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Trade Promotion Authority (TPA)/Fast-Track Renewal: Labor Issues

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Summary

Trade promotion authority (TPA), formerly known as "fast-track" authority, is scheduled to expire July 1, 2007. With it will expire the authority: (a) that Congress grants the President to enter into certain trade agreements, and (b) for Congress to consider the agreements' implementing legislation under expedited procedures. Currently, the Administration is negotiating a number of trade agreements that may not be completed before the current TPA is set to expire. If these activities are to continue, TPA/fast-track renewal may be a central issue in the 110th Congress. Within the debate, a major issue is expected to be whether to include as a principal negotiating objective in trade agreements, "enforceable core labor standards."

Two TPA/fast-track authorities have incorporated labor provisions. The first, the *Omnibus Trade and Competitiveness Act of 1988* (OTCA), which expired in 1994, included the broad, general objective: "to promote worker rights." The *North American Free Trade Agreement*, with its labor side agreement, was negotiated under OTCA. The second and current TPA/fast-track authority with labor provisions, the *Trade Act of 2002*, includes protections for labor, modified by protections for country governments, businesses and investors. Seven free trade agreements (FTAs) — with Chile, Singapore, Australia, Morocco, Bahrain, Oman, and the Dominican Republic and Central America — were negotiated under this authority. All have only one enforceable labor requirement: that each country not fail to enforce its own labor laws in a manner affecting trade between the parties. (In contrast to this, the U.S.-Jordan FTA, negotiated in 2000 and approved in 2001 without TPA/fast track authority, includes enforceable labor provisions.)

Major options for labor provisions in renewed TPA focus on whether principal negotiating objectives should include "enforceable core labor standards." Supporters argue that including these could help: (1) slow the offshoring of certain U.S. jobs; (2) protect foreign workers against exploitative corporate behavior; (3) support the ability of workers to share in the gains from international trade; and (4) fend off an international "race to the bottom" based on labor costs. Opponents argue that: (1) core labor standards should be promoted by the International Labor Organization, not by trade agreements; (2) as countries develop, they adopt higher labor standards on their own; (3) stronger worker protections could discourage international investment; and (4) labor standards are disguised protectionism. History shows that with or without FTAs, trade will likely continue to grow.

This report examines issues relating to TPA/fast-track labor provisions in the larger context of global labor issues. It: (1) identifies the players and their positions; (2) tracks the enforceable labor provisions in TPA/fast-track laws and the FTAs negotiated under them; (3) presents some legislative options for new TPA/fast-track labor provisions; and (4) sets out arguments for and against enforceable core labor standards. Finally, it looks at possible outcomes and implications of the various legislative options. This report will be updated as events warrant.

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Introduction

Trade promotion authority (TPA), formerly known as "fast track" authority, is scheduled to expire July 1, 2007. With it will expire the authority that Congress grants the President to enter into certain trade agreements, and the authority for Congress to consider implementing legislation for them under expedited procedures. The Administration is still negotiating a number of trade agreements that may not be completed before the TPA/fast-track authority is set to expire. Thus, TPA/fast-track renewal may be a central issue in the 110th Congress if these activities are to continue.[1]

Within the TPA/fast-track renewal debate, a major issue is expected to be which labor provisions to set forth as as "principal negotiating objectives" — that is, which labor provisions to set forth as "a priority for negotiators to seek" in trade agreements.[2] Two sets of provisions are probable candidates.

One, supported by labor advocates, is expected to be: to ensure that a party does not fail to *enforce core labor standards* in a manner affecting trade. Related provisions could (1) identify a set of mutually agreed upon "core labor standards" (defined in the next section) and (2) provide that violation of these standards would be subject to enforcement under the single set of dispute settlement procedures that would be applicable to all disputes.

An alternative is expected to be the current principal negotiating objective: to ensure that a party does not fail to *enforce its own labor laws*, commonly referred to as the "enforce-your-own" standard. This provision would be enforceable under current dispute settlement procedures that call for treating principal negotiating objectives "equally."

The difference between the two approaches reflects criticism by labor advocates that, in general, labor provisions in FTAs negotiated so far: (1) lack the enforceability of commercial provisions; (2) "clearly fail to meet some congressional negotiating objectives [for trade agreements and] barely comply with others"; (3) "represent a big

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[1] For a general discussion on TPA renewal, see CRS Report RL33743, *Trade Promotion Authority (TPA): Issues, Options, and Prospects for Renewal*, by J.F. Hornbeck and William H. Cooper.

[2] The *Trade Act of 2002* does not specifically define "principal negotiating objective." However, the Conference Report, H.Rept. 107-624, p. 229, defines it using the words quoted above.

step back" from both the U.S.-Jordan FTA (negotiated and approved during a hiatus when TPA/fast-track authority had expired), and from U.S. unilateral trade preference programs such as the Generalized System of Preferences (GSP); and (4) "completely exclude obligations for governments to meet such international standards as worker rights."[3] The issue of including enforceable core labor standards as a principal negotiating objective also reflects a strategy to change the way labor interests are mirrored in trade agreements by tightening the blueprint for them.

Opponents argue that provisions in FTAs negotiated under the current TPA/fast-track authority: (1) are the strongest labor provisions attached to FTAs to date; (2) are the product of bilateral negotiation; and (3) both depend on and reflect mutual agreement by negotiating countries over which provisions to include. Opponents also argue: (4) that enforceable core labor standards would raise sovereignty issues.

This report examines the issues raised by labor advocates and responses by opponents. It does so in the larger context of how and where enforceable labor provisions in TPA/fast-track authority and the trade agreements negotiated under them intersect with global labor issues. Thus, it first identifies the stakeholders who care (positively or negatively) about enforceable labor provisions, and their positions on the issue. After that, it: (1) tracks the enforceable labor provisions in TPA/fast-track laws and the FTAs they have spawned; (2) presents some legislative options for new TPA/fast-track provisions relating to enforceable labor provisions; and (3) sets out arguments for and against enforceable core labor standards from the perspective of the parties that could be affected by the standards. Finally, it looks at possible outcomes and implications of the various legislative options.

