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Trade Promotion Authority (Fast-Track Authority for Trade Agreements): Background and Developments in the 107th Congress

Updated June 24, 2002

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Trade Promotion Authority (Fast-Track Authority for Trade Agreements): Background and Developments in the 107th Congress

SUMMARY

One of the major trade issues in the 107th Congress is whether or not Congress approves trade promotion authority (formerly called fast-track authority) for the President to negotiate trade agreements with expedited procedures for implementing legislation. Under this authority, Congress agrees to consider legislation to implement the trade agreements (usually nontariff trade agreements) under a procedure with mandatory deadlines, no amendment, and limited debate. The President is required to consult with congressional committees during negotiation and notify Congress at major stages.

The President was granted this authority almost continuously from 1974 to 1994, but the authority lapsed and has not been renewed.

On December 6, 2001, the House passed TPA bill H.R. 3005 by a vote of 215-214. The bill covers tariff and nontariff agreements entered into by June 1, 2005. For expedited procedures to apply to legislation to implement a trade agreement, the agreement would have to “make progress” toward meeting the outlined negotiating objectives and satisfy other specified conditions. The President would have to consult with congressional bodies, including the newly established Congressional Oversight Group. Congress could withdraw expedited procedures if consultation requirements were not met.

On May 23, 2002, the Senate passed H.R. 3009, “the Trade Act of 2002,” which included TPA provisions in title XXI. Title XXI had many, but not all, of the same provi-

sions as the House TPA bill. A controversial difference, however, is the so-called Dayton-Craig amendment, which would allow the removal from an implementing bill any provisions to amend U.S. trade remedy laws.

An important issue before the House vote was how labor and the environment should be designated as negotiating objectives. Now, with a comprehensive trade bill approved by the Senate, a leading issue is trade adjustment assistance (TAA) for displaced workers. A key question is the level of federal subsidy for health premiums for workers.

Following Senate passage, House Ways and Means Committee Chairman Thomas sought a rule that, he argued, would strengthen the position of the House in the conference. In a departure from usual practice, he recommended a rule (H.Res. 450) that includes the House-approved TPA bill, reauthorization of Andean preferences and the Generalized System of Preferences, TAA, and other provisions. The House had previously approved some language in the Thomas rule (e.g., TPA) but not other language (e.g., TAA). Almost all House Democrats oppose the Thomas rule: some reasons they give are the higher TAA benefits and support for U.S. trade remedy laws in the Senate bill.

On June 19, 2002, the House Rules Committee reported out H.Res. 450. House floor action is expected soon. Conferees have not been appointed, but if they are, analysts expect a conference report could be available before the August recess.



MOST RECENT DEVELOPMENTS

On June 19, 2002, the House Rules Committee reported out a rule (H.Res. 450) recommended by Ways and Means Committee Chairman Thomas for consideration of the Senate-passed TPA bill (H.R. 3009).

On May 23, 2002, the Senate passed comprehensive trade bill H.R. 3009 by a 66-30 vote. Title XXI of H.R. 3009 includes TPA provisions similar, but not identical, to the House-approved TPA provisions.

The House approved TPA bill H.R. 3005 along party lines by a vote of 215-214, on December 6, 2001.

BACKGROUND AND ANALYSIS

The Constitution gives Congress the primary power over trade policy: Article 1 empowers Congress “to regulate commerce with foreign nations” and “to lay and collect taxes, duties, imposts, and excises.” For 145 years, Congress exercised this power through frequent enactment of tariff acts, setting in detail duty rates for individual imports. Since Congress was elected by local interests that often benefitted from protection against imports, there were incentives for keeping tariffs at high levels.

Early Presidential Authority to Cut Tariffs

By virtue of his constitutional power to conduct foreign affairs, the President technically has the authority to negotiate and enter into agreements with foreign countries, including those dealing with trade and tariff policy. The President, however, has no authority to impose duties unless Congress delegates that authority. The Reciprocal Trade Agreements Act of 1934 made a major change in these legislative and executive roles. Under the 1934 Act, Congress authorized the President to negotiate reciprocal reductions of tariffs, within a limited range and time period, and to implement them by proclamation without the need for implementing legislation. Because the President was accountable to a broader constituency than Members of Congress, the President could negotiate reciprocal reductions in tariffs (within the limits allowed) without the political liability faced by Members.

For the next several decades, Congress extended the President’s tariff-cutting authority several times. Under this authority, the President negotiated reductions in tariff levels multilaterally in five rounds under the General Agreement on Tariffs and Trade. After agreements were reached at these rounds, the President proclaimed the lower tariffs under the authority Congress had delegated.

Nontariff Barriers and Fast-Track Authority

The sixth round of multilateral trade negotiations, called the Kennedy Round (1964-67), involved negotiations on nontariff as well as tariff barriers. Congress had extended presidential tariff-cutting authority for the Kennedy Round by the Trade Expansion Act of 1962. That authority did not include negotiation of nontariff barriers. Nonetheless, the Administration reached agreements on two nontariff barriers: (1) the American Selling Price (ASP), which was an artificially high import valuation based on domestic producers' prices; and (2) a code, or set of rules, on antidumping. Although the 1962 Act authorized (as did the 1934 Act) the President to negotiate a reduction of "any existing duty or other import restriction," the general view at the time was that by entering into the antidumping agreement, the President had overstepped his delegated power. Congress subsequently not only did not enact legislation to implement it, but actually enacted a provision which would nullify any provision of the antidumping agreement inconsistent with the U.S. antidumping law.

