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Trade Promotion (Fast-Track) Authority: Summary and Analysis of Selected Major Provisions of H.R. 3005

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Summary

A major trade issue in the 107th Congress is whether or not Congress will approve authority for the President to negotiate trade agreements and submit the agreements for implementation under expedited legislative procedures. This authority, commonly called “fast-track authority” or “trade promotion authority” (TPA), lapsed in 1994. The House and the Senate Finance Committee each approved versions of a fast-track/TPA bill (H.R. 3005) in December 2001.

Congressional debate on fast-track/TPA legislation arrives at a period of slow economic growth for many of the world’s major economies. U.S. bilateral, regional, and multilateral trade agreements could fall under the proposed TPA legislation.

The versions of H.R. 3005 approved by the House and by the Senate Finance Committee are similar to each other in their basic structure and in most provisions. The Senate Finance Committee version, however, gives more attention to small businesses, trade remedy laws, and trade disputes. Both versions have many similarities to prior fast-track law, but they depart by giving more importance to labor, the environment, and other non-traditional priorities as part of U.S. trade policy. Also, for the first time, they would establish a Congressional Oversight Group to monitor trade negotiations more closely than before.

Both versions of H.R. 3005 include more detailed requirements on labor than under prior law. They are similar to each other with the exception of a required labor rights report. There is also serious disagreement in Congress on whether or not to attach a trade adjustment bill (S. 1209) to H.R. 3005.

Both versions of H.R. 3005 give greater attention to environmental matters than previously. One shared negotiating objective is to ensure that parties do not fail to effectively enforce environmental laws and to make such trade-related failures subject to dispute settlement. The bills also seek language in trade agreements to discourage parties from weakening environmental laws to encourage trade.

With regard to agriculture, both versions state that the principal negotiating objective is to obtain competitive, fairer, and more open market opportunities for U.S. agricultural exports. In addition to consultation requirements for import-sensitive products, both bills establish additional requirements for consultation with the agriculture committees.

Under H.R. 3005, either house could limit the deadline for trade agreements eligible for expedited implementation by adopting an extension disapproval resolution. Also, if required consultations do not occur, or if an agreement fails to promote required objectives, Congress could withdraw expedited implementation through procedural disapproval resolutions. These and other restrictions might also be enforced through other procedures available under general rules in each House.

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Trade Promotion (Fast-Track) Authority: Summary and Analysis of Selected Major Provisions of H.R. 3005

One of the major trade issues in the 107th Congress is whether Congress will approve legislation that sets conditions under which the President can negotiate certain trade agreements and submit the agreements for approval and implementation under expedited legislative procedures. Under this authority, formerly called “fast-track authority” and now often called “trade promotion authority” or “TPA,” Congress agrees to consider legislation to implement certain trade agreements under a procedure with mandatory deadlines, no amendment, and limited debate; while the President is required to notify and consult with Congress at various stages of negotiation.

The President was granted fast-track authority almost continuously from 1974 to 1994. In 1994, the authority lapsed and has not been renewed. Under the current absence of fast-track authority, if the Administration concludes a trade agreement that requires congressional action, implementing legislation will be considered under normal legislative procedures.

This report analyzes a major proposal to renew fast-track authority, H.R. 3005, the Bipartisan Trade Promotion Authority Act of 2001. The long title—“An Act to Extend Trade Authorities Procedures with Respect to Reciprocal Trade Agreements”—highlights the fact that the bill does not grant the President any new authority to negotiate trade agreements, but rather extends to a specified class of trade agreements the eligibility for an implementing bill to be considered under certain expedited procedures. Representative Thomas, Chairman of the House Ways and Means Committee introduced H.R. 3005 on October 3, 2001. The House passed the bill on December 6, 2001 by a vote of 215-214 along party lines. On December 18, 2001, the Senate Finance Committee ordered the bill reported with an amendment in the nature of a substitute (S.Rept. 107-139) on an 18-3 vote. The full Senate might take up the bill before the Memorial Day recess.

The purpose of this report is to review major selected provisions of H.R. 3005. The report notes differences between the House-passed version and the Senate Finance Committee-reported version. It also includes comparisons between H.R. 3005 and the Omnibus Trade and Competitiveness Act of 1988 (1988 Trade Act; P.L. 100-418), under which fast-track procedures were last approved.