Which Set of Core Labor Standards?

As mentioned, labor advocates are proposing that renewed TPA/fast-track authority include, as a principal negotiating objective for trade agreements, a handful of "enforceable" "core labor standards," or "internationally recognized worker rights."

The terms "internationally recognized worker rights" or "core labor standards" are technically defined in separate ways, by U.S. Trade law (the *Trade Act of 1974, Sec. 507*), and the International Labor Organization (ILO, a United Nations organization).[4] Both definitions are almost identical, and share four standards or rights: (1) the right to organize, (2) the right to bargain collectively, (3) prohibition of forced labor, and (4) protections for child labor including the "worst forms of child labor"[5] They differ on the fifth standard. U.S. law identifies it as: (5) labor standards

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[3] See, for example, *U.S. Chile Free Trade Agreement, Report of the Labor Advisory Committee for Trade Negotiations and Trade Policy (LAC)*, February 28, 2003, p. 3. (The LAC consisted of 58 members of various unions.)

[4] For the ILO definition of "core labor standards" and a table of countries that have signed onto each, see the ILO table of "Ratifications of the Fundamental human rights Conventions by country" at [http://www.ilo.org/ilolex/english/docs/declworld.htm] which includes direct links to the texts of each core labor standard.

[5] The "worst forms of child labor" include the employment of children for purposes (continued...)

pertaining to minimum wages, maximum hours, and occupational safety and health. ILO conventions define it as: (5) freedom from employment discrimination.[6]

In recent years these terms have become somewhat confusing because the current TPA/fast-track law included in the *Trade Act of 2002* and trade agreements negotiated under it have adopted the U.S. list of "internationally recognized worker rights" as the definition of the term "core labor standards." Consequently, this report will use the term "core labor standards" to refer to either list, and will mention "ILO core labor standards," "U.S. internationally recognized worker rights," or "U.S. list" only when referring to standards defined by either specific source.

Who Cares About Enforceable Core Labor Standards, and Why?

Labor Advocates

Labor advocates appear to have two objectives in promoting some type of enforceable core labor standards — one international, and the other domestic.

Internationally, the objective of labor advocates seemingly is humanitarian: to promote the protection of workers around the world, particularly those in developing countries, where global investment converges to take advantage of cheap labor. In such countries adults or even children may have to work long hours, under unhealthy and unsafe conditions, with few personal or hygienic freedoms, for low pay. Moreover, they may not be permitted the basic right to form unions and bargain collectively with their employers to improve those conditions.[7]

Domestically, the objective of labor advocates is seemingly more economic: to help "level the playing field "between U.S. and foreign workers, so that U.S. workers can compete with those in developing countries on a more equitable basis. A more equitable playing field, they argue, would provide at least some incentive for businesses to find ways to remain and/or expand in the United States instead of looking for ways to "offshore" parts of their operations to countries where labor costs are cheaper. Estimates on U.S. jobs "lost" to international trade and offshore outsourcing are hard to come by. However, jobs at risk have expanded from blue collar to white collar and from the manufacturing to high end service sector and research and development jobs, and now include, in addition to call center and data

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[5] (...continued)
including prostitution, pornography, drug trafficking, armed conflict, and forced labor.

[6] The *Trade Act of 1974* refers to the U.S. list as "internationally recognized worker rights." The ILO refers to its list as "core labor standards." The current TPA authority in the *Bipartisan Trade Promotion Authority Act of 2002*, Title XXI of the *Trade Act of 2002*, combines the ILO name and the U.S. list, defining the U.S. list as "core labor standards."

[7] For a summary on working conditions in various countries, see the State Department's *Country Reports on Human Rights Practices*, updated yearly. Each year the volume updates reports on worker rights conditions in many countries around the world.

entry jobs, higher skill professional jobs in fields such as engineering, computer chip design, nanotechnology, and medical test analysis, that have become important in the knowledge-based economy.

Business Groups

Opposite labor advocates are many business groups whose main objective is typically to support the passage of TPA/fast-track authority in order to facilitate the expansion of U.S. multinational corporations abroad — their most important avenue for continued growth. Both TPA/fast-track authority and trade agreements typically include many protections for investors.

For eight years between 1994 and 2002, however, the issue of whether or not to include any kind of enforceable labor provisions in trade agreements was a major point of contention in the debate over renewal of TPA/fast-track authority. During that time, some TPA/fast-track renewal bills would have prohibited some types of labor provisions in trade agreements negotiated under them.[8] Ultimately, a 2001 report prepared for the U.S. Trade Representative by the Business Roundtable, made up of chief executive officers from roughly 200 major companies, led the way toward TPA/fast-track renewal in 2002 when it said, "in pursuing labor (and environmental) objectives in trade and investment negotiations, the United States must grant our trade negotiators the flexibility to negotiate." It stressed that "International labor and environmental issues have emerged as the principal stumbling blocks. The Business Roundtable believes. . . that the issue is no longer whether they should be addressed in international trade and investment negotiations, but rather how to address them constructively."[9]

Developing Countries

Developing countries care about how enforceable core labor standards affect (either positively or negatively) their ability to attract investment. In 1996, at the World Trade Organization (WTO) Singapore Ministerial (a meeting of ministers of WTO members), developing countries, which formed a majority there, voted down the U.S. proposal for a committee to study the relationship between worker rights and trade. They did so because they were afraid formation of such a committee could lead to the imposition of enforceable labor standards that could undercut their comparative advantage in low-cost labor. As a result of these votes, the Singapore Declaration (the final document summarizing what they decided) named the ILO as the "competent body to set and deal with" international labor standards.[10] The ILO has as its main enforcement mechanism the tools of consensus and persuasion.

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[8] See CRS Report RL31178, *Trade Promotion Authority (Fast-Track): Labor Issues (Including H.R. 3005 and H.R. 3009)*, by Mary Jane Bolle.

