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

Updated December 7, 2001

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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 before entering into an agreement.

The President was granted this authority almost continuously from 1974 to 1994, but the authority lapsed and has not been renewed. A major issue has been the role of labor and the environment as objectives in trade agreements. Differences have been largely along party lines.

On May 10, the President provided an outline of his 2001 legislative agenda for trade. Trade promotion authority was at the top of the agenda. On May 24, the House and Senate New Democrats responded to the President's trade agenda with their own set of principles and an enforcement "toolbox" of ways to increase compliance with agreements. On June 13, Representative Crane, Chairman of the House Ways and Means Subcommittee on Trade, introduced H.R. 2149, which does not include labor or the environment among its principal objectives. However, the bill would allow those topics to be part of a trade agreement under specified conditions. On June 26, Senator Graham and Senator Murkowski introduced S. 1104, which includes worker

rights and the environment among its principal objectives. It also includes provisions to ensure that U.S. health, safety, labor, environmental, or security laws or standards would not be changed by a trade agreement.

On July 25, Senate Finance Committee Chairman Baucus released his proposal for a fast-track bill. The proposal included negotiating objectives, directives in support of labor rights and environmental protection, greater congressional oversight of negotiations, and a toolbox approach to enforcement. On October 3, Ways and Means Chairman Thomas introduced H.R. 3005. This bill was reported out of the House Ways and Means Committee (H.Rept. 107-249, Part 1) on October 16, 2001. On October 4, Representative Rangel, Ways and Means Ranking Member, and Representative Levin, Ranking Member on the Ways and Means Subcommittee on Trade, released their own proposal, H.R. 3019. That bill was rejected by the Ways and Means Committee on October 9 by a 27-12 vote. On October 11, Senator Baucus, Chairman of the Senate Finance Committee, gave a major speech outlining his position on fast-track legislation. It is uncertain when the Senate might act on any legislation. On December 6, the House passed TPA bill H.R. 3005 along party lines by a vote of 215-214. H.R. 3005 was approved as amended under Rules Committee Resolution H. Res. 306 (H. Rept. 107-323). On December 7, Senator Baucus said that the Finance Committee will mark up legislation on trade negotiating authority on December 11 or 12. Full Senate action is not expected until next year.

MOST RECENT DEVELOPMENTS

On December 6, 2001, the House approved TPA bill H.R. 3005 along party lines by a vote of 215-214. On December 7, Senator Baucus, Chairman of the Senate Finance Committee, said that the Finance Committee will mark up legislation on trade negotiating authority on December 11 or 12. Full Senate action is not expected until next year.

On October 16, the House Ways and Means Committee reported out H.R. 3005 (H.Rept. 107-249, Part 1), the Bipartisan Trade Promotion Authority Act of 2001, which Committee Chairman Thomas had introduced on October 3.

On October 4, the Ranking Member on the Ways and Means Committee, Representative Rangel, and the Ranking Member on the Ways and Means Trade Subcommittee, Representative Levin, introduced H.R. 3019, the Comprehensive Trade Negotiating Authority Act of 2001. The Ways and Means Committee disapproved H.R. 3019 on October 9 by a 27-12 vote.

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 107th Congress continues to be how labor and the environment should be treated in trade agreements. Some Members support fast-track reauthorization, but only with strong labor and environmental provisions that can be enforced with sanctions. They maintain 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 support labor and environmental provisions but not necessarily with enforcement by sanction. They want the President to have discretion on how to enforce those provisions. Yet other Members favor 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 are concerned that, if trade agreements allow trade sanctions to be used to enforce environmental and labor rules, such sanctions might be used as protectionist barriers.

Some Members view 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, oppose 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 January 30th confirmation hearing, 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 10th, 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 states 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 lists 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 does not include a time period for the authority, but calls 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 include 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, the Senate and House New Democrats responded to the President's trade promotion agenda with a set of principles (see box). According to a press release from Representative Dooley, one of the leaders of the New Democrats, the New Democrats "applaud" President Bush's inclusion of labor and environmental standards in the trade agenda, but argue that the Bush plan is "silent on the critical issue of appropriate mechanisms for enforcing trade agreements." The New Democrat principles say that they were intended to increase access to foreign markets and improve living standards through trade. The principles state that labor and the environment should have parity with the other negotiating objectives and call for enhanced congressional consultation. They also seek an "enforcement toolbox" that does not preclude any enforcement mechanism. The principles call 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, 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. In the section on trade negotiating objectives, H.R. 2149 lays out four broad "Overall Objectives" and 10 specific "Principal Objectives," and includes a subsection on "Other Presidential Objectives" that would authorize the President to include other issues if the provisions: (1) are directly related to trade; (2) are consistent with U.S. sovereignty; (3) are trade expanding and not protectionist; and (4) do not affect a country's ability to make changes to its laws that are consistent with sound macroeconomic development. In none of these provisions are labor and the environment specifically included.