The report begins with an overview of the U.S. trade policy agenda and what role TPA plays in trade policy. It then summarizes the major provisions of H.R. 3005 and discusses the labor, environmental, and agriculture provisions in particular. It includes a review of consultation and notification provisions, and concludes with a

discussion of expedited procedures and controls that H.R. 3005 proposes on their use. An Appendix presents expedited procedures for implementing bills for trade agreements (fast-track/TPA procedures) and other procedures included in the bill.

It should be noted that this report focuses on TPA bill H.R. 3005. As a possible vote approaches in the Senate, Members are actively debating whether to amend H.R. 3005 to add a proposal on trade adjustment assistance (such a proposal is discussed in the section of this report on labor). They also might consider amendments to reauthorize the Generalized System of Preferences and the Andean Trade Preferences Act. Looking back, the last approval of fast-track procedures (the 1988 Trade Act) was part of a much larger, omnibus trade bill.

The U.S. Trade Negotiating Agenda and Trade Promotion Authority *

Congressional consideration of trade promotion authority (TPA) legislation and the ensuing debate over U.S. trade negotiating objectives are occurring during a period of growing global economic uncertainty and of a changing international trading system that shape a very active U.S. trade negotiating agenda. As has been the case with previous fast-track trade authority legislation, the congressional debate will likely involve not only whether to grant the President the authority, but also what U.S. trade negotiating objectives should be. Members of the 107th Congress are deeply divided over U.S. trade policy objectives, such as to what degree, if any, should non-trade issues (for example, labor and environment) be included in trade agreements.

World Economic Slowdown and Changes in the International Trade System

Many of the world's major economies have been experiencing slow economic growth or recessions. After a decade of robust growth and low unemployment rates, the U.S. economy shifted downward with increasing unemployment over the near term. The European economies have endured slow economic growth, while Japan continues to suffer its worst economic slowdown of the post-World War II period. Furthermore, the economic problems of the industrialized countries have spilled over to developing countries that rely on them as export markets. The Bush Administration and other supporters of TPA have argued that the United States must take the lead in trade negotiations to spur economic growth and that TPA is necessary before trade partners will negotiate with the United States seriously. This argument is also present in the committee reporting language accompanying both versions of H.R. 3005.

The international trading system is undergoing change by moving beyond multilateral negotiations among developed nations. For example, an increasing number of developing countries are active participants in the international trading system. One hundred of the 142 members of the World Trade Organization (WTO)

*Prepared by William H. Cooper; Specialist in International Trade and Finance; Foreign Affairs, Defense, and Trade Division.

are developing countries; 30 of them are classified as least-developed countries. These countries have become more assertive in pressing their agendas, which frequently differ from those of the United States and other developed countries. Furthermore, China's recent entry into the WTO, gives more weight to the developing country agenda. The former communist countries of Central and Eastern Europe and of the former Soviet Union are also integrating themselves into the international trading system. In addition, the proliferation of bilateral and regional trade agreements is changing the international trading system. According to the WTO, about 100 bilateral and regional agreements have been established since 1995.

The international trade structure is also changing in that a growing number of activities are considered to be "trade" or "trade-related." Such activities include intellectual property rights protection, foreign investment, services, and government regulations. These changes in the international trading system will require new trade agreements to be negotiated, and the Bush Administration has argued that it needs TPA now so that the United States can ensure that the changing international trade system reflects U.S. interests.¹

U.S. Trade Negotiating Agenda and TPA Legislation

The economic slowdown in the United States and other countries and the changes in the international trading system are shaping the U.S. trade negotiating agenda. That agenda is reflected in the pending TPA legislation and can be divided into three overall goals:

- to create favorable conditions for U.S. exporters by eliminating tariff and nontariff barriers;
- to protect domestic industries from the adverse effects of unfair foreign trade practices and to provide temporary relief to domestic industries adjusting to rapid increases in fairly-traded imports; and
- to ensure that international trade rules, that are used to meet the first two goals, apply to all relevant economic activities.