[9] Business Round Table. *The Case for U.S. Trade Leadership: the United States is Falling Behind*, February 9, 2001, p. 4, 20.

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

U.S. Executive Branch

The Administration's position on enforceable labor standards, although it reflects the principal negotiating objectives of the FTA/fast-track laws, has shifted with various presidents and various circumstances. It typically mirrors the interests of the party it represents. The Clinton Administration was supportive of enforceable labor standards in trade agreements. First, it negotiated the labor side agreement to the North American Free Trade Agreement (NAFTA). Then, it pushed for studying the link between worker rights and trade at the 1997 Singapore Ministerial as mentioned above. Next, it promoted worker rights protections at the subsequent 1999 Ministerial in Seattle, Washington. The conference there was cut short for a number of reasons including issues between developed and developing countries.[11] Finally, in 2000, it negotiated the U.S.-Jordan FTA that included enforceable U.S. and ILO core labor standards in the body of the agreement. More recently, the Bush Administration has negotiated bilateral and regional trade agreements with the first labor and the first enforceable labor provisions in the body of a trade agreement. At the same time, however, reportedly, an offer by Peru's President Alejandro Toledo to negotiate enforceable labor standards in the proposed U.S.-Peru FTA was not accepted by the Bush Administration.[12]

Key Labor Provisions in TPA/Fast-Track Laws and in Trade Agreements Negotiated Under Them

Two of the three TPA/fast-track laws passed by Congress over the past 30 years have included labor provisions. These TPA/fast-track laws have facilitated the negotiation and approval of a total of eight FTAs so far, as follows:

Omnibus Trade and Competitiveness Act of 1988: NAFTA

The first TPA/fast-track law to include labor provisions as principal negotiating objectives was the *Omnibus Trade and Competitiveness Act of 1988* (OTCA, P.L. 100-418). Its full list of labor principal negotiating objectives is included in the **Appendix Table 1**. Most importantly, these include the general but vague requirement: " to promote worker rights." This requirement led to the first labor provisions attached to a bilateral or regional trade agreement.[13] The agreement was NAFTA, and labor provisions were included in a labor side agreement, not in the body of the agreement itself. The labor side agreement included: (1) labor provisions with limited enforceability, detailed below; (2) its own dispute resolution procedures for labor issues; and (3) a dollar cap on penalties.

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[11] See WTO Protests in Seattle, 1999. *Free Trade and Globalization*, February 18, 2001.

[12] See Senate, House Floor Action on Peru seen as Doubtful Before Break. *Inside U.S. Trade*, July 21, 2006.

[13] Article XX(e) of the General Agreement on Tariffs and Trade (GATT), 1969, establishing the predecessor to the World Trade Organization (WTO), permits discrimination against products produced by prison labor.

The labor provisions in the NAFTA labor side agreement required that each Party (the United States, Mexico, and Canada) enforce its own labor laws and standards. Only two of the five core labor standards, however, were to be enforceable, and one of these is only partially enforceable. The enforceable standards are for: (a) child labor protections; and (b) two components of labor standards: minimum wages and occupational safety and health. Among standards not enforceable under the NAFTA labor side agreement were a country's own laws protecting the rights of workers to organize and bargain collectively.

No TPA/Fast-Track Law: The Jordan Agreement

After the OTCA, there was an eight-year hiatus when there was no TPA/fast-track law, 1994-2002. During this time, the Administration negotiated and Congress approved the U.S.-Jordan FTA. This agreement included a number of labor provisions in the body of the agreement that were technically enforceable through the agreement's single dispute resolution procedure. Some of these provisions were later echoed in the *Bipartisan Trade Promotion Authority Act of 2002*, discussed below. The most important such labor provision specified that parties "shall not fail to effectively enforce" their own labor laws "through a sustained or recurring course of action or inaction in a manner affecting trade between the parties." Labor laws were defined as the U.S. list, recognizing the right of each party to exercise enforcement discretion. Parties also agreed to: (a) strive to ensure that both ILO and U.S. core labor standards are recognized and protected by domestic law; and (b) recognize the right of each party to establish, modify, and improve its labor standards. For more details on these provisions, see **Appendix Table 2**.

Bipartisan Trade Promotion Authority Act of 2002: Seven Trade Agreements

The second TPA/fast-track law with principal negotiating objectives for labor was the *Bipartisan Trade Promotion Authority Act of 2002* (Title XXI of the *Trade Act of 2002*, P.L. 107-210), which is set to expire July 1, 2007. Its principal negotiating objectives for labor (repeated in **Appendix Table 1**) include: (1) "to ensure that a party does not fail to effectively enforce its own labor laws"; and (2) "to strengthen the capacity of U.S. trading partners to promote respect for core labor standards." Modifying these provisions are others in the list of principal negotiating objectives for labor that offer protections for governments, businesses, and investors: (3) to recognize that parties to a trade agreement retain the right to exercise discretion in the allocation of enforcement resources; and (4) to ensure that labor practices of the parties do not arbitrarily or unjustifiably discriminate against U.S. exports or serve as disguised barriers to trade.

Under this TPA/fast-track authority seven trade agreements have been negotiated and approved.[14] These are with Chile, Singapore, Australia, Morocco,

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[14] CRS reports addressing these FTAs include the following: CRS Report RL31356, *Free Trade Agreements: Impact on U.S. Trade and Implications for U.S. Trade Policy*, by William H. Cooper; CRS Report RS21846, *U.S. Bahrain Free Trade Agreement*, by Martin

(continued...)

Bahrain, Oman, and a single agreement with five Central American Countries (Costa Rica, El Salvador, Guatemala, Honduras, and Nicaragua) and the Dominican Republic, known as CAFTA-DR. In addition, this TPA/fast-track authority has facilitated agreements with two other countries (Peru and Colombia) which are awaiting congressional action.[15] Labor provisions in the various agreements are detailed in **Appendix Table 2**.

