a working party on the relationship between worker rights and trade within the World Trade Organization (WTO) was listed as a principal

negotiating objective of the expired fast-track authority.⁴ H.R. 3005 does not include this provision.

Reaction to How H.R. 3005 Addresses the Key Questions

Between the time that the old fast-track authority expired in 1994 and the time H.R. 3005 was reported, Congress voted to implement three trade agreements: the North American Free Trade Agreement (NAFTA), (implemented in 1994 by P.L. 103-82), the Uruguay Round of Agreements, and the U.S.-Jordan Free Trade Agreement (P.L. 107-43 on September 28, 2001). Relating to the key congressional questions identified above, the provisions included in these agreements are viewed as precedents by some in Congress and as unique occurrences by others.

NAFTA promotes worker rights by providing that each country abide by its own labor laws, and that each country strive toward 12 labor standards. The U.S.-Jordan Free Trade Agreement provides that each country enforce its own laws and strive to ensure that ILO labor principles and internationally recognized worker rights (see table 1 above for definition) are “recognized and protected by domestic law.”

Some Democrats in Congress, particularly Representatives Charles B. Rangel, Ranking Democrat on the House Ways and Means committee, Representative Sander M. Levin, and Representative Robert T. Matsui, members of the committee and all co-sponsors of H.R. 3019, have argued that the provisions in the U.S.-Jordan FTA should be a “floor,” or lower limit for the kind of labor provisions that should be included in new trade agreements. They also argue that this floor is not being honored by H.R. 3005, which specifies as a goal, that parties to a trade agreement should “not fail to enforce” their own labor laws. Rather than requiring parties to a trade agreement slated for fast-track consideration by Congress to strive toward adopting either ILO “core labor” standards or “internationally recognized worker rights,” these Democrats argue, H.R. 3005 merely includes the more vague goal “to strengthen the capacity of U.S. trading partners to promote respect for core labor standards.”⁵

The Democrats have also expressed concern that H.R. 3005, unlike the expired TPA, does not include the goal of establishing a working party for worker rights and

⁴ Technically, the principal negotiating objective in P.L. 100-418, Sec. 1101, was “to secure a review of the relationship of worker rights to GATT articles, objectives, and related instruments with a view to ensuring that the benefits of the trading system are available to all workers.” The GATT was superseded by the World Trade Organization (WTO), through the Uruguay Round of Agreements in 1994. The Act that implemented the Uruguay Round of Agreements (P.L. 103-465, Sec. 131) requires the President to seek a working party in the “new WTO” to examine the relationship between internationally recognized worker rights and trade.

⁵ See “Text: Democratic Letter on Fast-Track” included in *Inside U.S. Trade*, September 28, 2001, and Statement of The Honorable Sander Levin, Ranking Member, Ways and Means Trade Subcommittee, Statement on Fast-Track/Trade Promotion Authority Legislation, Ways and Means committee Mark-Up on October 9, 2001: [<http://www.house.gov/levin/10.09.01.htm>]

trade in the WTO.⁶ This is a goal that has so far been difficult to achieve, because developing countries are typically strongly opposed to the idea, lest a discussion of the relationship between worker rights and trade ultimately lead to the imposition of labor requirements on these countries.

Some Republicans, on the other hand, (Senators Phil Gramm, Jon Kyl, and Mitch McConnell) have expressed concern with H.R. 3005 for not including protections on the sovereignty of U.S. laws. They argue that if worker rights provisions in a trade agreement are subject to the same dispute resolution procedures as other provisions in the agreement, the United States could be in a position to be judged on whether it does or does not fail to enforce its own labor standards. If the U.S. is found to “fail to enforce” its own labor standards, U.S. goods and services could be subject to sanctions. They recommend two amendments to remedy the potential situation.⁷

Organizations that have come out against TPA legislation (especially H.R. 3005) include the AFL-CIO, Public Citizen, the United Steelworkers of America, the Teamsters, and the Communications Workers of America. Groups in favor of the bill include the Business Roundtable, the U.S. Chamber of Commerce, the National Association of Manufactures.⁸

Background

Over the past several decades, Congress has passed various pieces of trade legislation that have included provisions for promoting worker rights. Between 1969 and 2001, at least six U.S. trade laws (establishing U.S. conditions for preferential trade treatment, providing negotiating authority, and providing for trade remedies,) and four international trade agreements to which the United States was a mutual party promoted the rights of workers in countries with which the United States trades.⁹

⁶ Ibid. See also, “Gephardt Sees WTO Declaration Hurting Fast-Track Chances,” *Inside U.S. Trade*, November 23, 2001.

⁷ “Republican Letter Against Thomas Bill.” *Inside U.S. Trade*, November 23, 2001.

⁸ “House Negotiations on TPA Compromise To Resume Among Members Next Month”. *Inside U.S. Trade*, August 23, 2001.

⁹ The trade agreements are the 1948 General Agreement on Tariffs and Trade (GATT), the 1993 North American Free Trade Agreement (NAFTA, implemented by P.L. 103-82), the 1994 Uruguay Round Agreements Act (implemented by P.L. 103-465), and the 2001 U.S.-Jordan Free Trade Act (implemented by P.L. 107-43). The trade acts are: The Trade Act of 1974 (P.L. 93-618 as amended by Sec. 503 of P.L. 98-573), amendments to the Generalized System of Preferences (Title V of the Trade Act of 1974 as amended – P.L. 98-573), the 1988 Omnibus Trade and Competitiveness Act (P.L. 100-418), a 1990 Amendment to the Caribbean Basin Initiative (P.L. 101-382), the 1992 Jobs Through Exports Act (P.L. 102-549), 1995 amendments to International Financial Institutions Act [Sec. 526(e) of P.L. 103-306], and the 2000 African Growth and Opportunity Act, (Title I of the Trade and Development Act of 2000, P.L. 106-200. For a list of provisions of most of these laws, see *Worker Rights Provisions and Trade Policy: Should They Be Linked?* by Mary Jane Bolle, (continued...)

One of those trade acts was the *Omnibus Trade and Competitiveness Act of 1988* (OTCA, P.L. 100-418) – the previous fast-track authority which expired in 1994. This law gave the president broad authority to include worker rights protections in trade agreements by identifying as a principal negotiating objective of trade agreements “to promote respect for worker rights.”¹⁰

Before it expired in 1994, OTCA authority was used to negotiate two key multilateral trade agreements: the *North American Free Trade Agreement* (NAFTA, implemented by P.L. 103-182), which for the first time, included a labor side agreement; and the *Uruguay Round of Multilateral Agreements* (implemented by P.L. 103-465), which required the President to seek a working party in the new WTO, to examine the relationship between “internationally recognized worker rights” and trade.

The debate over the inclusion of worker rights provisions in new fast-track authority reflects some shifts in congressional attitude toward including worker rights provisions in trade agreements – shifts affected in part by experience under NAFTA and the WTO.

North American Free Trade Agreement

The North American Free Trade Agreement (NAFTA), which went into effect January 1, 1994, ushered in a new level of controversy over presidential authority to include worker rights provisions in trade agreements.

The NAFTA was accompanied by a labor side agreement, the North American Agreement on Labor Cooperation (NAALC). NAALC was negotiated by the incoming Clinton Administration, after the NAFTA agreement itself had been completed, and had several key provisions. First, under it, Mexico, Canada, and the United States all agreed to enforce their own labor standards and to move toward strengthening those standards relating to 12 agreed-upon labor principles.¹¹

Second, fines were authorized if a country was taken to dispute settlement and found to have failed to enforce one of three of its 12 labor principles – those relating

⁹ (...continued)
(CRS Report 96-661.)

¹⁰ The OTCA also included two additional worker rights mandates for the President. He was, to (a) secure a review of the relationship between worker rights and GATT articles; and (b) promote as a GATT principle that the denial of worker rights should not be a means for a country or its industries to gain a competitive advantage in international trade. (The GATT was the predecessor body to the WTO.)