The bill's provisions cover tariff and nontariff trade agreements that are reached before June 1, 2005, with a two-year extension allowed under specified conditions.

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 meets the requirements for consultation and notification. Expedited procedures ("trade authorities procedures") would apply to an implementing bill that contains: (1) approval of the agreement and accompanying documents; and (2) provisions "necessary or appropriate" to implement the agreement, if statutory change is required. An implementing bill may include provisions to which Other Presidential Objectives apply only if the bill's provisions meet the four criteria shown in the above paragraph on objectives (three paragraphs above). The bill includes other provisions found in most TPA legislation: notification and consultation requirements; advisory reports on the agreement; specified documents when an implementing bill is submitted; and withdrawal of expedited procedures if notification/consultation requirements are not met. It also would establish a Congressional Oversight Group to consult with and provide advice to the USTR on negotiations. It would require the President to submit an enforcement plan for the agreement and include related costs in the next budget.

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, 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 includes objectives in three parts. First, the Statement of Purposes gives four broad goals for trade agreements. Second, the part on Principal Objectives lists 14 specific goals. These goals include worker rights and the environment. The bill states that the "principal objective of trade agreements is to expand the freedom to trade and invest, and in the process expand jobs, economic growth, and opportunity." It also says that in pursuing the 14 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." Third, the Complementary Objectives

state the President should “seek to ensure that the trade agreements...complement and reinforce other policy goals.” Priorities in this area include: (1) intellectual property rights protection; (2) stability in international currency markets; (3) respect for workers’ rights; (4) expanded production and trade while seeking to protect the environment; (5) support for U.S. counternarcotics strategy; (6) international peace and security; and (7) reduced illegal migration.

The bill’s provisions cover tariff and nontariff trade agreements that are reached before December 31, 2005, with a two-year extension under certain conditions.

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 if: (1) the agreement makes progress in meeting the Principal Objectives; (2) the President satisfies the notification and consultation requirements; and (3) the agreement includes *exact wording*, as specified in the bill, to the effect that the United States will 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. Expedited procedures (“trade agreement approval procedures”) would apply to an implementing bill that contains: (1) approval of the agreement and accompanying documents; (2) provisions necessary to implement such trade agreement; and (3) provisions necessary for budgetary purposes. The implementing bill would be prohibited from making changes in health, safety, labor, environmental, or security laws or standards. The bill provides for a point of order to strike any part of the bill (except budgetary provisions) that is in violation of the allowed provisions. It also provides for a point of order that an agreement that does not contain the required *exact wording* referred to above in this paragraph, with the consequent loss of expedited procedures. The bill includes some provisions found in most TPA legislation: notification and consultation requirements; an advisory report on the agreement; and specified documents when an implementing bill is submitted. It provides procedures for withdrawal of expedited procedures **before the start** of the negotiations (no reason required), or at any time if notification/consultation requirements are 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 give TPA.

Proposal by Senator Baucus

On July 25, 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 lists 13 objectives for trade negotiations. None is specifically related to labor or the environment.

Under a section called “Primary Directions to Negotiators,” the proposal specifies guidelines for labor rights, environmental protection, transparency, and trade laws. On labor rights, the proposal says 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 says 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 says that for all new trade agreements, the President must 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 states that all new trade agreements should be consistent with environmental protection goals. They provide 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 says that current environmental reviews for trade agreements shall be included as a statutory requirement for fast-track legislation, and that actions taken under core multilateral environmental agreements should be “safe harbored” from legal challenge under trade agreements. It includes several guidelines for investor-to-state disputes. It also says that all trade agreements should recognize the obligation of national governments to protect their citizens through health and safety standards.

The proposal would attempt to promote transparency in all stages of dispute settlement processes. It says that the United States should not enter into any trade agreement that undermines or weakens U.S. trade laws.

The proposal would grant fast-track procedures for two years, with a possible three-year extension. It says authority for a new round of WTO agreements and an FTAA agreement should be approved in the 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 would increase congressional oversight by a new body of Congressional Trade Advisors, who would have access to all negotiating sessions. It also would provide for possible withdrawal of fast-track procedures if negotiating objectives and directions are 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 does 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. 3005, Bipartisan Trade Promotion Authority Act of 2001

On October 3, 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 this 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, are the bill’s cosponsors.

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 six general objectives as “Overall Objectives.” Among these are the two objectives of mutually supportive trade and environmental policies and of respect for worker rights. The bill has 12 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 11 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 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. At least 90 days before initiating negotiations, the President must notify Congress of the intent to enter into negotiations and provide specified information. Before and after giving notice, the President must 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 is required on certain agricultural tariff matters. During negotiations, the USTR must consult closely with the revenue committees, all committees with jurisdiction, current congressional trade advisors, and the COG. Before entering into an agreement, the President must consult with the revenue committees, other committees with jurisdiction, and the COG, and these consultations must 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 must notify the House and Senate at least 90 days before entering into the agreement. Within 60 days of signing the agreement, the President must describe to Congress any changes to law necessary under the agreement. The President must 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.