For dispute resolution, the principal negotiating objective is (5) "to seek provisions that treat [all — i.e. including those for labor and those for commercial disputes] U.S. principal negotiating objectives equally with respect to the ability to resort to dispute settlement and the availability of equivalent dispute settlement procedures and remedies." In what is seen by labor advocates as a departure from this language, two characteristics stand out. First, each of the seven trade agreements has only one labor provision subject to the agreement's dispute settlement process — *that each country must enforce its own labor laws*. Second, procedures for labor disputes differ in several respects from those for commercial disputes and include a cap on monetary penalties. Opponents, argue, however, that the treatment of labor and commercial disputes is equal because the procedures and remedies are "equivalent."

Figure 1 summarizes, along a time line, the congressionally-passed sequence of TPA/fast-track authorities (in larger type) and the trade agreements negotiated under them (smaller type). Also listed are the key labor provisions in each.

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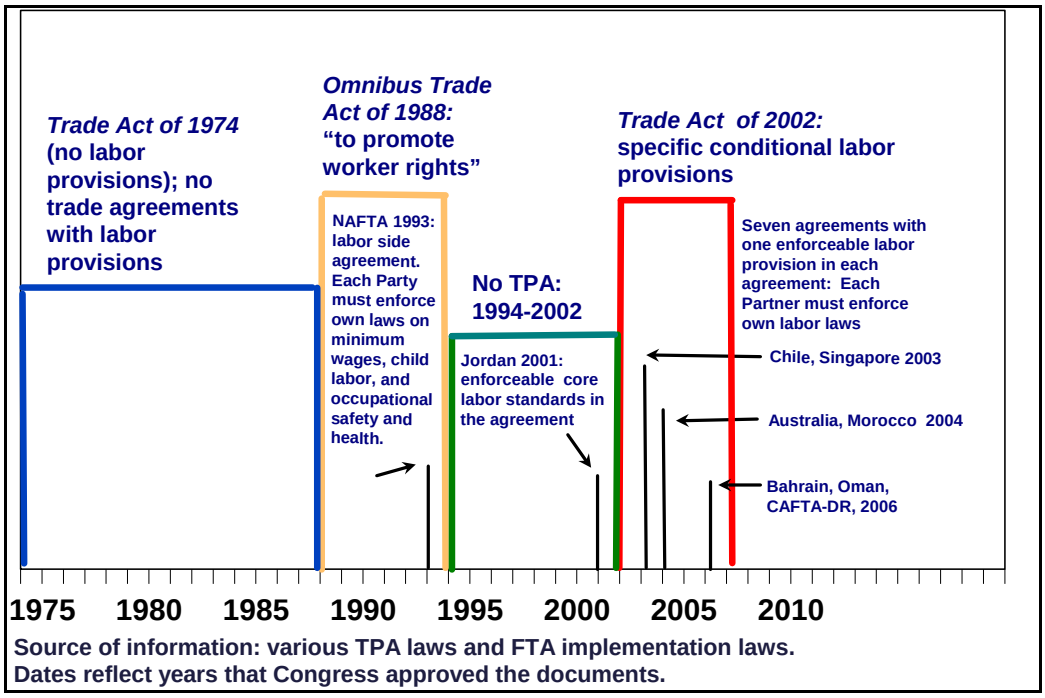
[14] (...continued)
A. Weiss; CRS Report RL31870, *The Dominican Republic-Central America-United States Free Trade Agreement (CAFTA-DR)*, by J.F. Hornbeck; CRS Report RS21560, *Free Trade Agreements with Singapore and Chile: Labor Issues*, by Mary Jane Bolle; CRS Report RL32375, *The U.S.-Australia Free Trade Agreement: Provisions and Implications*, by William H. Cooper; CRS Report RL33328, *U.S.-Oman Free Trade Agreement*, by Mary Jane Bolle; CRS Report RS20968, *Jordan-U.S. Free Trade Agreement: Labor Issues*, by Mary Jane Bolle; CRS Report RS21464, *Morocco-U.S. Free Trade Agreement*, by Raymond J. Ahearn; CRS Report RS22159, *DR-CAFTA Labor Rights Issues*, by Mary Jane Bolle; and CRS Report 97-861, *NAFTA Labor Side Agreement: Lessons for the Worker Rights and FAST-Track Debate*, by Mary Jane Bolle.

[15] See CRS Report RS22521, *Peru Trade Promotion Agreement: Labor Issues*, by M. Angeles Villarreal and Mary Jane Bolle; and CRS Report RS22419, *U.S.- Colombia Trade Promotion Agreement*, by M. Angeles Villarreal.

Figure 1. TPA/Fast-Track Laws and Their Labor Provisions, and FTAs and Their Enforceable Labor Provisions, 1974-2007



Source of information: various TPA laws and FTA implementation laws.
Dates reflect years that Congress approved the documents.

Legislative Options for TPA/Fast-Track Renewal

When discussing legislative options for renewal of the TPA/fast-track authority, it is important to keep in mind several things: First, TPA/fast-track authority represents statutory requirements for presidential *negotiation* of FTAs, rather than requirements for ultimate *provisions* in the FTAs. Second, a number of factors may converge to determine the ultimate labor provisions in FTAs, including: (1) the labor agenda of the negotiating Parties; (2) the ability of the United States to persuade potential partner countries to agree to various provisions; (3) the political makeup of the Congress which must vote the agreements up or down; and (4) the level of acceptance of labor provisions by the business community. While there may be any number of possible legislative options to address the issue of enforceable labor provisions in TPA/fast-track renewal, four are discussed below.

Option 1: No TPA/Fast-Track Renewal

Without the protection of TPA/fast-track authority, with its prohibition on amendments to FTAs and its requirement for limited debates, some argue, foreign countries may be less inclined to negotiate trade agreements with the United States. This is because foreign countries would know that anything they agreed upon could possibly be amended by Congress and sent back for further negotiation. On the other hand, Congress would be more involved in negotiating any agreements the Administration desired to pursue.