The decision by Congress not to approve the ASP or antidumping agreements showed that there was a dilemma regarding negotiations on nontariff barriers. Trading partners wanted assurance that U.S. negotiators could reach a deal with likelihood of approval back home. By then, tariff levels had been reduced through prior rounds, and nontariff barriers were becoming increasingly important in restricting trade. Without an advance grant of authority from Congress, U.S. negotiators were concerned they would have no credibility in future trade talks.

In the early 1970s, in anticipation of a seventh round of multilateral negotiations that was sure to include nontariff barriers, President Nixon submitted legislation for a new type of negotiating authority. The proposed legislation would have granted to him proclamation authority for nontariff barriers much like the previously granted authority for tariffs. He proposed that he be able to reach a nontariff agreement, submit it to Congress, and unless Congress legislatively disapproved the agreement, the President would put the changes into effect by proclamation. There would be no need for implementing legislation. The Nixon proposal was passed in the House.

That proposal, however, was stopped in the Senate. Senate Members and staff reached a different, substantially new arrangement with the Administration. Under this compromise, which was enacted in the Trade Act of 1974, Congress gave the President temporary authority to negotiate nontariff trade agreements. Congress specified negotiating objectives. The President was required to consult with appropriate congressional committees before and during the negotiation and to notify Congress at least 90 days before entering into the agreement. The President had to submit implementing legislation, along with a statement of administrative action to be taken and reasons why the agreement serves the interests of U.S. commerce. Once the bill was submitted, Congress was to follow an expedited legislative procedure. This procedure included mandatory deadlines, no amendments, and limited debate. The authority to negotiate nontariff trade agreements with an expedited procedure for implementing legislation became commonly known as fast-track authority. At the time the compromise was approved, there was little if any controversy about the procedural restrictions. The 1974 Act gave Congress an enlarged role in trade negotiations through the consultation and notification requirements.

The negotiating authority in the 1974 Act enabled the Administration to negotiate the Tokyo Round of multilateral trade negotiations (1974-79). After the Round was completed, there was an important development in the role of Congress regarding the implementation of the Round's results. When it was time to construct the implementing legislation, Senate staff argued that Congress should have an active part in that process. The result was that Congress took a draft bill through a "mock" legislative process, with committee consideration, amendments, and conference committee. The President then submitted legislation based on the final draft bill. Although not formally outlined in any document, the executive and legislative branches thus agreed on a process that allowed congressional involvement in crafting legislation to ensure expedited procedures once a bill was submitted.

The 1974 Act granted fast-track authority to the President for agreements reached over the next five years. The Trade Agreements Act of 1979 (P.L. 96-39) extended the authority another eight years. After a brief lapse, the Omnibus Trade and Competitiveness Act of 1988 (P.L. 100-418) renewed the President's fast-track authority for agreements reached through May 1993 (the latter two years of that renewal depended on whether the President requested the two-year extension and Congress did not pass a disapproval resolution). The 1988 Act was subsequently amended (P.L. 103-49) to extend fast-track authority for Uruguay Round agreements reached before April 16, 1994. After that, the President's trade negotiating authority expired and has not been renewed.

Fast-track authority had been instrumental in negotiating and implementing five major trade agreements. Two of those five agreements were multilateral agreements reached during the Tokyo Round and the Uruguay Round negotiations in the GATT. The other three agreements were free trade agreements: the U.S.-Israel free trade agreement, which was negotiated under special authority in the Trade and Tariff Act of 1984 (P.L. 98-573); the U.S.-Canada Free Trade Agreement; and the North American Free Trade Agreement. No agreement has been disapproved under fast-track procedures.

Stalemate on Fast-Track Renewal

During the 104th Congress (1995-1996), President Clinton proposed an extension of fast-track authority for agreements reached before December 31, 1999, with a two-year extension beyond that date if the President requested the extension and Congress did not pass a disapproval resolution. The President's intent was to use fast-track authority to extend the North American Free Trade Agreement to Chile. Democrats supported the President's proposal. A Republican-supported alternative was approved by the House Ways and Means Committee on September 21, 1995. This bill, H.R. 2371 (H.Rept. 104-285, Part 1), listed five principal negotiating objectives, but omitted objectives related to labor and environmental standards. H.R. 2371 would have limited fast-track implementation to provisions that are "directly related" to the specified principal negotiating objectives, unlike previous fast-track authorizations, which provided for fast-track consideration of provisions that are "necessary and appropriate" in the President's discretion to negotiate trade agreements that include areas that are not specified in the fast-track authorization. Under the proposal, if negotiators went beyond the mandated objectives, fast-track implementation could be denied. The bill did not reach floor vote. Disagreement over the inclusion of labor and environmental issues was a major reason why fast-track authority was not renewed in the 104th Congress.

A major push to enact fast-track legislation occurred during the 105th Congress (1997-1998). In the first half of 1997, President Clinton did little on a fast-track bill because of attention to the budget and other priorities. In spite of warnings from both Democrats and Republicans, he waited until after Labor Day to submit a proposal to Congress. He submitted his proposal on September 16, 1997. The proposal was met with criticism by both Democrats and Republicans. Many Democrats opposed the proposal because it did not include labor and the environment in the core objectives. Many Republicans said that they did not want to include labor or the environment in the agreement at all.