¹¹ These labor principles included the first four of the five “internationally recognized worker rights” as (see page 9 for definition), plus (1) the right to strike; (2) minimum employment standards relating to overtime pay; (3) elimination of employment discrimination; (4) equal pay for men and women; (5) compensation in cases of occupational injuries and illnesses; (6) protection of migrant workers; (7) minimum employment standards pertaining to minimum wages; and (8) prevention of occupational injuries and illnesses.

to (a) prohibition of child labor;(b) payment of minimum wages; or (c) protections against occupational injuries and illnesses – in a trade-related context.

Third, sanctions were authorized if a country failed to pay its fines. Sanctions are suspension of NAFTA benefits to the amount of the monetary penalty (which may be no greater than benefits from tariff reductions) for one year.

In reacting to NAFTA, many U.S. multinational corporations were concerned that NAFTA's labor side agreement could usher in a new era of attaching more stringent worker rights provisions to trade agreements. Their concern was that this could lead to increased labor costs, particularly in developing countries, where multinational corporations had begun to greatly expand production operations, and possibly to restrictions on trade if the provisions were not enforced.

Organized workers, on the other hand – especially in labor-intensive industries, feared that NAFTA, with its strong investment provisions, could lead to major increases in U.S. foreign direct investment to Mexico, with potentially adverse effects on U.S. jobs and wages.¹²

Organized workers were also disappointed in NAFTA's labor side agreement because it did not authorize fines and sanctions for failure to enforce several other major protections, including: (d) the right to organize and bargain collectively; (e) the right to strike; and (f) prohibition of forced labor. Over time, most of the cases arising under NAALC have been about Mexico's failure to enforce its laws permitting workers to organize and bargain collectively – violations not enforceable by fines or sanctions under NAFTA's labor side agreement. As a result of its concerns and disappointments since NAFTA went into effect, the AFL-CIO has taken the position that new trade promotion authority must require enforceable worker rights in the core of all new trade agreements, and that monetary fines based on the NAFTA labor side agreement model are inadequate, and have proven an ineffective means of enforcement.¹³

Worker Rights and the WTO

U.S. efforts to promote worker rights in the WTO has added to the controversy over including worker rights provisions in new trade agreements. The efforts of the Clinton Administration to fulfill the OTCA language encouraging the President to seek in the WTO a working group to examine the relationship between “internationally recognized worker rights” and trade did not meet with success. In

¹² By 2001, seven years after NAFTA went into effect, total job “gains” and job “losses” from NAFTA were still relatively small. Between January 1, 1994 and 2001, jobs created by increased exports to Mexico and Canada are estimated using the U.S. Trade Representative's methodology for the number of jobs supported by each billion dollars worth of exports, at roughly 1.3 million, while total direct job “losses” from increased imports from or plant relocations to Mexico or Canada are estimated by the Department of Labor at roughly 361,000.

¹³ Statement by AFL-CIO President John Sweeney on Key Principles for Trade Negotiating Authority, May 11, 2001. [<http://www.aflcio.org/publ/press2001/pr0511.htm>]

fact, his efforts and those of other developed countries met with great resistance by developing countries.

Developing countries, which make up a majority in the WTO, have expressed a fear that even a WTO study group on the relationship between worker rights and trade can lead to the imposition on developing countries of labor standards. These are standards which could raise wage costs and thereby threaten the economic growth of developing countries, which depend heavily on their abundance of low-cost labor. As a result of this concern, the 1996 WTO Conference of trade ministers in Singapore voted to shift the focus of worker rights promotion from the WTO to the International Labor Organization (ILO). It did this by designating the ILO as the “competent body to set and deal with” international labor standards.¹⁴ The issue of worker rights has not been addressed in a WTO ministerial conference since 1996.

1997-1998 House and Senate-Reported Legislation to Renew Trade Promotion Authority

The WTO experience may not have directly affected an attitude in Congress toward renewal of trade promotion authority. However, the fact that U.S. businesses have increasingly established business operations in developing countries, especially during the 1990s, may have had an impact, as has experience under NAFTA.

Nevertheless, so great was the controversy over the linkage of worker rights provisions (as well as environmental provisions) to trade agreements in the aftermath of NAFTA, that by 1997, no legislation to reauthorize TPA had been reported out of committee in either house of Congress.

In 1997, a seeming consensus was reached, when the House Ways and Means and Senate Finance Committees reported out bills to reauthorize trade promotion authority, in S. 1269 (S.Rept. 105-102), and H.R. 2621 (H.Rept. 105-341).

Both House and Senate bills aimed to limit presidential fast-track authority to include worker rights provisions in trade agreements slated for fast-track consideration.

- Specifically, both House and Senate TPA bills would have allowed the inclusion of labor provisions in trade agreements negotiated under new “fast-track” procedures *only* to prevent foreign governments from “derogating from” (lowering) existing labor standards in order to attract investment or gain a competitive trade advantage.
- The House bill would also have (1) permitted labor provisions to ensure that foreign labor practices do not “arbitrarily or unjustifiably serve as disguised barriers to trade;” and (2) permitted changes to

¹⁴ From the Singapore Declaration, signed by representatives of WTO countries present at the first meeting of Ministers of WTO countries in Singapore, December, 1996, contained in the *WTO Annual Report*, 1997.

a country's labor laws (– i.e., changes to weaken those laws) if the changes were “consistent with sound macroeconomic development.”

There was great political concern, not only over what provisions should be in the bills, but also over whether a vote should be taken. The Republican leadership scheduled a vote on H.R. 2621 for the fall of 1998. Many Democrats were concerned about voting so close to the elections.¹⁵ In the end, H.R. 2621 was defeated by a vote of 180 to 243. S. 1269 was not brought to the Senate floor for a vote.

The U.S.-Jordan Free Trade Agreement

Without “fast-track” authority, the Clinton Administration, in an effort to strengthen economic ties with Jordan, negotiated the U.S.-Jordan Free Trade Agreement (FTA). The FTA was adopted into law on September 28, 2001 (P.L. 107-43). This was the first U.S. trade agreement ever to include a set of labor provisions directly in the body of the agreement, where all provisions would be subject to dispute resolution procedures. Like the NAFTA labor side agreement, the U.S.-Jordan FTA required each country to enforce its own labor standards, and authorized sanctions for patterns of non-enforcement. However, unlike the NAFTA side agreement, the U.S.-Jordan FTA did not identify any standards as unenforceable by sanctions.

In Congress, the U.S.-Jordan agreement was controversial because of its labor provisions. The possibility of using sanctions to require a country to enforce its own labor standards was a major issue. Possible action by Congress to reject the agreement or change the language in the implementing legislation was diverted at the last minute by an exchange of letters between the United States and Jordan agreeing to “make every effort to resolve [the disputes] without recourse to the formal dispute resolution procedures.”¹⁶

Key TPA Legislation in 2001

Consideration of the U.S.-Jordan FTA occurred on a track parallel to the continuing debate over presidential trade promotion authority. The push to resolve the TPA stalemate was given an extra boost early in 2001, when the Business Roundtable (BRT) made up of chief executive officers from roughly 200 major companies, released a report calling anew for fast-track reauthorization, and suggesting a compromise solution. The BRT argued that the United States was falling behind other countries in trade leadership because the United States did not have fast-track authority.¹⁷

¹⁵ *Trade Promotion Authority (Fast-Track Authority for Trade Agreements): Background and Developments in the 107th Congress*, by Lenore Sek. CRS Issue Brief IB10084.

¹⁶ Letters exchanged between the U.S. Ambassador from Jordan, Marwan Muasher, and the USTR, Robert Zoellick, on July 23, 2001.

¹⁷ Business Round Table. *The Case for U.S. Trade Leadership: the United States is* (continued...)

Specifically, in contrast to the traditional attitude of the business community against the inclusion of worker rights provisions in trade agreements, the BRT, in its report, took a stand that: in pursuing labor (and environmental) objectives in trade and investment negotiations, the United States should adopt a “one size **does not** fit all” approach. Rather, “we must grant our trade negotiators the flexibility to negotiate” instead of placing limitations on the President to include worker rights provisions in trade agreements.

Economic Arguments Concerning New TPA

The BRT argued that new trade promotion authority, resulting new trade agreements, and the trade expansion that could ensue would be good for the United States. Traditional economic arguments primarily support the BRT position, and point out how further reduction in international trade barriers could benefit businesses, workers, consumers, and investors alike.