Option 2: TPA/Fast-Track Renewal with No Enforceable Labor Provisions

TPA/fast-track renewal that does not include enforceable labor provisions as a principal negotiating objective would likely be viewed by some as a step back from the expiring TPA/fast-track authority. On the other hand, this does not preclude the President from negotiating labor provisions.

Option 3: TPA/Fast-Track Labor Provisions Similar to Those Under the Expiring Authority

Current TPA/fast-track principal negotiating objectives include three key elements plus their modifying qualifications, mentioned earlier: (1) to ensure that a party does not fail to enforce its own labor laws; 2) to strengthen the capacity of U.S. trading partners to promote respect for core labor standards; and (3) to seek provisions that treat [all] U.S. principal negotiating objectives equally with respect to the ability to resort to dispute settlement, the availability of equivalent dispute settlement procedures, and the availability of equivalent remedies.

Option 4: TPA/Fast-Track Labor Provisions Setting out Enforceable Core Labor Provisions as Principal Negotiating Objectives

Option four includes principal negotiating objectives that would go one step beyond those in option 3, and actually list "enforceable core labor standards" as a principal negotiating objective. They could also include language in principal negotiating objectives for dispute resolution procedures to ensure that all principal negotiating objectives (i.e. for both labor and commercial issues) are fully disputable and covered by a single dispute resolution process.

The 2001 Rangel Bill

One possible configuration of option 4 was reflected in a TPA/fast-track renewal bill introduced by Representative Charles Rangel in the 107th Congress in 2001 (H.R. 3019). H.R. 3019 would have included enforceable labor standards defined by a short list of ILO core labor standards as principal negotiating objectives for labor. It would also have included: (a) protections and assistance for governments; and (b) a single set of dispute resolution procedures relating to all principal negotiating objectives.

More specifically, in H.R. 3019, these concepts translated into the following provisions (further detailed in **Appendix Table 3**): (1) to negotiate enforceable rules that provide for the adoption and enforcement of a handful of standards that read like ILO core labor standards; (2) to establish as a trigger for invoking the dispute settlement process either: (a) failure to effectively enforce one's own domestic labor standards; or (b) waiver or derogation from domestic labor standards in order to attract investment or gain a competitive advantage; and (3) a single dispute resolution

procedure for all types of complaints. Its would also have contained the following types of provisions relating to enforcement assistance, flexibility, and monitoring: (a) the right of Parties to exercise enforcement discretion; (b) the right of parties to establish, adopt, or modify their own labor standards consistent with core labor standards; (c) phased-in compliance for least-developed countries; (d) a program of technical assistance; and (e) regular review of adherence to core labor standards.

Arguments For and Against Enforceable Core Labor Standards as a Principal Negotiating Objective

"Should enforceable core labor standards be included as a principal negotiating objective?" is likely to be the main labor issue for Congress to consider in TPA/fast-track renewal. If the answer to this question is "yes," the follow-up question would be, "Which definition or definitions of core labor standards should be included?" While the AFL-CIO and other labor advocates argue in favor of ILO core labor standards or their equivalents, the U.S. Council for International Business (USCIB) argues against this position, saying it could require that U.S. laws be changed to comply. The model of the U.S.-Jordan FTA offers a third option.

In the arguments below, those against enforceable labor standards as principal negotiating objectives are generally in favor of continuing the enforce-your-own labor standards in the current TPA/fast-track authority. The ILO is not represented in this debate. It typically does not take a position on specific legislation including TPA/fast-track renewal. This is because its official role is that of promoting worker rights through technical assistance and consensus building.[16]

General Arguments

For Enforceable Core Labor Standards as a Principal Negotiating Objective. Those in favor of a principal negotiating objective for FTA/fast-track legislation that calls for strong enforceable labor standards in the body of the agreement include the AFL-CIO,[17] Human Rights Watch,[18] and the International Labor Rights Fund.[19]

Human Rights Watch argues that "the debate over TPA/fast-track renewal presents a unique and important opportunity to think creatively on protecting worker rights in the context of trade, learning from the example of the U.S.-Cambodia

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[16] CRS conversation with ILO Washington staff in the Spring of 2006.

[17] CRS conversation with Thea Lee, Policy Director of the AFL-CIO, January 16, 2007.

[18] CRS conversation with Carol Pier, Labor Rights and Trade Senior Researcher, Human Rights Watch, January 16, 2007.

[19] CRS conversation with Bama Althreya, Executive Director of the International Labor Rights Fund, January 16, 2007.

Textile Agreement.[20] The U.S.-Cambodia Textile Agreement rewards compliance with local labor laws and international standards with an increase in export quotas to the United States.

Labor advocates traditionally argue that enforceable core labor standards in trade agreements can define the line between comparative advantage and "social dumping" — competing by denying worker rights. Such denial, they argue, ends up in a "race to the bottom," as workers all over the world compete against each other for scarce jobs. They also argue that labor standards do not interfere with natural comparative advantage in developing countries because labor standards are only one basis for comparative advantage. Others are: (a) abundance of available workforce; (b) skills and education level of the available labor force; (c) infrastructure; (d) level of technological development of the country; and (e) natural resource base.[21]

Against. The USCIB is the American affiliate of the International Chamber of Commerce, the International Organization of Employers, and the Business and Industry Advisory Committee to the OECD. Its membership includes some 300 leading U.S. companies, professional services firms, and associations. It argues for the continuation of the enforce-your-own standard and against enforceable core labor standards as a principal negotiating objective. This is because it supports and promotes an open system of global commerce in which businesses can flourish and contribute to economic growth, human welfare, and protection of the environment.[22]

Those against principal negotiating objectives that call for enforceable core labor standards in trade agreements also typically argue that the enforce-your-own standards model provides a more direct, less encumbered path to economic growth. In addition, most developing countries have few resources to devote to labor standards enforcement, given the many competing needs for use of scarce resources. Meanwhile, once a developing country is more economially developed and relatively near full employment, workers typically have the clout to begin to demand better protection from their governments on their own. Imposing core labor standards on developing countries too soon, some argue, could: (1) interfere with their comparative advantage in cheap labor; and (2) amount to protectionism — the imposition of an additional set of non-tariff barriers — when the purpose of trade agreements is to reduce trade barriers and stimulate trade and investment.