Two weeks later, on October 1, 1997, the Senate proceeded more quickly. The Finance Committee reported out S. 1269 (S.Rept. 105-102). The bill included labor and the environment only as they related to trade, and limited fast-track to provisions that were necessary for the implementation of the agreement, not “necessary or appropriate.” In early November, the Senate approved a motion to proceed to floor consideration, but stopped there to wait for the House to act.

On October 8, 1997, the House Committee on Ways and Means approved H.R. 2621 (H.Rept. 105-341, Part 1), which was similar to the bill in the Senate. The committee vote was 24-14, with only 4 of the 16 Democrats on the Committee voting for the bill. Republicans wanted President Clinton to assure at least 60-80 votes on the floor, but this was never attained. Labor interests had been lobbying hard, and few Democrats wanted to support the measure. Some Democratic Members urged a floor vote to try to get the undecided Members to commit. House Speaker Gingrich agreed, and set the floor vote for November 7th then delayed it to Nov. 9th. President Clinton lobbied hard, but there were not the votes for passage, and House Speaker Gingrich and President Clinton agreed to hold off on the floor vote. House Speaker Gingrich reportedly said that the vote was about 5-25 votes short of passage.

The following year, on July 1, 1998, the Senate Finance Committee voted 18-2 to approve S. 2400 (S.Rept. 105-102), a comprehensive trade bill that included essentially the same fast-track provisions that the Committee had approved the year before (S. 1269) plus other trade programs such as trade preferences for sub-Saharan Africa and the Caribbean and renewal of the Generalized System of Preferences. (Democrats in the House had opposed the idea of a comprehensive bill the year earlier.) S. 2400 did not reach the Senate floor.

On July 23, 1998, House Speaker Gingrich announced that a vote would be scheduled on fast-track legislation that September. President Clinton and some Democratic Members opposed a vote that close to the November elections. They wanted the vote postponed until the next year. Some Republicans claimed that the Democrats did not want to vote for trade authority against their labor supporters just before an election. Democrats claimed that the Republicans scheduled the vote to get agriculture and business support and to hurt the Democrats. On September 25, 1998, the House voted down fast-track bill H.R. 2621 by a vote of 180-243. The vote was along strongly partisan lines. Some observers had wondered if the bill’s defeat would hurt the international markets, but that did not happen. Some also wondered whether the vote might hurt prospects for fast-track legislation in the future, since it might be hard for Members to reverse their votes.

During the 106th Congress (1999-2000), there was little done on fast-track renewal. In 1999, the Senate Finance Committee considered the idea of another omnibus trade bill with

fast track provisions, but decided to split up the proposals and didn't act on fast-track. With the presidential election in 2000, there was virtually no activity on fast track that year.

Developments During the 107th Congress

A major issue during the first session of the 107th Congress was how labor and the environment should be treated in trade agreements. Some Members supported fast-track reauthorization, but only with strong labor and environmental provisions that could be enforced with sanctions. They maintained that high domestic labor and environmental standards put U.S. producers at a competitive disadvantage, and that increased trade with countries with lax standards may lead to pressure to lower U.S. standards. Other Members supported labor and environmental provisions but not necessarily with enforcement by sanction. They wanted the President to have discretion on how to enforce those provisions. Yet other Members favored excluding labor and the environment completely and limiting the authority for fast-track implementation to provisions that relate strictly to removal of trade barriers. They were concerned that, if trade agreements allowed trade sanctions to be used to enforce environmental and labor rules, such sanctions might be used as protectionist barriers.

Some Members viewed the U.S.-Jordan free trade agreement (FTA) as a model for how to address labor and the environment in future agreements. The FTA includes provisions on labor and the environment in the main text of the agreement, unlike the side agreements of the NAFTA. It allows a party to call on the agreement's dispute settlement provisions where the other party fails to effectively enforce its national labor and environmental laws in a manner affecting trade between the parties. Other Members, however, opposed the U.S.-Jordan FTA model. A few Members have suggested the U.S. approach could be patterned after the Canada-Chile free trade agreement, which includes monetary penalties for violation of labor and environment provisions. Other Members and USTR Zoellick emphasize there is no one-size-fits-all model and support a "toolbox" approach that offers a variety of solutions from which to choose. These many different approaches are seen in the Administration's position, a proposal by the New Democrats, and various bills in the House and in the Senate.

The President's Legislative Agenda (May 10, 2001)

From its start, the Bush Administration has made trade negotiating authority a priority of its overall trade policy. During his February 27th State of the Union address, President Bush said, "Each of the previous five Presidents has had the ability to negotiate far reaching trade agreements. Tonight I ask you to give me the strong hand of presidential trade promotion authority, and to do so quickly."

The Administration also introduced a new phrase to replace the term "fast-track authority." During his confirmation hearing on January 30, 2001, U.S. Trade Representative (USTR) nominee Robert Zoellick said that he would promptly follow up with the Senate Finance Committee and the House Ways and Means Committee "to consider how to reestablish *trade promotion authority* [italics added] for the President, based on the fast-track

precedent and the broadest possible support.” The term “trade promotion authority” is now widely used interchangeably with “fast-track authority.”