These three goals have guided U.S. negotiators in previous trade negotiations and will likely do so in upcoming negotiations. The goals are reflected in the negotiating objectives set out in the version of H.R. 3005 passed by the House and the version reported out by the Senate Finance Committee. (The negotiating objectives are discussed further in other sections of this report.)

U.S. trade negotiators are pursuing the agenda in multilateral negotiations in the WTO and in negotiations to establish regional and bilateral trade areas. These negotiations cut across geographical areas and economic activities. Any agreements reached from these negotiations will probably require congressional approval before

¹ Zoellick, Robert B. Falling Behind on Free Trade. *The New York Times*. April 14, 2002.

implementation. TPA would provide that implementing legislation be considered without amendment, thereby increasing prospects for passage.

On November 14, 2001, in Doha, Qatar, trade ministers from 142 WTO-member countries agreed to launch wide-ranging multilateral negotiations. The new negotiations will cover a broad range of issues, such as agricultural trade liberalization, trade in services, industrial tariffs, trade-related intellectual property rights, and rules on antidumping and countervailing duty investigations. The negotiations are tentatively scheduled to be completed by 2005.

In the meantime, the United States has been negotiating bilateral and regional free trade agreements and will likely begin negotiations on even more agreements. At the end of 2000, the United States launched negotiations with Singapore (November 2000) and Chile (December 2000), to establish bilateral free trade areas. Such arrangements would lead, at a minimum, to the elimination of tariffs in bilateral merchandise trade, the reduction or removal of other barriers in trade in goods and services, and concessions on treatment of foreign investments. While negotiators have confronted stumbling blocks in both sets of negotiations, the agreements are expected to be reached in mid to late 2002. Similarly, the United States and 33 other countries of the Western Hemisphere agreed in December 1994 to begin negotiations to establish a Free Trade Area of the Americas (FTAA) by 2005. In addition, the Bush Administration has expressed the goal of exploring the possibility of establishing a free trade agreement with the countries of Central America, and USTR Zoellick has indicated the Administration will consider forming a free trade area with South Africa. Australia, New Zealand, Egypt, and other countries have also either expressed strong interest in forming free trade areas with the United States or have been suggested as potential FTAs partners.

Committee reporting language for both versions of H.R. 3005 explicitly states that the authority will be applicable to all trade agreements that are reached before June 1, 2005 (or before June 1, 2007, if the authority is extended) and that meet the other conditions for such authority. In addition, unlike the 1988 fast track authority, no distinction is made between multilateral agreements, on the one hand, and regional and bilateral agreements on the other hand, in terms of the applicability of the TPA. Furthermore, section 6 of both bills recognizes that negotiations are already underway with Chile, Singapore, and the FTAA partner-countries and waives certain notification requirements in anticipation of such agreements being concluded shortly. The legislation is thus designed to apply to both the present and future U.S. trade negotiating agenda.

Summary of Major Provisions*

The provisions of H.R. 3005, like those of many fast-track/trade promotion authority bills, can be considered in five parts. First, they outline trade negotiating objectives. Second, they set conditions under which Congress will consider

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implementation and approval of trade agreements under expedited procedures. Third, they set out notification and consultation requirements for the executive branch. Fourth, they specify actions related to implementation, such as documents the President must submit. Fifth, they might include other, related provisions.²

Although the executive branch conducts the actual negotiations, Congress, acting under the section on trade negotiating objectives, communicates to negotiators the goals that it expects a trade agreement to achieve. Similar to the 1988 Trade Act, H.R. 3005 outlines these negotiating objectives as “overall negotiating objectives” and as “principal negotiating objectives,” but unlike before, H.R. 3005 adds a third category called “promotion of certain priorities.”

“Overall negotiating objectives” are usually broad objectives or goals. The Trade Act of 1988 had three overall objectives that are included in both versions of H.R. 3005: market access, elimination of trade barriers, stronger international trading disciplines. Both versions of H.R. 3005 add four more overall objectives: economic growth, mutually supportive trade and environmental policies, respect for worker rights, and provisions to discourage weakening environmental or labor laws to encourage trade. The Senate Finance Committee version has one more overall objective (not in the House version): fair and equal treatment for small businesses. H.R. 3005's enlargement of the section on overall objectives from prior law indicates that the purpose of trade negotiations is broadened beyond market opening to include other policies such as labor rights and environmental protection.