For some businesses, an increase in trade from new agreements could help: (1) expand U.S. exports to new foreign markets; and (2) expand investment abroad. Other businesses that compete domestically with imports could suffer difficult adjustments or go out of business.

For workers, new trade authority could lead to long-term gains if they can shift to higher paying, higher productivity industries from those being phased out by increased imports and/or U.S. plant relocations abroad, particularly to developing countries. However, what is unclear is the long-term wage impact of increased international trade, particularly on lower-skilled U.S. workers who, with the exodus of much low and mid-level manufacturing from the United States, and increased automation of many remaining jobs, must essentially move up to higher skill level jobs or down to lower-skill service jobs.

For consumers, new trade agreements could: further lower prices on imported goods, and help raise overall U.S. productivity levels, which can lead to increases in the standard of living.

For investors, new trade agreements could give a boost to stocks benefitting from greater profitability of U.S. businesses.

Other arguments in favor of including worker rights provisions in trade agreements are that: (1) worker rights provisions can discourage multinational corporations from engaging in exploitative labor practices in developing countries; (2) worker rights protections can lessen labor cost differences between countries and thereby make plant relocation (“runaway plants”) to developing countries less attractive; and (3) worker rights protections can help discourage downward pressure on U.S. wages from cheaper imports.

¹⁷ (...continued)

Falling Behind, February 9, 2001.

Other arguments against including worker rights provisions in trade agreements are that: (1) labor provisions (addressing “social” issues) do not belong in an economic vehicle designed to promote trade; (2) labor provisions are protectionist (in that, to the extent that they impose labor requirements, they may raise the production costs of the trading partners) and thereby amount to substituting non-tariff barriers for the tariffs they are designed to reduce or eliminate; and (3) all countries will eventually adopt worker protections as they develop economically.

The Lead-Up to TPA Compromise Bills

After the BRT issued its position paper, other groups and individuals followed with their lists of acceptable concepts and provisions for new fast-track authority. The list of those offering ideas included President Bush, some pro-free-trade Democrats who called themselves the New Democrats, Chairman Phil Crane of the House Ways and Means Trade Subcommittee (with H.R. 2149, the *Trade Promotion Authority Act of 2001*), Senator Max Baucus of the Senate Finance Committee, and the AFL-CIO.¹⁸

Two key bills to reauthorize presidential fast-track authority were introduced in October, 2001. Representative Bill Thomas, Chairman of the House Ways and Means Committee, and Representative Charles Rangel, ranking minority member of the same committee, authored bills that, between them, included provisions from virtually all of the various position papers offered to promote a compromise. H.R. 3005 (Thomas), the *Bipartisan Trade Promotion Authority Act of 2001* (BTPAA) was reported by the House Ways and Means Committee on October 16, 2001. H.R. 3019 (Rangel/Levin), the *Comprehensive Trade Negotiating Authority Act of 2001*, the Democratic alternative, was voted down as a substitute for the committee bill. H.R. 3005 was passed by the House on December 6, along party lines, by a vote of 215-214, and by the Senate Finance Committee by a vote of 18-3 on December 12.

H.R. 3005 and H.R. 3019 Compared

H.R. 3005 was introduced by its author as a bipartisan compromise. It includes language and ideas from the reported House bill from 1997 (H.R. 2621), from NAFTA, the U.S.-Jordan FTA, and the OTCA 1988 fast-track authority. It also includes a number of “new” provisions relating to congressional and administrative consultation and oversight.

H.R. 3005 has been passed in two forms, whose labor provisions are nearly identical with a single exception. The House version of H.R. 3005 was passed on December 6, along party lines, by a vote of 215-214, and the Senate Finance

¹⁸ Sources: [Bush] “*Labor and Environment Toolbox*,” obtained from the U.S. State Department. Released by the White House May 10, 2001; “*New Democrats Release Fast-Track Negotiating Principles*.” Inside U.S. Trade, May 21, 2001. “*Baucus Releases Fast-Track Principles*.” Inside U.S. Trade, July 25, 2001. “*Statement by AFL-CIO President John Sweeney on Key Principles for Trade Negotiating Authority*,” May 11, 2001: [http://aflcio.org/publ/press2001/pr0511.htm]

Committee version was passed by a vote of 18-3 on December 12. The difference between the House and Senate versions relates to Reports on Labor Conditions.

Both the House and Senate versions of H.R. 3005 require the President to submit reports to Congress concerning labor laws of a country seeking an agreement with the United States. The House bill requires that the President submit to Congress *in general*, for any trade *agreement*, a report showing the extent to which countries which are party to the agreement have in effect laws governing *exploitative child labor*. The Senate bill requires that the President submit to the House Ways and Means and Senate Finance Committee, *for any trade negotiations entered into under this Act*, a *meaningful labor rights report* on the country with which the President is negotiating, on a time frame determined by the U.S. Trade Representative in consultation with the Chairmen and Ranking Minority Members of both committees.

H.R. 3019 was offered as a Democratic-sponsored bill and includes two different approaches, contained in two different sets of principal negotiating objectives, for the promotion and enforcement of worker rights.

The sections below compare and contrast key provisions in H.R. 3005 and H.R. 3019, and address some policy implications of these provisions. Table 8 at the back of this report includes a detailed comparison of the labor provisions of H.R. 3005 and H.R. 3019.

Overall Negotiating Objectives

Both H.R. 3005 and H.R. 3019 include as *overall* negotiating objectives (summarizing the conceptual approach of the bills): to promote worker rights. However, H.R. 3005 aims to promote *respect for* worker rights, and H.R. 3019 aims to promote *enforcement of* worker rights. (See discussion on the definition of worker rights, below.) The overall negotiating objectives of both bills are detailed, below.

Table 2. H.R. 3005 and H.R. 3019: Overall Negotiating Objectives

- H.R. 3005, Sec. 2(a)(6): “To promote respect for *worker rights* and the rights of children consistent with core labor standards of the ILO . . . and an understanding of the relationship between trade and worker rights;”
- H.R. 3019, Sec. 2(a)(11): “To promote enforcement of *internationally recognized core labor standards* by trading partners of the United States.”

Definitions of Worker Rights in H.R. 3005 and H.R. 3019

The definitions of worker rights used by each bill cannot be determined by comparing the terms used in the *overall* negotiating objectives (in italics) with the terms and definitions mentioned earlier in this report and repeated below as items listed under **“internationally recognized worker rights”** and **“core labor standards.”**

Thus, one must look elsewhere in each bill to determine which definition of worker rights each bill uses. It should be re-emphasized, that there is no official definition of “worker rights” in international parlance.

H.R. 3005, in *principal* negotiating objectives, uses the term **“core labor standards”** in Sec. 2(b)(11)(c), and in Sec. 11(2) defines it by listing the items which are identified below as **“internationally recognized worker rights.”**

H.R. 3019 includes two sets of principal negotiating objectives, each of which contains a different definition of worker rights.

For principal negotiating objectives *for trade agreements in the WTO*, H.R. 3019 uses several terms: **“core internationally recognized labor standards,”** **“core labor standards,”** and **“internationally recognized worker rights”** which it defines as indicated below.

For principal negotiating objectives for *bilateral trade agreements and trade agreements in the Free Trade Area of the Americas (FTAA)*, H.R. 3019 refers to **“core labor standards”** and defines them as indicated below.

Table 3. Worker Rights Defined In Terms of H.R. 3005 and H.R. 3019

Worker rights are typically defined in one of two ways: “internationally recognized worker rights” or “core labor standards.”

“Internationally recognized worker rights,” typically referenced in U.S. trade laws and trade agreements, are defined in the Trade Act of 1974 (P.L. 93-618 as amended by Sec. 503 of P.L. 98-573) as:

- 1. the right of association;
- 2. the right to organize and bargain collectively;
- 3. prohibition on the use of any form of forced or compulsory labor;
- 4. minimum age for the employment of children; and
- 5. acceptable conditions of work with respect to minimum wages, hours of work, and occupational safety and health.

“Core labor standards” are defined slightly differently by the International Labor Organization (ILO). They substitute for “5” above,

- freedom from employment discrimination.

Confusing Terms for Worker Rights in H.R. 3005 and H.R. 3019:

H.R. 3005 and H.R. 3019 do not adhere strictly to the above definitions of “worker rights,” which leads to some confusion.