On May 10, 2001, President Bush provided Congress with an outline of his 2001 legislative agenda for international trade, with trade negotiating authority (TPA) the top priority. The President’s proposal for TPA stated that the authority would be used for a new WTO round, a Free Trade Area of the Americas agreement, and other regional and bilateral negotiations, including free trade agreements with Chile and Singapore. The proposal listed 13 negotiating objectives. One objective would encourage the protection of children and adherence to core labor standards in connection with international trade, and another would encourage mutually supportive trade and environmental protection policies in accordance with the objective of sustainable development, both “in a manner consistent with U.S. sovereignty and trade expansion.” The Administration proposed that environmental protection, employment opportunities, and other measures be taken into account in making decisions on negotiations. It also affirmed that Congress and advisory committees would be consulted at key stages of each negotiation. The proposal did not include a time period for the authority, but called for “a sufficient time” for various negotiations.

Along with the legislative agenda, the President submitted an illustrative list identifying a “toolbox” of actions the United States could take together with trade negotiations. Examples of toolbox actions included using labor standards in existing trade programs and highlighting in the National Trade Estimate report measures that hurt the environment.

New Democrats Proposal (May 24, 2001)

On May 24, 2001, the Senate and House New Democrats responded to the President’s trade promotion agenda with a set of principles. According to a press release from Representative Dooley, one of the leaders of the New Democrats, the New Democrats applauded President Bush’s inclusion of labor and environmental standards in the trade agenda, but argued that the Bush plan was “silent on the critical issue of appropriate mechanisms for enforcing trade agreements.” The New Democrat principles said that they were intended to increase access to foreign markets and improve living standards through trade. The principles stated that labor and the environment should have parity with the other negotiating objectives and called for enhanced congressional consultation. They also sought an “enforcement toolbox” that did not preclude any enforcement mechanism. The principles called for “parallel policies” to increase domestic confidence in trade, such as reauthorization of trade adjustment assistance and a joint work program with the International Labor Organization (ILO) and World Trade Organization (WTO). Some congressional Republican leaders responded by saying that the principles were welcome as a contribution to moving forward the debate on trade authority.

H.R. 2149, the Trade Promotion Authority Act of 2001

On June 13, 2001, Representative Crane, Chairman of the Trade Subcommittee of the House Ways and Means Committee, introduced H.R. 2149, the Trade Promotion Authority Act of 2001. Labor and the environment were not specifically included in any of the provisions. When the bill was introduced, House Republican leaders said that H.R. 2149 was a first step in the formulation of a trade promotion bill. They looked for quick consideration and said that the bill would move through committee to the House floor as

soon as they had the votes for approval. There was immediate opposition to the bill from House Democratic leaders. The day after the bill was introduced, House Democratic Leader Gephardt said that the bill “looks like another ‘my way or the highway’ solution to a problem.” A spokesperson for Finance Committee Chairman Baucus said that the bill showed there was “a long way to go” in addressing labor and the environment. Many, but not all, business and agriculture groups supported the bill, while labor and environmental groups strongly opposed it.

S. 1104, Trade Promotion Act of 2001

On June 26, 2001, Senator Graham, for himself, Senator Murkowski, and seven other Senators introduced S. 1104, the Trade Promotion Act of 2001. In his introductory comments, Senator Graham said that the bill was the result of work by himself and Senator Murkowski to translate the President’s trade principles and the New Democrat priorities into legislative language.

S. 1104 included worker rights and the environment among its principal objectives. It also said that in pursuing the principal objectives, negotiators “shall take into account legitimate United States domestic objectives, including protection of health, safety, essential security, environmental, consumer, and employment opportunity interests.” Further, the bill said that the President should “seek to ensure that the trade agreements...complement and reinforce other policy goals.” Priorities in this area included respect for workers’ rights, and expanded production and trade while seeking to protect the environment.

The bill included many standard provisions of fast-track/trade promotion authority bills, but it also included some provisions that were not standard: (1) nontariff agreements under the bill would have to include *exact wording*, as specified in the bill, to the effect that the United States would not be bound by any provision in the agreement that interferes with or amends any U.S. law or standard relating to health, safety, labor, environment, or essential security; (2) the implementing bill would be prohibited from making changes in health, safety, labor, environmental, or security laws or standards; (3) a point of order could strike any part of the bill (except budgetary provisions) that was in violation of specifically allowed provisions; and (4) a point of order that an agreement that does not contain the required *exact wording* referred to above could cause the loss of expedited procedures. S. 1104 also provided procedures for withdrawal of expedited procedures *before the start* of the negotiations (no reason required), or at any time if notification/consultation requirements were not met.

Democratic congressional leaders on trade spoke out against the bill. Finance Committee Chairman Baucus said that the bill was not strong enough with regard to labor and environmental provisions. Representative Rangel, Ranking Member on the Ways and Means Committee, and Representative Levin, Ranking Member on the Ways and Means Subcommittee on Trade, were also critical. A number of Republican Members spoke favorably of the bill. Senator Grassley, Ranking Member on the Finance Committee, praised it. USTR Zoellick said he applauded the bill’s sponsors for introducing a bill to grant TPA.

Proposal by Senator Baucus on July 25, 2001

On July 25, 2001, Finance Committee Chairman Baucus released a proposal for a fast-track bill. He emphasized that there was little time left in the year for action on a bill, and he said that he viewed the proposal as a starting point and hoped it would spark the dialogue necessary to develop a bipartisan approach to fast-track extension.

The proposal listed 13 objectives for trade negotiations. None was specifically related to labor or the environment.