“Principal negotiating objectives” usually are more defined goals or issues. The House version of H.R. 3005 has 13 principal objectives: trade barriers and distortions to trade, trade in services, foreign investment, intellectual property rights (IPR), transparency, anti-corruption, improvement of the WTO and multilateral trade agreements, regulatory practices, electronic commerce, reciprocal trade in agriculture, labor and the environment, dispute settlement and enforcement, and WTO extended negotiations. The Senate Finance Committee version includes those 13 objectives and adds an objective on border taxes.³ The House and Senate language on the 13 shared objectives is almost identical, although there are some differences in three objectives: foreign investment, agriculture, and dispute settlement.

A number of the principal objectives in H.R. 3005 were also in the 1988 Trade Act and are becoming common in trade negotiations—trade barriers, services, agriculture, and intellectual property rights, for example. However, some principal objectives are different in H.R. 3005 and the 1988 Trade Act. For example, H.R. 3005 (but not the 1988 Trade Act) includes principal objectives on anti-corruption, regulatory practices, and electronic commerce. The 1988 Trade Act (but not H.R.

² For a detailed comparison of the House approved version of H.R. 3005 and Senate Finance Committee-reported version, see CRS Report RL31249, *Trade Promotion (Fast-Track) Authority: A Comparison of H.R. 3005 as Approved by the House and Reported by the Senate Finance Committee*, by Lenore Sek.

³ The objective on border taxes is to obtain a revision of WTO rules on the treatment of border adjustments to redress the disadvantage to countries that depend on direct taxes for revenue rather than indirect taxes.

3005) included principal objectives on developing countries, current account surpluses, and access to high technology. On the controversial issues of labor and the environment, the 1988 Trade Act had a principal objective on “worker rights,” and H.R. 3005 has a principal objective on “labor and the environment,” but these objectives (and related language in other principal objectives) are substantially different and are discussed further in later sections of this report.

H.R. 3005 also includes a third section under negotiating objectives (“promotion of certain priorities”) that was not in the 1988 Trade Act. This section directs the President to take actions to promote certain priorities. Beginning in the 1990s, many fast-track bills added a third section under negotiating objectives in an attempt to address the role of labor and the environment in trade negotiations. In some cases, this third section was to separate labor and the environment from overall and principal objectives. In other cases, it was to give detailed direction to the executive branch on action to take related to the negotiations. For H.R. 3005, the Senate Finance Committee explains: “While these priorities are not formally described as negotiating objectives, their importance as statements of the trade policy of the United States is equal to the importance of the general and specific objectives set forth in subsections [on overall and principal objectives].”⁴ Nine of the 12 actions listed under “promotion of certain priorities” in H.R. 3005 involve labor and the environment. (These are discussed in more detail later.) The other actions would require the President to preserve the right of the United States to rigorously enforce its trade laws, report to the revenue committees on the effectiveness of a trade remedy, and seek consultation with other countries on how currency movements affect trade.

After specifying negotiating objectives, H.R. 3005 sets out conditions under which trade agreements would be considered under the bill’s provisions. Those conditions are almost identical in both versions and are similar to past law in most respects. One condition is that a trade agreement (tariff or nontariff) must be entered into by a given deadline (June 1, 2005), with a possible two-year extension if specified conditions are met. In the case of certain tariff agreements, the Congress delegates to the President the authority to enter into those agreements and implement the tariff changes by proclamation; no implementing legislation is necessary.

In the case of all other trade agreements, H.R. 3005 would allow the President to enter into those agreements and submit them for approval and implementation under expedited procedures (mandatory deadlines, limited debate, no amendment), as long as specified conditions are met. For expedited procedures (called “trade promotion procedures” in the bill) to apply, the agreement would have to make progress in meeting the overall and principal objectives (this is the same as the 1988 Trade Act), and the President would have to satisfy the consultation requirements. Trade promotion 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 a trade agreement, if changes in law are required to implement the agreement. (The 1988 Trade Act did not have comparable provisions on implementing bills that qualify for expedited procedures.)