- H.R. 3005 refers to its standards as “core labor standards” but defines them with the list of “internationally recognized worker rights,” above;
- H.R. 3019, on the other hand, calls worker rights by four different names:

– For multilateral trade agreements negotiated within the World Trade Organization (WTO), uses three terms to describe worker rights – “core internationally recognized labor standards,” “internationally recognized worker rights,” and “internationally recognized core labor standards,” and defines only “internationally recognized worker rights” with a correct reference to the Trade Act of 1974.

– For bilateral agreements and a Free Trade Area of the Americas agreement, it uses the term “core labor standards” and the definition listed above.

Principal Negotiating Objectives

As mentioned, H.R. 3005 includes one set of *principal* negotiating objectives (items targeted for inclusion in trade agreements) applicable to all trade agreements, and H.R. 3019 includes two distinct sets of principal negotiating objectives: one set for multilateral trade agreements under the WTO, and the other set for bilateral agreements and an agreement establishing a *Free Trade Area of the Americas* (FTAA).

H.R. 3005: For ALL Trade Agreements (WTO, Bilateral, and FTAA).
H.R. 3005 has 12 principal negotiating objectives, of which one relates to labor and

the environment. It has a number of parts {Sec. 2 (b) (11)}, and aims to promote respect for worker rights by focusing on such things as self-enforcement, sovereignty, and dispute resolution procedures which treat labor issues equally with other issues. These principal negotiating objectives relating to labor are listed in table 4.

The key principal negotiating objectives in H.R. 3005 relating to labor (see below) are similar to provisions that have already appeared in the NAFTA labor side agreement (which includes the self-enforcement provision), the U.S.-Jordan FTA (which includes the self-enforcement and sovereignty provisions, and a commitment to core labor standards), and H.R. 2621 (Crane, defeated by the House in the 105th Congress, which includes protections for businesses).

The principal negotiating objectives relating to dispute settlement procedures in H. R. 3005 reflect the “flexibility” advocated by the BRT (*See* “A” under the dispute settlement procedure description above which calls for penalties appropriate to the parties, nature, subject matter and scope of the violation.) The principal negotiating objectives also reflect calls by organized labor to have labor provisions in trade agreements treated as equal in importance to “traditional” subjects covered in trade agreements, e.g., foreign investment, intellectual property, etc. (*See* “B” under the dispute settlement procedure description above.)

Table 4. H.R. 3005: Principal Negotiating Objectives for All Trade Agreements (WTO, Bilateral and FTAA)

- Self-enforcement, Sec.2(b)(11)(A): “To ensure that a party. . . does not fail to effectively enforce its . . . labor laws, through a sustained or recurring course of action or inaction, in a manner affecting trade. . .” (similar to the NAFTA labor side agreement and the U.S.-Jordan FTA);
- Sovereignty, Sec b(11)(B): “To recognize that parties to a trade agreement retain the right to exercise discretion with respect to investigatory, prosecutorial, regulatory, and compliance matters and to make decisions regarding the allocation of resources to enforcement. . . and to recognize that a country is effective in enforcing its laws if a course of action or inaction reflects a reasonable exercise of such discretion, or results from a bona fide decision regarding the allocation of resources” (similar to the NAFTA labor side agreement and the U.S.-Jordan FTA);
- Core Labor Standards, Sec.2(b)(11)(C): “To strengthen the capacity of U.S. trading partners to promote respect for core labor standards;”
- Protections for businesses, Sec.2(b)(11)(G): “To ensure that labor. . . policies and practices of the parties to the trade agreement with the United States do not arbitrarily or unjustifiably discriminate against U.S. exports or serve as disguised barriers to trade” (similar to H.R. 2621 in the 105th Congress);
- Dispute Settlement, Sec. 2(b)(12): By way of enforcement, H.R. 3005 would:
 - A. Sec.2 (b)(12)(E): “Seek provisions to impose a penalty upon a party to a dispute under that agreement that encourages compliance with the obligations of the agreement, is appropriate to the parties, nature, subject matter and scope of the violation, and has the aim of not adversely affecting parties or interests not party to the dispute while maintaining the effectiveness of the enforcement mechanism;” and
 - B. Sec. 2(b)(12)(F): “Seek provisions that treat U.S. principal negotiating objectives equally” with other negotiating objectives [i.e., treat labor issues equally with foreign investment, intellectual property, etc.] “with respect to the ability to resort to dispute settlement under the applicable agreement, the availability of equivalent dispute settlement procedures, and the availability of equivalent remedies.”

H.R. 3019: For Trade Agreements Negotiated in the WTO. H.R. 3019 has 23 principal negotiating objectives, of which one relates to labor and the environment. It has several parts {Sec.2(b)(13)}, and aims to promote and enforce “core internationally recognized labor standards,” primarily through WTO and ILO promotion and enforcement. Its principal negotiating objectives for trade agreements in the WTO are detailed in table 5 below.

Table 5. H.R. 3019: Principal Negotiating Objectives for Trade Agreements Negotiated in the WTO

- Achieve a framework, Sec. 2(b)(13)(A): “To achieve a framework of enforceable multilateral rules as soon as practicable that leads to the adoption and enforcement of core labor standards, including in the WTO, and as appropriate other international organizations including the ILO;”
- Update WTO Agreements, Sec. 2(b)(13)(B): “To update article XX of the GATT, 1994, and Article XIV of the GATS in relation to core internationally recognized worker rights, including in regard to actions of WTO members, taken consistent with and in furtherance of recommendations made by the ILO under Article 33 of the Constitution of the ILO;”
- Establish a working group, Sec 2(b)(13)(C): “To establish promptly a working group on trade and labor issues” (without specifying the forum) –“to explore the linkage between international trade and investment and internationally recognized worker rights (as defined in section 502(a)(4) of the Trade Act of 1974) taking into account differences in the level of development among countries;”
- Provide for regular review, Sec. 2(b)(13)(D): “To provide for regular review of adherence to core labor standards in the Trade Policy Review Mechanism established in Annex 3 to the WTO agreement;”
- Establish a regular working relationship, Sec. 2(b)(13)(E): “To establish a working relationship between the WTO and the ILO. . . to provide WTO members with technical and legal assistance in developing and enforcing internationally recognized core labor standards;”
- Improve WTO-ILO coordination, Sec. 2(b)(15)(C): “To improve coordination between the WTO and other international organizations such as ... the ILO;”
- Achieve Dispute Settlement, Sec. (2)(b)(6): “To improve enforcement of decisions of dispute settlement panels to ensure prompt compliance by foreign governments with their obligations under the WTO.”

Provisions in H.R. 3019 call for the establishment of a *framework* that leads to the adoption and enforcement of core labor standards in the WTO and in the ILO, and specify some of the elements in that framework. These provisions are subject to two different interpretations. One interpretation is that they have the potential to be very strong – even stronger than the provisions in H.R. 3005 which are open-ended and

permit great negotiating flexibility. The reason for the strength of H.R. 3019 provisions, proponents of this position argue, is that the WTO has in place specific dispute settlement procedures. Proponents of this idea also argue that the ILO is already set to be a partner with the WTO in promoting and enforcing worker rights because the ILO is the international organization with the major responsibility for promoting and enforcing worker rights around the world.

The other interpretation suggests that the framework described on page 13 for the adoption and enforcement of core labor standards in the WTO and the ILO could represent a long-term approach. Proponents argue this position based on efforts stemming from the Uruguay Round Agreements implementing Act (Sec. 131 of P.L. 103-465), which required that the President seek a working party in the WTO to examine the relationship between internationally recognized worker rights and trade. As mentioned earlier in this report, President Clinton did seek such a working party in the WTO; but he was unsuccessful because his efforts met with great resistance by developing countries, which make up a majority in the WTO.