Under a separate section called “Primary Directions to Negotiators,” the proposal gave guidelines for labor rights, environmental protection, transparency, and trade laws. On labor rights, the proposal said that the United States shall seek a requirement that countries not derogate from domestic labor laws so as to gain trade or investment advantages, affirmation of countries’ commitments to the five core principles of the International Labor Organization (ILO), a general exception in the WTO to permit a country to take measures under an ILO Article dealing with failure of a country to carry out a recommendation, and increased cooperation between the ILO and the WTO and other international institutions. It said that the United States shall conduct a labor rights review focused on observance of core ILO principles; and shall seek provisions allowing restriction of imports made with forced labor, including exploitative child labor. It further said that for all new trade agreements, the President would have to transmit to Congress a strategy for implementing and enforcing core labor standards in countries that are parties to the agreements.

With regard to environmental protection, the proposal stated that all new trade agreements should be consistent with environmental protection goals. It provided that the United States shall seek a requirement that countries not derogate from domestic labor laws so as to gain trade or investment advantages, and the President must transmit to Congress a strategy for implementing and enforcing core environmental protection standards in countries that are parties to all new trade agreements. It also said that current environmental reviews for trade agreements would be included as a statutory requirement for fast-track legislation, and that actions taken under core multilateral environmental agreements would be “safe harbored” from legal challenge under trade agreements. It included several guidelines for investor-to-state disputes. It also said that all trade agreements should recognize the obligation of national governments to protect their citizens through health and safety standards.

The proposal attempted to promote transparency in all stages of dispute settlement processes. It said that the United States should not enter into any trade agreement that undermined or weakened U.S. trade laws.

The proposal covered fast-track procedures for two years, with a possible three-year extension. It said authority for a new round of WTO agreements and an FTAA agreement should be approved in a fast-track bill, but authority for other agreements would have to be separately requested by the President and approved by the House Ways and Means and Senate Finance Committees. The proposal included increased congressional oversight by a new body of Congressional Trade Advisors, who would have access to all negotiating sessions. It also provided for possible withdrawal of fast-track procedures if negotiating objectives and directions were not substantially satisfied.

Reaction to the proposal was mixed. Environmental and labor groups saw the provisions as weak, and especially opposed the allowance for the President to select from a range of options under a “flexible enforcement procedure,” since they were critical of how the Bush Administration would use such discretion. The National Association of Manufacturers said that although it did not support all of the proposal, it agreed with much of it. The Administration welcomed the proposals as a “step forward.”

About two and a half months later, Chairman Baucus further outlined his position on TPA legislation. In a speech on October 11, 2001, he called for greater bipartisanship on a fast-track bill, saying that otherwise every future trade agreement would be “a struggle to pass.” He said common ground could be found in several areas: greater cooperation between the WTO and the International Labor Organization (ILO); restored funding for the Department of Labor’s International Labor Affairs Bureau; changes to address investment problems such as those under Chapter 11 of the North American Free Trade Agreement; and protection of U.S. trade laws. He supported a system for Congress to check if negotiating objectives have been met. He also said that trade adjustment assistance “must be a part of any movement forward on fast track.”

H.R. 3019, Comprehensive Trade Negotiating Authority Act of 2001

On October 4, 2001, Representative Rangel, Ranking Member on the House Ways and Means Committee, and Representative Levin, Ranking Member of the Ways and Means Subcommittee on Trade, released H.R. 3019. The bill’s supporters said that their proposal had key differences with H.R. 3005 (see next section), which had just been introduced by Representative Thomas, Chairman of the Ways and Means Committee. These key differences, they said, were in the areas of labor standards, environmental issues, enforcement, and the role of Congress. During the October 9 markup by Ways and Means, H.R. 3019 was rejected by a 27-12 vote.

The bill included a list of overall objectives that was relatively extensive in comparison to other bills and prior law. H.R. 3019 also presented sets of principal objectives that depended on whether a trade agreement was negotiated under the WTO, for the FTAA, or bilaterally. Although both H.R. 3019 and H.R. 3005 gave more attention to labor and environmental objectives than in past law, the provisions in H.R. 3019 in general gave more direction to negotiators on achieving labor and environmental goals.

Nontariff agreements under the bill’s provisions would have to “substantially achieve” [compared to “make progress in meeting” in H.R. 3005] all the objectives. H.R. 3019 included notification and/or consultation requirements at various stages of negotiation [generally in more instances than in H.R. 3005], and would amend the current system of congressional trade advisers, rather than [as proposed in H.R. 3005] establish a new body of congressional trade advisers.

H.R. 3019 would allow withdrawal of expedited procedures for an implementing bill before the start of negotiations, during negotiations, and before the President enters into an agreement if congressional advisers do not concur with the President that the agreement “substantially achieves the principal negotiating objectives.” In comparison, H.R. 3005 would disallow expedited procedures if the President did not give notice or consult as required.

H.R. 3005, Bipartisan Trade Promotion Authority Act of 2001

On October 3, 2001, Representative Thomas, Chairman of the House Ways and Means Committee, introduced H.R. 3005, a bill to extend trade negotiating authority. Chairman Thomas had worked with a small number of Democrats on the bill through the summer. The Democrats included Representative Dooley with the New Democrats, and Representatives Jefferson and Tanner, both on the Ways and Means Committee. The three Democrats, Representative Crane, and Representative Dreier, Chairman of the Rules Committee, were original cosponsors of the bill.