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[20] CRS conversation with Carol Pier, op. cit. *The U.S.-Cambodia Textile Agreement* provides for a 6% minimum annual quota increase for Cambodia textile imports, but allows the United States to raise quota limits up to an additional 18% if working conditions in that sector substantially comply with local labor laws and international standards. Source: *Labor Rights Protections in CAFTA*, A Human Rights Watch briefing paper, October, 2003.

[21] See CRS Report 96-661, *Worker Rights Provisions and Trade Policy: Should They Be Linked?* by Mary Jane Bolle.

[22] CRS communication from Adam B. Greene, Vice President, Labor Affairs and Corporate Responsibility, USCIB, January 18, 2007.

Arguments Related to U.S. Workers

For Enforceable Labor Standards as a Principal Negotiating Objective. Labor advocates argue that a principal negotiating objective calling for enforceable labor standards can help level the playing field for U.S. workers and make them more competitive internationally.

Against. Others argue that there are better ways to help U.S. workers than to try to level the playing field, which, at best, may only slow the offshore movement of some U.S. jobs. A better way, they argue, may be to expand trade adjustment assistance benefits, educational benefits, or other training and retraining programs to cover all job losers and help them transition into new careers. Still others might argue that the need or desire to earn a living is often incentive enough to encourage workers displaced by offshoring to find new employment.

Arguments Related to Foreign Workers

For Enforceable Labor Standards as a Principal Negotiating Objective. Labor advocates argue that in order for workers to become consumers, they must share in the gains of increasing productivity and economic expansion, and that enforceable core labor standards can help promote these gains.

Against. Opponents argue that real gains in standard of living come from rising productivity, not artificially imposed labor standards including minimum wages. In addition some workers do not want enforceable core labor standards because these, they argue, could limit their ability to maximize their earnings through overtime hours.

Opponents also argue that enforceable labor standards are not needed in principal negotiating objectives because other resources besides trade agreements are available to encourage countries to help raise labor standards to protect foreign workers. These include: (1) U.S. trade preference programs which require that beneficiary countries either currently afford or be taking steps to afford their workers internationally recognized worker rights;[23] (2) the ILO which offers technical support to countries to help them adopt and enforce core labor standards; (3) international labor groups which serve as "watchdogs" bringing abusive labor conditions to light in the radio, print, and film/video media; (4) evolutionary forces in countries characterized by workers themselves insisting on better labor conditions as their economies grow; (5) codes of conduct for multinational corporations which provide some level of accountability for corporations doing business in developing countries; and (6) U.S. government grants for improving labor standards and their enforcement through "trade capacity building."

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[23] U.S. trade preference programs include the Generalized System of Preferences (GSP), the Caribbean Basin Economic Recovery Act (CBERA), the Caribbean Basin Trade Partnership Act (CBTPA), the Andean Trade Preference Act (ATPA), and the African Growth and Opportunity Act (AGOA.) In some cases, the U.S. government has withdrawn or is anticipating withdrawal of preferential trade status from countries after an FTA with them has gone into effect.

Sovereignty Issues

For Enforceable Core Labor Standards as a Principal Negotiating Objective. Those in favor of enforceable core labor standards as a principal negotiating objective could argue that the ILO already requires that countries comply with ILO core labor standards as a condition of remaining members in good standing, even if they do not formally approve the ILO conventions.[24]

Against. Those against enforceable core labor standards as a principal negotiating objective might argue that including enforceable ILO core labor standards as principal negotiating objectives could come very close to interfering with national sovereignty. They might also point out that under the ILO, a country's failure to adhere to core labor standards is not punishable with sanctions. Such observers would be likely to support, as an alternative, the enforce-your-own standards in the current TPA/fast-track authority.

Arguments on the Definition of Core Labor Standards

One option for the definition of core labor standards is the ILO definition. Those against this option could be in favor of the U.S. definition of "internationally recognized worker rights." Still others could be in favor of a more flexible definition that could accommodate a country's compliance with the spirit and/or details of either the ILO or the U.S. definition, or both.

For Using the ILO Definition of Core Labor Standards. The AFL-CIO is strongly in favor of enforceable ILO core labor standards as a principal negotiating objective, arguing that the ILO conventions are more current than U.S. internationally recognized worker rights.[25] Human Rights Watch, while not arguing for either ILO core labor standards or U.S. internationally recognized worker rights by name, argues that the definition of core labor standard must include employment discrimination (which is in the ILO but not the U.S. definition.)

Against. If the ILO definition is adopted, foreign governments could hold existing U.S. labor laws up to scrutiny, arguing that they don't totally comply with ILO Core Labor Standards. In fact, the United States has ratified only two conventions (one on forced labor and one on the worst forms of child labor).[26] Accordingly, the USCIB argues that many U.S. labor laws would need to be changed to come into compliance with the ILO definition of core labor standards. U.S. law would particularly need to be amended, the USCIB argues, in such areas as forced labor, minimum age for employment, and employment discrimination. This conclusion was reached through a number of studies by the presidentially appointed Tripartite Advisory Panel on International Labor Standards (TAPILS) — a research

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[24] *About the Declaration* (on Fundamental Principals and Rights at Work). ILO website at [http://www.ilo.org].

[25] CRS conversation with Thea Lee, op. cit.