Proponents of the idea that promotion and enforcement of worker rights through the WTO and the ILO could be a long-term approach also argue that the ILO, an organization with roughly 175 members, has a limited range of enforcement tools.¹⁹ The ILO's primary tools for promoting and enforcing worker rights throughout the world are technical assistance, consultation, recordkeeping (i.e., maintaining lists showing which countries have formally adopted which labor standards), and persuasion. The ILO is dependent on self-enforcement by member countries, with little chance of penalty for non-compliance. The ILO's strongest enforcement tool, Article 33 of the ILO Constitution, relies on voluntary trade discrimination against countries that do not meet ILO guidelines. Article 33 has been used only once – on Myanmar, in 2000, in an effort to try to put group pressure on that country to end its widespread use of forced labor.²⁰

H.R. 3019: For a *Free Trade Area of the Americas (FTAA)* and *Bilateral Agreements*. H.R. 3019's principal negotiating objectives for an FTAA agreement differ considerably from its objectives for WTO trade agreements. Instead of delegating promotion and enforcement of worker rights to the WTO and the ILO, H.R. 3019 seeks to incorporate strict enforcement guidelines into the FTAA itself.

¹⁹ The ILO adopted a declaration in June of 1998 which said, in part, that all member countries, even if they have not ratified ILO conventions (e.g., core labor standards) have an obligation arising from the fact of their membership in the ILO, to respect, and promote core labor standards. International Labour Conference 96th Session, Geneva, June 1998. Obtained from the ILO website: [<http://www.ilo.org>].

²⁰ Article 33 of the ILO Constitution, states that “in the event of any Member failing to carry out within the time specified the recommendations if any, contained in the report of the Commission of Inquiry ... the Governing Body may recommend to the Conference such action as it may deem wise and expedient to secure compliance herewith.” The resolution approved by the delegates recommended that ILO members review their relations with Myanmar to ensure that they do not abet the system of forced or compulsory labor. Source: In Historic Vote, ILO Assembly Tightens Pressure on Myanmar. *ILO News*, August 8, 2000: [<http://us.ilo.org/news/focus/0008/FOCUS-1.html>].

Principal negotiating objectives for an FTAA and bilateral agreements are identified below.

The H.R. 3019 provisions, if adopted in an FTAA, could take worker rights promotion and enforcement to a new level of worker rights promotion beyond the NAFTA labor side agreement and beyond the U.S.-Jordan FTA by: (1) including in an FTAA enforceable rules for the adoption and enforcement of core labor standards (although each country would have the right to establish its own domestic labor standards consistent with core labor standards); (2) providing for phased-in compliance with labor market standards for least-developed countries; and (3) including dispute settlement provisions which would provide in *all contexts* for the use of *all remedies* that are demonstrably effective to promote *prompt and full compliance* with decisions by the dispute settlement panel. (By comparison, NAFTA limits remedies to fines and, for non-payment of fines, removal of NAFTA benefits to the amount of the penalty for one year.)

Table 6. H.R. 3019: Principal Negotiating Objectives for FTAA and Bilateral Agreements

- Retain the right to allocate resources on the basis of priorities, Sec. 2(c)(9)(B)(ii)(I): For FTAA members “to retain the right to exercise discretion with respect to investigatory, prosecutorial, regulatory, and compliance matters and to make decisions regarding the allocation of resources to enforcement with respect to other labor matters determined to have higher priorities;”
- Retain the right to establish own domestic labor standards, Sec. 2(c)(9)(B)(ii)(I): For FTAA members to “retain the right to establish their own domestic labor standards, and to adopt or modify accordingly labor policies, laws, and regulations, in a manner consistent with” core labor standards.”
- Provide for phased-in compliance, Sec. 2(c)(9)(C): “To provide for phased-in compliance for least-developed countries comparable to mechanisms utilized in other FTAA agreements;”
- Regularly review countries’ adherence, Sec. 2(c)(9)(E): To “provide regular review of adherence to core labor standards;”
- Exceptions from FTAA obligations, Sec. 2(c)(9)(F): “To create exceptions from the obligations under the FTAA agreements for products produced by prison labor or slave labor, products produced by child labor, and actions taken consistent with and in furtherance of recommendations made by the ILO;”
- Improve FTAA-ILO coordination, Sec. 2(c)(11)(A): “To improve coordination between the FTAA and other international organizations such as ... the ILO ... to increase the effectiveness of technical assistance programs;” and
- Achieve dispute settlement procedures, Sec. 2(c)(4)(B): “To provide in all contexts for the use of all remedies that are demonstrably effective to promote prompt and full compliance with decisions by the dispute settlement panel.”

Congressional and Administrative Oversight

Both H.R. 3005 and H.R. 3019 include provisions for congressional and administrative oversight of trade agreements. Both bills would include reviews of the potential impact of new trade agreements on U.S. workers. The two bills differ in who would produce as well as receive the reports.

Under H.R. 3005, reports would be transmitted from the President to the House Ways and Means and Senate Finance Committees. Under H.R. 3019, (see table 7 below), they would be transmitted from the U.S. Trade Representative in conjunction with the International Trade Commission and the Department of Labor to Congress. The bills also differ in their timing requirements.

H.R. 3005 has no specific timing requirements. H.R. 3019 has very specific requirements which include different schedules for different potential trade agreements. For agreements negotiated under the WTO, an initial review is due to Congress within six months after the onset of the negotiations, and a final version is due not later than 90 calendar days before the agreement is signed by the President. See page 21 for congressional and administrative oversight provisions.

The extensive use of consultations and reports to Congress and committees on various labor rights issues connected with trade, would cover new ground. Some observers argue that, of the two bills, H.R. 3005's provisions are stronger because they require more reports. Others contend that H.R. 3019's provisions are stronger because they are much more detailed and include strict time requirements for preliminary and final versions of the report.

The table that follows lays out a more detailed comparison between the various approaches to trade promotion authority discussed in this report.

**Table 7. H.R. 3005 and H.R. 3019:
Congressional and Administrative Oversight**

Both H.R. 3005 and H.R. 3019 provide for reviews on the employment effects of trade agreements:

- H.R. 3005, Review on employment, Sec. 2(c)(5) directs the President to “review the impact of future trade agreements on U.S. employment, modeled after Executive Order 13141, and report to the House Ways and Means and Senate Finance Committee on such review.”
- H.R. 3019, Review on employment, Sec.6(e): “Upon the commencement of negotiations for a trade agreement, the Trade Representative, jointly with the Secretary of Labor and the Commissioners of the International Trade Commission, and in consultation with other appropriate Federal agencies, shall commence a review of the effects on workers in the United States of a proposed trade agreement.” The Trade Representative shall submit to Congress within 6 months after the onset of negotiations, a preliminary draft of the labor review. . . and not later than 90 calendar days before the agreement is signed by the President, the final version of the labor review.” (Cont. next page.)

Table 7. H.R. 3005 and H.R. 3019: Congressional and Administrative Oversight

H.R. 3005 also includes additional provisions for reports and administrative oversight. It provides that the President shall:

- Consultative mechanisms: Sec. 2(c)(2): “seek to establish consultative mechanisms among parties to trade agreements to strengthen the capacity of U.S. trading partners to promote respect for core labor standards [defined as internationally recognized worker rights] and to report to” the House Ways and Means Committee and the Senate Finance Committee on the context and operation of such mechanisms.”
- Consultations by the Secretary of Labor, Sec. 2(c)(7): “have the Secretary of Labor consult with any country seeking a trade agreement with the United States concerning that country’s labor laws and provide technical assistance to that country if needed;
- Report on labor conditions. Both bills require the President to submit reports to Congress concerning labor laws of a country seeking an agreement with the United States. The **House** bill requires that the President submit to Congress *in general*, for any trade *agreement*, a report showing the extent to which countries which are party to the agreement have in effect laws governing *exploitative child labor*. The **Senate** bill requires that the President submit to the House Ways and Means and Senate Finance Committee, for any trade *negotiations* entered into under this Act, a *meaningful labor rights report* on the country with which the President is negotiating, on a time frame determined by the U.S. Trade Representative in consultation with the Chairmen and Ranking Minority Members of the House Ways and Means and Senate Finance Committees.
- Survey on prohibitions against exploitative child labor, Sec. 2(c)(8): “submit to the Congress a report describing the extent to which the country or countries that are parties to the agreement have in effect laws governing exploitative child labor;” and
- Report on effectiveness of penalties in promoting worker rights, Sec. 2(c)(11): report to the House Ways and Means and Senate Finance Committees “not later than 12 months after the imposition of a penalty or remedy by the United States permitted by a trade agreement. . .on the effectiveness of the penalty or remedy The report shall address whether the penalty or remedy was effective in changing the behavior of the targeted party and whether the penalty or remedy had any adverse impact on parties or interest not party to the dispute.”