H.R. 3005 was approved by the House Ways and Means Committee on October 9, 2001, by a vote of 26-13. The Committee markup had originally been scheduled for October 5, but was postponed because of complaints by Democratic Committee members that more time was needed to debate key proposals. The bill was reported out of the Ways and Means Committee (H.Rept. 107-249, Part 1) on October 16.

On December 6, 2001, the House approved H.R. 3005 along party lines by a vote of 215-214. The version of H.R. 3005 considered and approved in the House had been amended under Rules Committee Resolution H.Res. 306 (H.Rept. 107-323).

Provisions of H.R. 3005 as Passed by the House. The provisions of H.R. 3005 cover tariff and nontariff trade agreements that are reached before June 30, 2005, with a two-year extension allowed under specified conditions.

Under the section on trade negotiating objectives, the bill outlines seven general objectives as “Overall Objectives.” Among these are the two objectives of mutually supportive trade and environmental policies and of respect for worker rights and the rights of children. The bill has 13 more specific “Principle Objectives.” One of these objectives—labor and the environment—has drawn much attention. That objective calls for the following: assurance that parties will not fail to effectively enforce their own environmental and labor laws; recognition that parties retain wide discretion on domestic labor and environmental matters; strengthened capacity of U.S. trading partners to promote respect for labor standards and to protect the environment; elimination of government practices that threaten sustainable development; market access for U.S. environmental businesses; and assurance that labor, environmental, health, or safety policies of other countries do not discriminate against U.S. exports.

The section on objectives also directs the President to take actions that further “certain priorities,” most of which are related to labor and environmental goals. An example of these 12 actions is that the President must seek greater cooperation between the World Trade Organization and the International Labor Organization. Of note: this section also directs the President to preserve the U.S. ability to enforce rigorously its trade laws.

For *certain tariff agreements* that generally cut tariffs by no more than half and meet other specified conditions, the President may proclaim tariff changes without implementing legislation.

For *other tariff agreements and for nontariff agreements*, the President may enter into an agreement only if the agreement “makes progress in meeting” the Overall and Principal

Objectives, and the President satisfies the consultation/notification requirements. Expedited legislative procedures would apply to an implementing bill with: (1) provisions approving a trade agreement and any statement of administrative action; and (2) provisions “necessary or appropriate” to implement an agreement, if changes in law are required to implement the agreement.

H.R. 3005 includes consultation requirements at various stages of negotiation. (Some requirements do not apply to tariff agreements that would be implemented through proclamation). At least 90 days before initiating negotiations, the President would have to notify Congress of the intent to enter into negotiations and provide specified information. Before and after giving notice, the President would have to consult with the two revenue committees, such other committees “as the President deems appropriate,” and the newly established Congressional Oversight Group (COG; see next paragraph). Additional consultation would be required on certain agricultural tariff matters. During negotiations, the USTR would have to consult closely with the revenue committees, all committees with jurisdiction, current congressional trade advisors, and the COG. Before entering into an agreement, the President would have to consult with the revenue committees, other committees with jurisdiction, and the COG, and these consultations would have to include the nature of the agreement and other specified information. The bill sets deadlines for private sector advisory committee reports and a report by the International Trade Commission on the agreement’s impacts.

The bill would establish a new body of congressional trade advisors, the Congressional Oversight Group. Members of the COG would be the chair and ranking member of the revenue committees (who would co-chair the COG), three other members (no more than two members from the same party) from each of the revenue committees, and the chair and ranking member of any other committees with jurisdiction for laws affected by agreements under negotiation. Members of the COG would be official advisors to the U.S. delegation and would consult and advise the USTR on aspects of the negotiation.

The section on implementation of trade agreements is similar to other bills and to previous law. The President would have to notify the House and Senate at least 90 days before entering into the agreement. Within 60 days of signing the agreement, the President would have to describe to Congress any changes to law necessary under the agreement. The President would be required to submit the agreement, a statement of administrative action, a draft implementing bill, and other specified information (no deadline for submission). H.R. 3005 includes a procedure that would disallow expedited procedures for an implementing bill, if the President did not give notice or consult as required.

Senate Finance Committee Action on H.R. 3005

On December 12, 2001, the Senate Finance Committee approved its version of H.R. 3005 on an 18-3 vote. The bill was approved “subject to further amendment” because another Senator reportedly evoked Senate rules to limit the time the Finance Committee could meet on the bill. The Committee met again on December 18, rejected three amendments, and ordered H.R. 3005 to be reported with an amendment in the nature of a substitute (S. Rept. 107-139).

The version of H.R. 3005 approved by the Senate Finance Committee is similar to the House-passed version in most respects, but it does have some differences regarding any negotiated changes to trade remedy law, investor-government disputes, dispute panel action, and small businesses.

Senate Action on TPA

On May 10, Senators Baucus and Grassley introduced package of trade legislation as a manager's amendment (S.Amdt.3401) in the form of a substitute to H.R. 3009, the bill to reauthorize the Andean Trade Preference Act (ATPA). The amendment includes trade promotion authority (TPA) as contained in the version of H.R. 3005 that was reported out of the Senate Finance Committee. It also includes reauthorization of the Trade Adjustment Assistance (TAA) program, including health insurance subsidies for workers who lose their jobs because of an increase in imports. Furthermore, the legislation would provide for a five-year reauthorization of the Generalized System of Preferences (GSP) program, as well as reauthorization of ATPA. Senate floor action on the legislation is expected the week of May 13. If the Senate approves a TPA bill, a conference would address House-Senate differences. Analysts predict that as votes get closer to the fall elections, it will become more difficult for Congress to approve a TPA bill.