H.R. 3005 was approved by the House Ways and Means Committee on October 9 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).

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

On October 4, 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 the Thomas bill 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 provisions of H.R. 3019 cover tariff and nontariff agreements that are reached within five years of enactment, with a two-year extension allowed under specified conditions.

Under the section on negotiating objectives, the bill begins with a relatively long list of overall objectives (16 overall objectives in H.R. 3019, compared to 3-6 overall objectives in most other bills and in prior law). In another departure from other bills and prior law, H.R. 3019 then presents different sets of principal negotiating objectives for different types of trade agreements. It gives 23 objectives for agreements under the WTO, 17 objectives for an agreement for a Free Trade Area of the Americas (FTAA), and the same 17 objectives for bilateral agreements. It does not include a list comparable to that in H.R. 3005 on actions the President must take to achieve "certain priorities." Although both H.R. 3005 and H.R. 3019 give more attention than to labor and environmental objectives than past law, the provisions in H.R. 3019 in general give more direction to negotiators on achieving labor and environmental goals.

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 agreements "substantially achieves" [as compared to "makes progress in meeting" in H.R. 3005] all the objectives, and the President satisfies other (including notification and consultation) requirements. Expedited legislative procedures would apply to an implementing bill with: (1) provisions approving a trade agreement and any statement of administrative action [in H.R. 3005]; (2) provisions "necessary or appropriate" to implement an agreement, if changes in law are required to implement the agreement [in H.R. 3005]; and (3) provisions to provide trade adjustment assistance [not in H.R. 3005].

H.R. 3019 includes notification and/or consultation requirements at various stages of negotiation [generally in more instances than in H.R. 3005]. It also amends 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 at different stages of negotiations, and for different reasons than in H.R. 3005. H.R. 3019 would allow withdrawal of expedited procedures 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."

Outlook

On December 7, Senator Baucus, Chairman of the Senate Finance Committee, said that the Finance Committee will mark up legislation on trade negotiating authority on December 11 or 12. Full Senate action is not expected until next year.

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; referred to Committee on Ways and Means and Committee on Rules. 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 House Report 107-323, be considered as adopted. Rule H. Res. 306 passed House by recorded vote: 215 - 214.

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.

CONGRESSIONAL HEARINGS, REPORTS, AND DOCUMENTS

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.

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.
- 10/24/00** – The U.S.-Jordan free trade agreement is signed. The agreement’s labor and environment provisions become a focus of congressional debate on fast-track authority.
- 02/27/01** – In his State of the Union speech, President Bush asks Congress to quickly give him presidential trade promotion authority.
- 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.
- 05/24/01** – The Senate and House New Democrats release their set of TPA principles that say that labor and the environment should have parity with other negotiating objectives.

06/13/01 – Representative Crane, Chairman of the House Ways and Means Subcommittee on Trade, introduces H.R. 2149.

06/26/01 – Senator Graham, for himself, Senator Murkowski, and seven other Senators introduce S. 1104.

07/25/01 – Senate Finance Committee Chairman Baucus releases his proposal for a fast-track bill.

10/04/01 – Representative Rangel, Ranking Member on the Ways and Means Committee, and Representative Levin, Ranking Member on the Ways and Means Subcommittee on Trade, introduce H.R. 3019. The bill is later disapproved by the Ways and Means Committee on 10/09/01 by a 27-12 vote.

10/16/01 – The House Ways and Means Committee reports out H.R. 3005 (H.Rept. 107-249, Part 1). The Committee approved the bill on 10/09/01 by a 26-13 vote. Committee Chairman Thomas introduced the bill on 10/03/01.

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

FOR ADDITIONAL READING

Destler, I. M. and Peter J. Balint. The New Politics of American Trade: Trade, Labor, and the Environment. Institute for International Economics. *Policy Analyses in International Economics*. October 1999. 66 p.

Negotiating Trade Agreements: Presidential Fast Track Authority; Pro and Con. Congressional digest, v. 76, Dec. 1997: whole issue (289-320).

Slow Road to Fast-track: Does it Matter? *The Economist* (US), Oct 3, 1998; v. 348, n. 8088. p. S32.

CRS Products

CRS General Distribution Memorandum, *Trade Promotion Authority (Fast-Track): A Comparison of H.R. 2149 (107th Congress) and H.R. 2621 (105th Congress)*, by Lenore Sek. July 17, 2001.

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 98-888, *"Fast-Track" or Expedited Procedures: Their Purposes, Elements, and Implications*, by Stanley Bach.

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 RL31196, *Trade Promotion (Fast-Track) Authority: H.R. 3005 Provisions and Related Issues*, by Lenore Sek (coordinator), Mary E. Tiemann, Richard S. Beth, Mary Jane Bolle, William H. Cooper, and Vladimir N. Pregelj.

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