Table 8. Comparison of H.R. 3005 (Thomas) and H.R. 3019 (Rangel/Levin)

| Category | H.R. 3005 (Thomas) For all agreements | H.R. 3019 (Rangel/Levin) (WTO vs. FTAA/bilateral agreements) |
|---|--|--|
| Overall Trade Negotiating Objectives | | |
| | Sec. 2(a)(6): To promote respect for worker rights consistent with the ILO, and an understanding of the relationship between trade and worker rights. | Sec. 2(a)(11): To promote enforcement of internationally recognized core labor standards by U.S. trading partners. |
| Principal Negotiating Objectives | | WTO agreements |
| To promote worker rights | Sec. 2(b)(11)(C): To strengthen the capacity of U.S. trading partners to promote respect for core labor standards | Sec. 2(b)(13)(A): To achieve a framework that leads to adoption and enforcement of “core internationally recognized labor standards” through such organizations as the WTO and the ILO. |
| To create WTO review of standards | No provision. | Sec. 2(b)(13)(D): To regularly review adherence to core labor standards in the WTO |
| To establish/improve WTO-ILO Cooperation | No similar provision as a principal negotiating objective. However, as a directive: Sec. 2(c)(1): For the President to seek greater cooperation between the WTO and the ILO | Sec. 2(b)(13)(E): To establish a WTO-ILO working relationship Sec. 2(b)(15)(C): To improve WTO-ILO coordination |
| To ensure self- enforcement | Sec. 2(b)(11)(A): To ensure that a party does not fail to enforce its own labor laws through a sustained course of action or inaction in a manner affecting trade | No similar provision. |
| To maintain sovereignty | Sec. 2(b)(11)(B): To recognize the right of parties to exercise discretion regarding allocation of resources on enforcement. | No similar provision in the WTO provisions, but a similar provision is included under the FTAA provisions, below. |
| To protect U.S. interests | Sec. 2(b)(11)(G): To ensure that labor policies and practices do not unjustifiably discriminate against U.S. exports or serve as disguised barriers to trade. | No similar provision. |

| Category | H.R. 3005 (Thomas) For all agreements | H.R. 3019 (Rangel/Levin) (WTO vs. FTAA/bilateral agreements) |
|---|--|--|
| Update worker rights for the GATT and GATS | No provision. | Sec. 2(b)(13)(B): To update Article XX of the General Agreement on Tariffs and Trade (GATT) 1994 and Article XIV of the General Agreement on Trade in Services (GATS) to reflect ILO core internationally recognized worker rights and recommendations under article 33. In this way, a country could legally deviate from its obligations under the WTO and discriminate against imports produced under conditions not protected by core labor standards or not meeting ILO recommendations. |
| To establish a working group on trade and labor | No provision. | Sec. 2(b)(13)(C): To establish working group on trade and labor issues (without specifying the forum.) |
| Dispute Settlement | <p>Sec. 2(b)(12)(E): To seek penalties appropriate to the parties, subject matter and scope of the violation that will be effective, but not adversely affect parties not involved in the dispute.</p> <p>Sec. 2(b)(12)(F): To seek provisions that treat U.S. principal negotiating objectives equally with other negotiating objectives (i.e. treat labor issues equally with foreign investment, intellectual property, etc.)</p> | <p>Sec. 2(b)(6)(A): To ensure prompt compliance by foreign governments with their obligations under the WTO.</p> <p>No similar provision.</p> |
| FTAA/Bilateral Agreements ONLY | | |
| To negotiate enforceable rules | <p>No specific provisions for FTAA/Bilateral Agreements. Provisions applicable to all agreements (detailed above) apply.</p> <p>Sec. 2(b)(11)(C): Mentioned above: To strengthen the capacity of U.S. trading partners to promote respect for core labor standards</p> | <p>Sec. 2(c)(9)(A): To include enforceable rules providing for the adoption and enforcement of ILO core labor standards.</p> <p>Sec. 2(c)(9)(B)(ii)(II): For FTAA members to retain the right to establish their own domestic labor standards consistent with core labor standards.</p> |

| Category | H.R. 3005 (Thomas) For all agreements | H.R. 3019 (Rangel/Levin) (WTO vs. FTAA/bilateral agreements) |
|---|--|---|
| Principal Negotiating Objectives (Cont.) | | FTAA/Bilateral ONLY (Cont.) |
| To establish dispute settlement trigger | No provision. | Sec. 2(c)(9)(B): To establish a trigger for invoking the dispute settlement process. The trigger shall be: (a) an FTAA member's sustained failure to enforce; or (b) waiver or derogation from domestic labor standards to attract investment or gain a competitive advantage. |
| To maintain sovereignty | Sec. 2(b)(11)(B) – (mentioned under H.R. 3005 general provisions, earlier): To recognize the right of parties to exercise discretion regarding the allocation of resources on enforcement. | Sec. 2(c)(9)(B)(ii)(I): Similar provision to that in H.R. 3005. |
| To provide phased-in compliance | No provision. | Sec. 2(c)(9)(C): To provide phased-in compliance with labor market standards for least-developed countries. |
| To create an FTAA work program | No provision. | Sec. 2(c)(9)(D): To create FTAA work program providing guidance, technical assistance, and market access incentives for FTAA members to adhere to and enforce core labor standards |
| To review countries' adherence to standards | No provision. | Sec. 2(c)(9)(E): To regularly review countries' adherence to core labor standards |
| To create exceptions from FTAA obligations | No provision. | Sec. 2(c)(9)(F): To create exceptions from FTAA trade obligations for products produced by prison, slave, or child labor and for ILO recommendations. |
| To improve FTAA-ILO coordination | No provision, but as mentioned previously: Sec. 2(c)(1): For the President to seek greater cooperation between the WTO and the ILO. | Sec. 2(c)(11)(A): To improve FTAA-ILO coordination to increase effectiveness of technical assistance programs. |
| Dispute Settlement | See dispute settlement provision under WTO Agreement. | Sec. 2(c)(4)(B): To provide in all contexts for the use of all remedies that are demonstrably effective to promote prompt and full compliance with decisions by the dispute settlement panel. |

| Category | H.R. 3005 (Thomas) For all agreements | H.R. 3019 (Rangel/Levin) (WTO vs. FTAA/bilateral agreements) |
|---|--|---|
| Congressional and Administrative (Labor) Oversight | | |
| Review Effects on Workers | Sec. 2(c)(5): The President shall review the impact of future trade agreements on U.S. employment and report to House Ways and Means (HW&M) and Senate Finance (SF) Committees. | Sec. 6(e): The USTR, Secretary of Labor, and International Trade Commission shall begin review of the effects on U.S. workers of the proposed trade agreement, and the USTR shall submit a draft report to Congress 6 months after onset of negotiations, and a final version at least 90 calendar days before the agreement is signed by the President. (Several exceptions on timing include one for FTAA: preliminary draft due 18 months after enactment.) |
| Report to Congressional Committees | Sec. 2(c)(2): The President shall seek consultative mechanisms among Parties to promote respect for core labor standards and report to HW&M and SF Committees. | No similar provision. |
| Technical Assistance by Secretary of Labor | Sec. 2(c)(7): The President shall have the Secretary of Labor consult with any country seeking a U.S. trade agreement about its labor laws and provide technical assistance if needed. | No similar provision. |
| Report to Congress | Sec. 2(c)(8): The House bill requires that the President submit to Congress <i>in general</i> , for any trade agreement, a report showing the extent to which countries which are party to the agreement have in effect laws governing <i>exploitative child labor</i> . Sec. 2(c)(8): The Senate bill requires that the President submit to HW&M and SF Committees, for any trade negotiations entered into under this Act, a <i>meaningful labor rights report</i> on the country with which the President is negotiating, in a time frame determined by the USTR in consultation with the Chairmen and Ranking Minority Members of the two committees. | No similar provision. |

| Category | H.R. 3005 (Thomas) For all agreements | H.R. 3019 (Rangel/Levin) (WTO vs. FTAA/bilateral agreements) |
|------------------------------------|--|--|
| Report to Congressional Committees | Sec. 2(c)(11): The President shall report to HW&M and SF Committees within 12 months after a penalty is imposed, on its effectiveness in enforcing U.S. rights under the trade agreement, (i.e., changing the behavior of the targeted party, and any impacts on parties not involved in the dispute. | No similar provision. |

Most Recent Legislative Developments: H.R. 3005 (passed in the House) and H.R. 3009 (passed in the Senate)

The versions of the TPA bill that were passed by the House as H.R. 3005 on December 6, 2001 (H.Rept. 107-323) and the Senate as H.R. 3009 on May 23, 2002 (S.Rept. 107-139) include 13 labor-related provisions which are similar in both bills, plus an expanded trade adjustment assistance (TAA) package based on that originally passed as S. 1209.