A number of amendments to the manager's amendment were proposed with some passing. The most controversial to date was S.Amdt.3408 sponsored by Senators Dayton and Craig, which would allow a point of order to be raised against any provision of an implementing trade bill receiving TPA consideration, if that provision would weaken any U.S. trade remedy law. A motion to table the amendment was defeated 38-61, and the amendment passed on a voice vote. Supporters of the amendment claim that the amendment is necessary to ensure that U.S. safeguards, antidumping and countervailing duty laws are not undermined during trade negotiations in the WTO and other fora. The Bush Administration strongly opposed the Craig-Dayton amendment. It and other critics claim that the amendment ties the hands U.S. negotiators by restricting their ability to negotiate.

On May 23, 2002, the Senate approved H.R. 3009, which included TPA provisions under title XXI, by a 66-30 vote.

The bills approved in the House and in the Senate have the same seven overall objectives, but the Senate bill has an eighth on small businesses. They have the same 13 principal objectives, but the Senate bill adds four more objectives on child labor, human rights, border taxes, and textile trade. Both bills call for the President to take almost the same 12 actions to maintain U.S. competitiveness.

The two bills have almost identical language on the President's authority to proclaim tariff changes and to negotiate trade agreements with expedited legislative procedures for an implementing bill. They have essentially the same deadlines for entering into an agreement for expedited approval procedures. They both state that a trade agreement must "make progress in meeting" negotiating objectives and describe similar kinds of provisions that an implementing bill may have. A major difference, however, is a provision in the Senate bill, called the Dayton-Craig amendment, which would allow any implementing bill provision amending U.S. trade remedy laws to be stricken from that bill.

Both bills have similar language regarding notification and consultation before and during negotiations. They both have special provisions on negotiations on textiles and agriculture (the Senate bill also includes fish and shellfish). They have much the same language on consultation with Congress before entering into an agreement, but a major difference on notification and reporting of proposed changes to trade remedy laws.

Both versions have some similarities on the President's submission of the trade agreement and other documents to Congress, and both allow withdrawal of expedited procedures for lack of consultation. The Senate bill adds language on reporting changes to trade remedy laws, procedural action in the Senate, and disclosure of oral or written agreements with other governments. It also adds that expedited procedures will not apply if an Administration report on dispute strategy is not submitted in a timely manner, or if part of a trade agreement was not disclosed to Congress.

The two bills are almost identical on establishing a Congressional Oversight Group. They both provide for adjustment to the pre-notification requirements where negotiations are underway, require a plan by the President to address enforcement, and state that congressional trade-related activities could increase. Additional sections in the Senate bill would require the ITC to report on agreements implemented under expedited procedures in the past, and would direct the USTR to seek an advocate in the WTO for small- or medium-sized businesses.

Recent Developments

Following Senate passage, House Ways and Means Committee Chairman Thomas sought a rule that, he argued, would strengthen the position of the House in the conference. In a departure from usual practice, he recommended a rule (H.Res. 450) that includes the House-approved TPA bill, reauthorization of Andean preferences and the Generalized System of Preferences, TAA, and other provisions. The House had previously approved some language in the Thomas rule (e.g., TPA) but not other language (e.g., TAA). Almost all House Democrats oppose the Thomas rule: some reasons they give are the higher TAA benefits and support for U.S. trade remedy laws in the Senate bill.

On June 19, 2002, the House Rules Committee reported out the Thomas rule. House floor action on the rule may happen soon. Conferees have not been appointed, but if they are, analysts expect a conference report could be available before the August recess.

LEGISLATION

H.Res. 306 (Reynolds)

Providing for consideration of the bill (H.R. 3005) to extend trade authorities procedures with respect to reciprocal trade agreements. Reported as an original measure (H.Rept. 107-323) and approved by a vote of 224 - 202 on December 6.

H.R. 1446 (English)

Standard Trade Negotiating Authority Act of 2001. A bill to provide permanent trade negotiating authority. Introduced April 4, 2001; referred to Committees on Ways and Means; and Rules. The bill would extend fast trade procedures permanently if a newly

established Commission on Labor and the Environment submitted a report to the President and Congress, and the President received prior authorization from Congress, before the start of negotiations. It would exempt agreements under the WTO.

H.R. 2149 (Crane, et. al.)

Trade Promotion Authority Act of 2001. A bill to extend trade authorities procedures with respect to reciprocal trade agreements. Introduced June 13, 2001; referred to the Committee on Ways and Means, and in addition to the Committee on Rules, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

H.R. 3005 (Thomas, et. al.)

Bipartisan Trade Promotion Authority Act of 2001. A bill to extend trade authorities procedures with respect to reciprocal trade agreements. Introduced October 3, 2001. Reported (amended) by the Committee on Ways and Means (H.Rept. 107-249, Part 1) October 16, 2001. On December 6, 2001, Rules Committee Resolution H.Res. 306 reported to House. H.Res. 306 provided that the amendment recommended by the Committee on Ways and Means now printed in the bill, modified by the amendment printed in the H.Rept. 107-323, be considered as adopted. December 6, 2001, passed House by recorded vote: 215 - 214. Referred to the Senate Finance Committee December 12, 2001; mark-up session held. Ordered to be reported with an amendment in the nature of a substitute favorably (S.Rept. 107-139) December 18, 2001.