⁴U.S. Senate. *Bipartisan Trade Promotion Authority Act of 2002*. Report to accompany H.R. 3005. S. Rept. 107-139. Feb. 28, 2002. p. 36.

The President can negotiate a trade agreement without meeting the above requirements, but in that case, implementing legislation will be considered under the normal legislative process.

H.R. 3005 sets out requirements for the President to notify and consult with Congress at various stages of negotiation. The two versions of H.R. 3005 are similar in many respects and expand on the requirements of the 1988 Trade Act. Of note, H.R. 3005 would establish a new body of congressional trade advisors, the Congressional Oversight Group (COG), which would be created in addition to the current body of congressional trade advisors⁵ and seems intended to be a more active group of official advisors to negotiations. (Consultation and notification requirements are discussed further later.)

The section of H.R. 3005 on actions for implementation is similar to the 1988 Trade Act in many respects. Like prior law, H.R. 3005 would require the President to: (1) notify the House and Senate at least 90 days before entering into the agreement; (2) describe to Congress any changes to law necessary under the agreement (within 60 days of signing the agreement in H.R. 3005); and (3) submit to Congress the agreement, a statement of administrative action, a draft implementing bill, and other specified information. The version reported by the Senate Finance Committee adds reporting requirements on prospective changes to trade remedy laws, both when the President notifies Congress before entering into the agreement and when the President submits the agreement and supporting materials to Congress. As under previous law, there is no deadline for submission of these documents, and expedited legislative procedures would be disallowed if Congress decided that the President did not give notice or consult as required. The version reported by the Senate Finance Committee adds a provision that would allow withdrawal of expedited procedures if the Secretary of Commerce does not transmit to Congress, in a timely manner, a report on the U.S. strategy toward correcting certain WTO dispute findings.

Unlike prior law, both versions of H.R. 3005 would require the President to submit a plan for implementing the trade agreement and request funding in the next budget. They also recognize that TPA might increase trade-related activities for the trade committees and COG members and note that the primary committees of jurisdiction should have adequate staff for these increased activities. The Senate Finance Committee-reported version has two additional sections not found in the House-approved version nor in prior law. The first requires the International Trade Commission to report within one year of enactment on how agreements implemented under expedited legislative procedures in the past have affected the U.S. economy. The second requires the USTR to seek an advocate in the WTO for small- or medium-sized businesses and to report to the revenue committees annually on steps taken to achieve that goal.

⁵ 19 U.S.C. 2101.

Labor-Related Provisions*

The versions of H.R. 3005 that were passed by the House and reported out of the Senate Finance Committee include 13 labor-related provisions. Overall, their requirements are both more detailed and slightly different from those in previous fast-track authority under the 1988 Trade Act.

The expanded labor provisions in H.R. 3005 evolved from concerns that intensified after the North American Free Trade Agreement (NAFTA) went into effect in January, 1994. The next few pages: (a) spell out and compare the labor provisions in the expired fast-track language with those of H.R. 3005; and (b) address related issues for Congress, identifying arguments on both sides.

Labor Provisions of Expired Fast-Track and H.R. 3005 Compared

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

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

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

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

Figure 1 lists all the specific House and Senate provisions within the three categories: overall negotiating objectives, principal negotiating objectives, and the

*Prepared by Mary Jane Bolle; Specialist in International Trade; Foreign Affairs, Defense and Trade Division. For further information, see CRS Report RL31178, *Trade Promotion Authority (Fast-Track): Labor Issues (Including H.R. 3005 and H.R. 3019)*, by Mary Jane Bolle.

“promotion of certain priorities,” which has congressional and administrative oversight provisions.

Figure 1. Labor Provisions in H.R. 3005

Overall Negotiating Objectives

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

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

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

Principal Negotiating Objectives

The principal negotiating objectives in H.R. 3005 relating to labor are:

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

Congressional and Administrative Oversight Provisions (“Certain Priorities”)

Both House and Senate versions of H.R. 3005 have identical Congressional and Administrative Oversight requirements with one exception. The identical provisions are:

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

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

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

The Senate bill [Sec. 2(c)(8)] requires that the President submit to the House Ways and Means and Senate Finance Committees, for any trade negotiations entered into under this Act, a *meaningful* labor rights report on the country with which the President is negotiating, in a time frame determined by the U.S. Trade Representative’s (USTR) Office in consultation with the Chairmen and Ranking Minority Members of the two Committees.