The similar aspects of the House and Senate bills are both more detailed and slightly different from those in previous fast-track authority under the 1988 Trade Act. They evolved from concerns that intensified after the North American Free Trade Agreement (NAFTA) went into effect in January, 1994.

The next few pages: (a) spell out and compare the labor provisions in the expired fast-track language with all those in the passed House and Senate bills; and (b) address related issues for Congress, identifying arguments on both sides.

Labor Provisions of Expired Fast-Track, H.R. 3005 (House), and H.R. 3009 (Senate) Compared

The fast-track authority which expired in 1994 identified as a principal labor objective:

- (a) to promote respect for worker rights;
- (b) to secure a review of the relationship between worker rights and GATT (succeeded by the World Trade Organization – the WTO), aiming to ensure that the benefits of the trading system are made available to all workers); and
- (c) to adopt as a principle of the GATT that the *denial of worker rights* should not be a means for a country or its industries to gain competitive advantage in international trade.

These above-mentioned objectives were addressed in the two major trade agreements negotiated and adopted under the expired fast-track authority: NAFTA includes a labor side agreement which aims to promote respect for worker rights, as identified in (a) above. It also requires that each country enforce its own laws, as implied in (c) above. Implementing language for the Uruguay Round trade agreements, which created the WTO, required the President to seek a working party in the WTO to examine the relationship between internationally recognized worker rights and trade, as required in (b) above.

In contrast to the expired fast-track authority, H.R. 3005 and H.R. 3009 include much more detailed requirements. They include about a dozen separate provisions which set out very specific guidelines and limits for the promotion of worker rights protections in the international trade arena.

Figure 1 lists similar House and Senate provisions in three categories: overall negotiating objectives, principal negotiating objectives, and the “promotion of certain priorities,” which has congressional and administrative oversight provisions.

Overall negotiating objectives reiterate the concepts included in the expired 1988 authority of: (1) promoting respect for worker rights, (but specifying that it shall be done in the International Labor Organization) and (2) seeking provisions in trade agreements to ensure that domestic labor laws are not weakened as an encouragement for trade.

The principal negotiating objectives on “labor and the environment” include among their goals: (1) strengthen the capacity of U.S. trading partners to promote respect for worker rights, (2) ensure that a party does not fail to enforce its own labor laws in a manner affecting trade; and (3) ensure that labor policies do not unjustifiably discriminate against U.S. exports or serve as disguised barriers to trade.

Congressional and administrative oversight provisions under “promotion of certain priorities” include several requirements for the President. Among these are the labor-related actions: (1) to seek greater cooperation between the ILO and the WTO, (2) to review the impact of future trade agreements on U.S. employment and report to key congressional committees, (3) to arrange for consultation and technical assistance by the Secretary of Labor, regarding the labor laws of any country seeking a U.S. trade agreement, and (4) to report on the effectiveness of penalties in changing trading behavior.

Major Controversies

House-Senate conference debate over TPA labor provisions will center on minor differences in language relating to a labor rights report, and major differences arising from the fact that the Senate bill includes, among other provisions, amendments to the trade adjustment assistance program(TAA).

Labor Rights Report. On the first issue, the labor rights report, the Senate bill would require a much more in-depth report than the House. The House bill requires that the President submit to Congress a report showing, for any new trade agreement, the extent to which countries currently have in effect laws governing *exploitative child labor*. The Senate bill, in contrast, requires that the President submit to the House Ways and Means and Senate Finance Committees a “*meaningful*” labor rights report on the country with which the President is negotiating. (See actual language for these requirements at the bottom of figure 1.) Currently, the State Department annually publishes one to several pages on worker rights practices for roughly 75 countries in *Country Reports on Economic Policy and Trade Practices*, in accordance with Section 2202 of the 1988 Trade Act. Therefore, considerable research to support a labor rights report for many, though not all countries, may be ongoing within the State Department.

Figure 1. Labor Provisions in H.R. 3005 and H.R. 3009 Compared (exclusive of Senate TAA and Related Amendments)

Overall Negotiating Objectives

The *overall* negotiating objectives of H.R. 3005 and H.R. 3009 relating to labor are:

- (1) to promote respect for worker rights and the rights of children consistent with *core labor standards* in the International Labor Organization (ILO), and an understanding of the relationship between trade and worker rights [H. – Sec. 2(a)(6); S. – Sec. 2102(a)(6)]; and
- (2) to seek provisions in trade agreements under which parties strive to ensure that they do not weaken or reduce the protections afforded in domestic (environmental and) labor laws as an encouragement for trade [H – Sec. 2(a)(7); S. – Sec. 2102(a)(7)].

Note: H.R. 3005 and H.R. 3009 define core labor standards to include: (a) the right of association; (b) the right to organize and bargain collectively; (c) a prohibition on the use of any form of forced or compulsory labor; (d) a minimum age for the employment of children; and (e) acceptable conditions of worker with respect to minimum wages, hours of work, and occupational safety and health. [H. – Sec. 10, S. – Sec. 2113].

Principal Negotiating Objectives

The principal negotiating objectives in H.R. 3005/Baucus-Grassley relating to labor are:

- (1) to strengthen the capacity of U.S. trading partners to promote respect for core labor standards [H. Sec. 2(b)(11)(C); S. – Sec. 2102(b)(11)(C)];
- (2) to ensure that a party does not fail to enforce its own labor laws through a sustained course of action or inaction in a manner affecting trade [H. – Sec. 2(b)(11)(A); S. – Sec. 2102(b)(11)(A)];
- (3) to recognize the right of parties to exercise discretion regarding the allocation of resources on enforcement [H. – Sec. 2(b)(11)(B); S. – Sec. 2102(b)(11)(B)];
- (4) to ensure that labor policies and practices do not unjustifiably discriminate against U.S. exports or serve as disguised barriers to trade [H. – Sec. 2(b)(11)(G); S. – Sec. 2102(b)(11)(G)]; and
- (5) to seek (dispute settlement) procedures that treat U.S. principal negotiating objectives equally with other negotiating objectives (i.e. treat labor issues equally with foreign investment, intellectual property, etc.) [H. – Sec. 2(b)(12)(F); S. – Sec. 2102(b)(13)(F)].

Congressional and Administrative Oversight Provisions (“Certain Priorities”)

Both H.R. 3005 and H.R. 3009 have identical Congressional and Administrative Oversight requirements with one exception. The identical provisions are:

- (1) for the President to seek greater cooperation between the ILO and the WTO [H. – Sec. 2(c)(1); S. – Sec. 2102(c)(1)];
- (2) for the President to review the impact of future trade agreements on U.S. employment and report to the House Ways and Means and Senate Finance Committees [H. – Sec. 2(c)(5); S. – Sec. 2102(c)(5)];
- (3) for the President to seek consultative mechanisms among Parties to promote respect for core labor standards and report to the House Ways and Means and Senate Finance Committees [H. – Sec. 2(c)(2); S. – Sec. 2102(c)(2)];
- (4) for the President to have the Secretary of Labor consult with any country seeking a U.S. trade agreement about its labor laws and provide technical assistance if needed [H. – Sec. 2(c)(7); S. – Sec. 2102(c)(7)]; and
- (5) for the President to report to the House Ways and Means and Senate Finance Committees within 12 months after a penalty is imposed, on its effectiveness in enforcing U.S. rights under the trade agreement (i.e., in changing the behavior of the targeted party, and any impacts on parties not involved in the dispute) [H. – Sec. 2(c)(11); S. – Sec. 2102(c)(11)].