[26] See ILO table of ratifications at [http://www.ilo.org/ilolex/english/docs/declworld.htm].

group made up of USCIB as a representative of business, the AFL-CIO representing labor, and the U.S. government.[27]

Another Option: the U.S.-Jordan FTA Approach. The enforceable labor provisions in the Jordan FTA (included in **Appendix Table 2**), negotiated and approved when there was no TPA/fast-track coverage, represent a third option for the definition of core labor standards. The Jordan FTA carries what many observers consider the strongest labor provisions yet. All labor provisions are located in the body of the agreement and all are fully enforceable.[28] Under the U.S.-Jordan FTA, Parties agree to: (1) Reaffirm obligations under the ILO and strive to ensure that both these labor principles and "internationally recognized worker rights" are recognized and protected by domestic law. Parties also: (2) agree to not fail to effectively enforce their own labor laws in a manner that affects trade between the Parties; (3) agree to strive to ensure that they do not waiver or derogate from their own labor laws in order to encourage trade with the other party; (4) recognize the right of each party to establish, adopt, or modify its labor laws and regulations, and strive to ensure that its laws provide for labor standards consistent with [U.S. defined] internationally recognized worker rights; and (5) recognize that each party retains enforcement discretion with respect to other matters deemed to have higher priority.

Others argue that while the dispute resolution procedures for the Jordan agreement do not preclude a broad array of sanctions for non-compliance, most of the obligations in the Jordan agreement are "hortatory" or strongly urged rather than mandates. Thus, there is only one obligation that may be enforced, and a party wishing to complain over the existence and administration of labor laws would need to make the more difficult case that government conduct "severely distort[s] the balance of trade benefits" or "substantially undermine[s] fundamental objectives of [the] Agreement."[29]

Possible Outcomes and implications

Whether TPA/fast-track is renewed, and whether the negotiation of enforceable core labor standards is included in any such renewal, international trade is likely to continue to expand in both volume and complexity. If TPA/fast-track renewal is proposed and debated, the issue of enforceable core labor standards is likely to remain important to labor advocates, business groups, the U.S. government, and foreign governments, for various reasons, as efforts are made to find a compromise position.

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[27] CRS communication from Adam B. Greene, op. cit.

[28] However, in anticipation of and just prior to congressional floor consideration of the Jordan agreement, the U.S. Ambassador from Jordan Marwan Muasher and the U.S. Trade Representative Robert Zoellick, exchanged letters agreeing to resolve any disputes that might arise without resort to sanctions.

[29] See Article 17(1)(a)(iii) of the U.S.- Jordan FTA. This is often referred to as a "non-violation" case.

If enforceable core labor standards were to be adopted as a principal negotiating objective in TPA/fast-track authority, and if enforceable core labor standards were then to be negotiated into trade agreements approved by Congress, the inclusion of the enforceable standards could move TPA/fast-track authority along its evolutionary path to a new level of protection for U.S. and foreign workers. Business advocates, however, could continue to hold concerns that such standards could interfere with their economic efficiency.

The economic effects of any enforceable core labor standards in any TPA/fast-track renewal on U.S. workers, foreign workers, and businesses, however, would likely be small, and would depend on a number of factors including: 1) the extent to which enforceable core labor standards were adopted and implemented in trade agreements; 2) the number of trade agreements affected; 3) the magnitude of U.S. trade with countries affected by any such agreements; and 4) the extent of actual enforcement of any such standards in trade agreements. In addition, the effects from any of these four factors could be dwarfed by any shifts in the value of the dollar that might occur relative to other currencies.

If enforceable core labor standards were to be included in any renewed TPA/fast-track authority and were then to be included in trade agreements negotiated thereunder, many challenges would remain with regard to enforcement. Foreign governments typically have many competing needs for scarce resources besides protecting the health and safety of their workers. In addition, the Office of the U.S. Trade Representative and the Commerce Department, working together to process trade disputes, would have to choose which disputes to pursue in order to make the best use of scarce agency resources. If core labor standards were to be enforced, businesses would then have to face a decision as to what impact, if any, this would have on their investment decisions.

If enforceable core labor standards should be adopted as a principal negotiating objective in TPA/fast-track legislation, whether or not the United States would need to make any changes to its labor laws could depend on which definition of core labor standards were to be adopted. It is likely that if "enforceable core labor standards" were to be identified as a principal negotiating objective, they would be defined in such a way that no changes in U.S. law might be required.

If TPA/fast-track authority is not renewed, or if it should be renewed without enforceable core labor standards, a number of ways remain to promote labor standards and protect worker rights. These include standards currently incorporated into U.S. trade preference programs; continuing efforts of the ILO to promote core labor standards; the efforts of various labor advocates and international labor "watchdog" groups; economic development forces in various countries which eventually lead to protections of the rights of workers; codes of conduct guiding the actions of corporations in protecting the rights of international workers; and U.S. government "trade capacity building" grants which help to improve labor standards in developing countries.

Appendix Table 1. Worker Rights Provisions in TPA/Fast-Track Authority, 1974-2007

Year	TPA/Fast-Track Authority	Worker Rights Provisions in Principal Negotiating Objectives	Agreements Approved Under this TPA/Fast-Track Authority and Approval Year
1974-1988	Trade Act of 1974 (P.L. 93-68) as amended ultimately expiring January 3, 1988	No worker rights provisions.	U.S.-Israel Free Trade Agreement (FTA), 1985 U.S.-Canada FTA,1988
1988-1993	Omnibus Trade Act of 1988 (P.L. 100-418) as amended, ultimately expiring December 31, 1993	Sec. 1101, PRINCIPAL NEGOTIATING OBJECTIVES, specifies worker rights in principal negotiating objectives: (a) to promote worker rights; (b) to secure a review of the relationship of worker rights to General Agreement on Tariff and Trade (GATT, the predecessor to the World Trade Organization -WTO) articles; (c) to ensure that the benefits of the trading system are available to all workers; and (d) to adopt as a principle of the GATT that the denial of worker rights should not be a means for a country of its industries to gain competitive advantage in international trade.	North American Free Trade Agreement (NAFTA), 1993
1994-2002	None	None	Jordan, 2001
2002-2007	Trade Act of 2002 (P.L. 107-210, set to expire July 1, 2007)	Sec. 2102(a) OVERALL NEGOTIATING OBJECTIVES for Labor: (6) to promote respect for worker rights consistent with core labor standards of the ILO. Sec. 2102 (b) (11) PRINCIPAL NEGOTIATING OBJECTIVES for Labor: (A) To ensure a party does not fail to effectively enforce its own labor laws; [BUT] (B) To recognize that parties to a trade agreement retain the right to exercise discretion and make decisions regarding the allocation of enforcement resources; (C) To strengthen the capacity of U.S. trading partners to promote respect for core labor standards; [BUT] (G) To ensure that labor practices of the parties do not arbitrarily or unjustifiably discriminate against U.S. exports or serve as disguised barriers to trade. Sec. 2102(b)(12) DISPUTE SETTLEMENT AND ENFORCEMENT: (G) To seek provisions that treat U.S. principal negotiating objectives equally with respect to — (i) The ability to resort to dispute settlement; (ii) The availability of equivalent dispute settlement procedures; and (iii) The availability of equivalent remedies. Sec. 2102(b)(17) WORST FORMS OF CHILD LABOR: to seek commitments by parties to trade agreements to vigorously enforce their own laws prohibiting the "worst forms of child labor" [pertaining to use in such things as war, drug trade, trafficking, or pornography].	Free Trade Agreements with: Chile, 2003 Singapore, 2003 Australia, 2004 Morocco, 2004 Bahrain, 2006 Oman, 2006 Central America and the Dominican Republic (known as CAFTA-DR), 2006