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

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

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

Major Controversies

Congressional debate over TPA labor issues centers primarily on two key issues. One is differing House and Senate versions of a provision requiring labor rights reports. The other issue involves whether or not to amend H.R. 3005 in the Senate, by attaching or linking provisions of S. 1209, which would renew, expand, and reform the Trade Adjustment Assistance (TAA) program.

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

TAA Amendments: Attaching S. 1209 to H.R. 3005.⁶ The second issue is whether or not to attach provisions of S. 1209 to H.R. 3005. Many Senate Democrats have argued that TPA will not get to the floor without an expansion of the

⁶ Information for this section was taken from CRS Report RS21078, *Trade Adjustment Assistance for Workers: Legislation in the 107th Congress*, by Paul J. Graney.

TAA program. This program provides financial and technical assistance to workers and firms to help them adjust to import competition. The White House proposal, offered to the Senate Finance Committee on March 19, 2002, differed on two key issues from S. 1209 (whose provisions are detailed below). First, it excluded TAA benefits for secondary workers and farmers, although the Administration more recently has indicated it will support this proposal. Second, disagreement remains over the Democrats' proposal to provide health insurance benefits to TAA beneficiaries. Republican opponents argue that this would amount to creating a massive new federal entitlement program, according to the *Washington Trade Daily*, April 10, 2002.

S. 1209 was reported by the Senate Finance Committee on February 4, 2002 (S. Report 107-134). On March 19, 2002, the Administration delivered its proposal in bill form (the *Trade Adjustment Assistance [TAA] Reform Act of 2002*) to the Senate Finance Committee. One of two elements of S. 1209 attracting the most discussion is that S. 1209 would combine the old TAA and NAFTA-TAA programs and expand both to reach three new groups. These groups are: (a) all workers who lose their jobs because their plants relocate to foreign countries. (Both the TAA and NAFTA-TAA programs traditionally cover workers who lose their jobs because of increased imports. The NAFTA-TAA program also covers workers who lose their jobs because of a shift in production abroad); (b) secondary workers whose job loss is dependent on the job loss of workers directly affected by trade; and (c) several groups of workers not previously covered by TAA legislation. This third group includes family farmers, ranchers, independent fishermen, taconite workers, truck operators, and others as identified. The Congressional Budget Office estimates that these changes will nearly double the TAA caseload. The provision covering secondary workers would make up about three-fourths of the increase in caseload. Covering shifts in production would make up about one-fifth of the increase.⁷

The second element of S. 1209 that is controversial is the inclusion of premium assistance for health care coverage for TAA recipients. The proposed subsidy would pay 75% of health insurance premiums for eligible workers and temporary Medicaid insurance for certain uninsured individuals. The CBO estimates that this would result in a budget outlay in 2003 of \$262 million. The Administration's proposal would not include health insurance benefits.⁸

The controversial premium assistance provision was not included in the House version of H.R. 3005 or in the House-passed reauthorization of TAA (H.R. 3008). A linkage of S. 1209 to H.R. 3005 in the Senate would aim to garner the support of more Members than would H.R. 3005 alone. In a February 26 speech, Senator Max Baucus, Chairman of the Senate Finance Committee, indicated that TAA is an essential element in a new trade consensus, and remains the only issue under discussion that has the potential to deliver a substantial new bloc of votes to the fast-

⁷ Trade Adjustment Assistance for Workers, Farmers, Fishermen, Communities, and Firms Act of 1001. Report to accompany S. 1209. S. Report. 107-134, February 4, 2002, p. 52.