The *differing* House and Senate provisions have to do with a labor rights report to Congress:

H.R. 3005 [Sec. 2(c)(8) – House] requires that the President submit to Congress in general, for any trade agreement, a report showing the extent to which countries which are party to the agreement have in effect laws governing exploitative child labor.

H.R. 3009 [Sec. 2102(c)(8) – Senate] requires that the President submit to the House Ways and Means and Senate Finance Committees, for any trade negotiations entered into under this Act, a *meaningful* labor rights report on the country with which the President is negotiating, in a time frame determined by the U.S. Trade Representative’s (USTR) Office in consultation with the Chairmen and Ranking Minority Members of the two Committees.

TAA Amendments: Including S. 1209 in H.R. 3009⁷. The second issue was whether or not to include provisions of S. 1209 in H.R. 3009 in the Senate. Many Senate Democrats argued that TPA would not get to the floor without an expansion of the TAA program. This program provides financial and technical assistance to workers and firms to help them adjust to import competition. The White House proposal, offered to the Senate Finance Committee on March 19, 2002, differed on two key issues from S. 1209 (whose provisions are detailed below). First, it excluded TAA benefits for secondary workers and farmers, although the Administration more recently has indicated it will support this proposal. Second, disagreement remained over the Democrats' proposal to provide health insurance benefits to TAA beneficiaries. Republican opponents argued that this would amount to creating a massive new federal entitlement program, according to the *Washington Trade Daily*, April 10, 2002.

S. 1209 was reported by the Senate Finance Committee on February 4, 2002 (S. Report 107-134). On March 19, 2002, the Administration delivered its proposal in bill form (the *Trade Adjustment Assistance [TAA] Reform Act of 2002*) to the Senate Finance Committee. One of two elements of S. 1209 attracting the most discussion was that S. 1209 would have combined the old TAA and NAFTA-TAA programs and expand both to reach three new groups. These groups are: (a) all workers who lose their jobs because their plants relocate to foreign countries. (Both the TAA and NAFTA-TAA programs have traditionally covered workers who lose their jobs because of increased imports, but only the NAFTA-TAA program has also covered workers who lose their jobs because of a shift in production abroad); (b) secondary workers whose job loss is dependent on the job loss of workers directly affected by trade; and (c) several groups of workers not previously covered by TAA legislation. This third group includes farmers, fishermen, taconite workers, and those engaged in exploration or drilling for oil or natural gas. The Congressional Budget Office (CBO) estimates that these changes would nearly double the TAA caseload. The provision covering secondary workers would make up about three-fourths of the increase in caseload. Covering shifts in production would make up about one-fifth of the increase.⁸

The second controversial element of S. 1209 was the inclusion of premium assistance for health care coverage for TAA recipients. The proposed subsidy would have paid 70% of health insurance premiums for eligible workers and temporary Medicaid insurance for certain uninsured individuals. Adjusting downward from CBO's earlier estimates for higher coverage, this could result in an estimated budget outlay in 2003 of \$244 million. The Administration's proposal would not have include health insurance benefits.⁹

⁷ Information for this section was taken from CRS Report RS21078, *Trade Adjustment Assistance for Workers: Legislation in the 107th Congress*, by Paul J. Graney.

⁸ Trade Adjustment Assistance for Workers, Farmers, Fishermen, Communities, and Firms Act of 1001. Report to accompany S. 1209. S. Report. 107-134, February 4, 2002, p. 52.

⁹ *Ibid.*, p. 50, Table 1. The CBO's estimate was \$262 million for 75% health insurance premium coverage.

The controversial premium assistance provision mentioned above was not included in the House version of H.R. 3005 or in the House-passed reauthorization of TAA (H.R. 3008). In a February 26, 2002 speech, Senator Max Baucus, Chairman of the Senate Finance Committee, indicated that TAA is an essential element in a new trade consensus, and remained the only issue under discussion that had the potential to deliver a substantial new bloc of votes to the fast-track trade bill.¹⁰ On March 14, 2002, a majority of Senate Democrats signed a letter to Senator Tom Daschle, Senate Majority Leader, supporting the retention in TPA legislation of health care provisions included in S. 1209 as reported.¹¹

The expansion of the TAA program has been long called for by labor proponents who have argued that all workers who lose their jobs for trade-related reasons (whether from increased imports or from plant relocations) should be eligible for the same benefits – benefits that will offer financial support, retraining, and relocation benefits as they work to upgrade their skills and transition into more complex jobs that offer them the best opportunity of reclaiming old earnings levels.

On the other hand, some argue that the expansion of the TAA program would increase costs significantly. President Bush proposed in his FY 2003 budget to extend the TAA and NAFTA-TAA programs. The Administration's FY2003 budget request includes total funding of \$462 million for the TAA and NAFTA-TAA programs – an increase of \$46 million over FY2002 funding levels of \$416 million. CBO estimated that the changes in direct spending for the new TAA program for workers under S. 1209 as passed, including the health insurance coverage, would result in estimated budget outlays in 2003 of \$996 million.

TAA Health Care and Other Compromises. Compromises within the Senate on a number of issues including the TAA health care issue, allowed fast track/TPA to move forward. The compromise translates into an estimated three-fold increase in the cost of the TAA program to total an estimated \$12 billion over 10 years. Some details of the final agreement include the following:¹²

- **70% Tax Credit for Health Insurance Premiums.** Displaced workers will be eligible for a 70% advanceable, refundable tax credit for certain health insurance premiums under Federal COBRA program or through group insurance pools set up in the states.¹³ In addition, the legislation provides for a 2-year bridge program

¹⁰ Baucus Stresses TAA's Importance; Signals Minimal Changes Lie Ahead. Inside U.S. Trade. March 1, 2002.

¹¹ Senate Democrats Take Hardline on TAA-Health Care Debate. Inside U.S. Trade, March 15, 2002, p. 36.

¹² This information is taken both from the bill itself and from the Finance Committee-issued fact sheet on Baucus-Grassley.

¹³ "Title X of the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA) requires employers with 20 or more workers to offer the option of continuing coverage under the employer's group health insurance plan following a qualifying event, such as a job layoff." Source: Analysis of COBRA coverage among former employees, by Chris L. Peterson. CRS Report RS21159 .

through the National Emergency Grant program (retroactive to April 1, 2002).

- **Expansion and Extension of TAA Program.** The existing TAA program will be expanded and extended. The bill offers new benefits for oil and natural gas producers¹⁴ and makers of taconite pellets, and a new TAA program for farmers and fishermen. Benefits including the health insurance coverage will now be available to “primary” workers (those directly affected by trade) under the following conditions:
 - **Decrease in sales or production because of increased imports.** Sales, production, or both for the firm or subdivision must have *decreased absolutely*; the value or volume of imports like or directly competitive with articles produced by that firm or subdivision must have increased, and that increase must have “contributed importantly” to the workers’ separation or threat of separation and to the decline in sales or production of that firm; or
 - **Shift in production abroad.** Production of articles like or directly competitive with articles produced by that firm or subdivision must have *shifted abroad*, and that shift must have “contributed importantly” to the workers’ separation or threat of separation.
- **Benefits for Secondary Workers.** Adversely affected “upstream” and “downstream” workers are also eligible for TAA benefits. These are workers who either supply materials to (i.e., “upstream” workers) or use goods produced by (i.e., “downstream” workers) other firms whose workers are certified as eligible for TAA benefits. But the articles produced by these secondary workers must be related to the article(s) on which the original certification was based. In addition, the products produced by workers of “downstream” producers must have been affected by an increase in imports from or a shift in production to Mexico or Canada.
- **Other key provisions:**
 - A new pilot program for wage insurance for older workers;
 - Expansion of training, nearly tripling the training budget to \$300 million;
 - Extension of income benefits by 6 months (harmonizing income maintenance and training time);
 - Expansion of programs for communities. Establishes a program to help communities develop strategic plans following job losses, and provides technical assistance, loans, and grants.

¹⁴ Any firm or subdivision of a firm that engages in exploration or drilling for oil or natural gas shall be considered to be producing articles directly competitive with imports.