Appendix Table 2. Key Labor Provisions in FTAs Negotiated Under Various TPA/Fast-Track Laws

TPA/Fast-Track Authority	Free Trade Agreement or Partner Country	Enforceable Labor Provisions and Their Location
Omnibus Trade Act of 1988	North American Free Trade Agreement (NAFTA)	In LABOR SIDE AGREEMENT: The only enforceable labor provision is for a party's failure to enforce its own laws relating to child labor, minimum wage, or occupational safety and health where the violation is trade-related and covered by mutually-recognized labor laws. DISPUTE SETTLEMENT PROCEDURES: The labor side agreement has its own dispute settlement procedures with lower maximum penalties than are in the agreement itself.
No TPAS Authority	Jordan	In the BODY OF THE AGREEMENT : (Technically all provisions are enforceable; although an exchange of letters between the U.S. and Jordanian governments agreed to resolve any potential disputes without resorting to sanctions.) LABOR PROVISIONS: Parties: 1. Agree to not to fail to enforce their own laws, through a sustained or recurring course of action or inaction, in a manner affecting trade between the Parties; but retain the right to exercise discretion in that enforcement; 2. Reaffirm obligations under the International Labor Organization (ILO) and strive to ensure that these labor principles and "internationally recognized worker rights" are recognized and protected by domestic law; 3. Recognize that it is inappropriate to encourage trade by relaxing domestic labor laws. Therefore, the parties strive to ensure they do not waive or derogate from such laws in order to encourage trade with the other party; 4. Recognize the right of the other party to establish its own labor standards and adopt or modify its labor laws and regulations accordingly; and to strive to ensure that those laws are consistent with the U.S. definition of core labor standards. 5. Recognize that cooperation between them provides enhanced opportunities to improve labor standards. DISPUTE SETTLEMENT PROCEDURES: The same procedures apply to all agreement provisions equally.
Trade Act of 2002	Free Trade Agreements with: Chile Singapore Australia Morocco Bahrain Oman Central America and the Dominican Republic (known as CAFTA-DR)	In the BODY OF THE AGREEMENT: THE ONLY LABOR PROVISION THAT IS ENFORCEABLE UNDER DISPUTE SETTLEMENT PROCEDURES IS: All parties: 1. Agree to not to fail to enforce their own laws, through a sustained or recurring course of action or inaction, in a manner affecting trade between the Parties; but retain the right to exercise discretion in that enforcement. DISPUTE SETTLEMENT PROCEDURES: Labor (and environment) provisions have some different dispute settlement procedures with a lower maximum fines and/or sanctions.

Appendix Table 3. Enforceable Labor Provisions Included in H.R. 3019 (Rangel, 107th Congress)

TPA/Fast-Track Authority	Enforceable Labor Provisions
H.R. 3019 (Comprehensive Trade Negotiating Authority Act of 2001)	Sec. 2(d)(1). PRINCIPAL NEGOTIATING OBJECTIVES FOR BILATERAL TRADE AGREEMENTS: (1) To include enforceable rules that provide for the adoption and enforcement of the following core labor standards: the right of association, the right to bargain collectively, and prohibitions on employment discrimination, child labor, and slave labor; (2) To establish as the trigger for invoking the dispute settlement process with respect to the obligations above: (a) failure to effectively enforce one's own domestic labor standards through a sustained or recurring course of action or inaction, in a manner affecting trade or investment; or (b) waiver or derogation from domestic labor standards in order to attract investment, inhibit exports, or otherwise gain a competitive advantage; Recognizing that: (A) Parties retain the right to exercise discretion regarding investigatory, prosecutorial, regulatory, and compliance matters and to make decisions regarding the allocation of resources to enforcement with respect to other labor matters determined to have higher priorities [same as in *Trade Act of 2002*]; and (B) Parties retain the right to establish their own domestic labor standards, and to adopt or modify accordingly labor policies, laws, and regulations, in a manner consistent with the core labor standards identified in (1) above. (3) To provide for phased-in compliance for least-developed countries comparable to mechanisms used in other agreements; (4) To create a work program to provide guidance and technical assistance to [Parties] in strengthening their labor laws and regulations and commitments for market access incentives for least developed [Parties] to improve adherence and enforcement of core labor standards; (5) To provide for regular review of adherence to core labor standards; and (6) To create exceptions from obligations under the ... agreements for products produced by prison or slave labor and products produced by child labor; and for actions taken consistent with and in furtherance of recommendations made by the ILO. DISPUTE SETTLEMENT PROCEDURE (7) To provide for a single effective and expeditious dispute settlement mechanism and set of procedures that applies to all ... agreements.