H.R. 3009 (Crane, et. al.)

To extend the Andean Trade Preference Act, to grant additional trade benefits under that Act, and for other purposes. Introduced October 3, 2001; reported, amended, by the Committee on Ways and Means (H.Rept. 107-290) November 14, 2001. Passed/agreed to in House by voice vote November 16, 2001. Reported by Senate Finance Committee Chairman Baucus with an amendment in the nature of a substitute (S.Rept. 107-126) December 14, 2001. Passed Senate with an amendment by 66 - 30 vote May 23, 2002.

H.R. 3019 (Rangel, et. al.)

Comprehensive Trade Negotiating Authority Act of 2001. A bill to provide fast-track trade negotiating authority to the President. Introduced October 4, 2001; referred to Committee on Ways and Means and Committee on Rules.

S. 136 (Gramm)

Fast Track Trade Negotiating Authority Act. A bill to amend the Omnibus Trade and Competitiveness Act of 1988 to extend trade negotiating and trade agreement implementing authority through the end of 2004. Introduced January 22, 2001; referred to Finance Committee.

S. 599 (Roberts, et al.)

Permanent Trade Promotion Authority and Market Access Act of 2001. A bill to amend the Omnibus Trade and Competitiveness Act of 1988 to establish permanent trade negotiating and trade agreement implementing authority. Introduced March 22, 2001; referred to Finance Committee.

S. 1104 (Graham/Murkowski, et al.)

Trade Promotion Act of 2001. A bill to establish objectives for negotiating, and procedures for implementing, certain trade agreements. Introduced June 26, 2001; referred to Finance Committee.

S. 2062 (Durbin)

Comprehensive Trade Negotiating Authority Act of 2002. A bill to provide fast-track trade negotiating authority to the President. Introduced March 21, 2002; referred to Finance Committee.

CONGRESSIONAL HEARINGS, REPORTS, AND DOCUMENTS

U.S. Congress. House. Committee on Rules. Report to accompany H. Res. 450, June 19, 2002. H. Rept. 107-518. 107th Congress, 2nd session. U.S. Govt. Print. Off., 2002. 74 p.

U.S. Congress. House. Committee on Ways and Means. Bipartisan Trade Promotion Authority Act of 2001. Report together with additional and dissenting views to accompany H.R. 3005, October 16, 2001. H. Rept. 107-249, Part 1. 107th Congress, 1st session. U.S. Govt. Print. Off., 2001. 83 p.

U.S. Congress. Senate. Committee on Finance. Bipartisan Trade Promotion Authority Act of 2002. Report together with additional views to accompany H.R. 3005, February 28, 2002. S.Rept. 107-139. 107th Congress, 2d session. U.S. Govt. Print. Off., 2002. 69 p.

———. Andean Trade Preference Expansion Act. Report to accompany H.R. 3009, December 14, 2001. S.Rept. 107-126. 107th Congress, 2d session. U.S. Govt. Print. Off., 2002. 56 p.

CHRONOLOGY

1934 – In the Reciprocal Trade Agreements Act of 1934, Congress begins a policy of delegating authority to the President to negotiate tariff agreements within limits and to implement the new tariff levels by proclamation.

01/03/75 – The Trade Act of 1974 is enacted. Under the Act, Congress continues to delegate to the President the authority to negotiate tariff agreements and implement them by proclamation. Congress also delegates to the President the authority to negotiate nontariff trade agreements subject to consultation and notification requirements. For nontariff agreements reached by specified deadlines, Congress agrees to consider such agreements under an expedited (“fast track”) procedure.

04/16/94 – After almost continual reauthorization since 1975, the President’s trade negotiating authority expires.

09/25/98 – The House disapproves H.R. 2621 by a largely partisan vote of 180-243. The Administration opposed the vote.

05/10/01 – President Bush outlines his 2001 legislative agenda for international trade. He places trade promotion authority (TPA) at the top of the agenda.

12/06/01 – The House passes H.R. 3005 by a 215-214 vote along party lines.

5/23/02 – The Senate approves TPA under title XXI of H.R. 3009 by a 66-30 vote.

CRS Products

CRS Report 97-817, *Agriculture and Fast Track Trade Legislation*, by Geoffrey S. Becker and Charles E. Hanrahan.

CRS Report RS21004, *Fast-Track Negotiating Authority for Trade Agreements and Trade Promotion Authority: Chronology for Major Votes*, by Carolyn C. Smith.

CRS Report RS21078, *Trade Adjustment Assistance for Workers: Legislation in the 107th Congress*, by Paul J. Graney.

CRS Report RL31192, *Trade Agreement Implementation: Expedited Procedures and Congressional Control in Existing Law*, by Richard S. Beth.

CRS Report RL31178, *Trade Promotion Authority (Fast-Track): Labor Issues (Including H.R. 3005 and H.R. 3019)*, by Mary Jane Bolle.

CRS Report RL31445, *Trade Promotion (Fast-Track) Authority: A Comparison of Bills Approved by the House (H.R. 3005) and by the Senate (Title XXI of H.R. 3009)*, by Lenore Sek and William H. Cooper.

CRS Report 97-896, *Why Certain Trade Agreements Are Approved as Congressional-Executive Agreements Rather than as Treaties*, by Jeanne J. Grimmett.