⁸ *Ibid.*, p. 50, table 1.

track trade bill.⁹ On March 14, 2002, a majority of Senate Democrats signed a letter to Senator Tom Daschle, Senate Majority Leader, supporting the retention in TPA legislation of health care provisions included in S. 1209 as reported.¹⁰

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

On the other hand, some argue, S. 1209 would increase costs significantly. President Bush proposed in his FY 2003 budget (submitted before the *TAA Reform Act of 2002*, which would abolish the NAFTA-TAA program) to extend the TAA and NAFTA-TAA programs. The Administration's FY2003 budget request includes total funding of \$462 for the TAA and NAFTA-TAA programs – an increase of \$46 million over FY2002 funding levels of \$416 million. CBO estimates that the changes in direct spending for the new TAA program for workers under S. 1209, including the health insurance coverage, will result in estimated budget outlays in 2003 of \$996 million.

Environment-Related Provisions*

The House-passed and Senate-reported versions of H.R. 3005 contain several environmental objectives and related provisions, and, overall, give substantially greater consideration to environmental matters than did previous fast-track trade agreement authority under the 1988 Trade Act. In that Act, environmental concerns were addressed only in negotiating objectives regarding trade in services and foreign direct investment. These provisions directed U.S. negotiators, in pursuing stated goals, to

take into account legitimate United States domestic objectives including, but not limited to, the protection of legitimate health or safety, essential security, environmental, consumer or employment opportunity interests and the law and regulations related thereto.

(1988 Trade Act, §§ 1101(b)(9) and (11); 19 U.S.C. §§ 2901(b)(9), (11))

Agreements entered into under this authority were the North American Free Trade Agreement (NAFTA) and the Uruguay Round Agreements which included the establishment of the World Trade Organization (WTO). Despite the lack of explicit

⁹Baucus Stresses TAA's Importance; Signals Minimal Changes Lie Ahead. Inside U.S. Trade. March 1, 2002.

¹⁰Senate Democrats Take Hardline on TAA-Health Care Debate. Inside U.S. Trade, March 15, 2002, p. 36.

*Prepared by Mary Tiemann; Specialist in Environmental Policy; Resources, Science, and Industry Division.

environmental directives in the 1988 Trade Act, environmental concerns were addressed in varying degrees in the NAFTA, the NAFTA environmental side agreement, and certain Uruguay Round Agreements and Ministerial Decisions.

Environmental Objectives. The versions of H.R. 3005, as passed by the House, and as reported by the Senate Finance Committee, include two identical *overall negotiating objectives* on environment. The first objective is “to ensure that trade and environmental policies are mutually supportive and to seek to protect and preserve the environment and enhance the international means of doing so, while optimizing the use of the world’s resources”. The second objective is to seek provisions in trade agreements under which parties “strive to ensure that they do not weaken or reduce the protections afforded in domestic environmental ... laws as an encouragement for trade” (Sections 2(a)(5), (7)).

This second objective parallels language contained in the U.S.-Jordan Free Trade Agreement (FTA) and the NAFTA (Chapter 11, Investment). Both agreements assert that it is inappropriate to encourage trade by relaxing domestic environmental laws and generally state that a party should not waive or otherwise derogate from such measures to attract investment. NAFTA, Article 1114, further provides that a party may request consultations if it considers that another party has done so.

Environmental groups have argued for TPA language that seeks to prevent countries from weakening environmental standards to promote a trade advantage, and the language in both bills appears to respond to that issue. Environmental interests have further called for making such action subject to dispute settlement procedures. Those opposing this proposal by environmentalists have expressed concern that, in doing so, legitimate changes in domestic environmental measures could be subject to challenge by U.S. trading partners. Neither version of H.R. 3005 includes such an objective.

Additionally, both bills contain several identical *principal negotiating objectives* on environment. Perhaps most significantly, Section 2(b)(11) provides that it is a principal negotiating objective “to ensure that a party to a trade agreement with the United States does not fail to effectively enforce its environmental ... laws, through a sustained or recurring course of action or inaction, in a manner affecting trade between the United States and that party.” A further objective is to recognize that parties retain the right to exercise discretion with respect to prosecutorial, regulatory, and compliance matters. These objectives mirror provisions contained in the U.S.-Jordan Free Trade Agreement (FTA) and the NAFTA environmental side agreement. The latter objective goes further than the U.S.-Jordan FTA to clarify the rights of a government to establish its own environmental standards by adding, “no retaliation may be authorized based on the exercise of these rights or the right to establish domestic labor standards and levels of environmental protection.”

Other principal negotiating objectives on environment in both versions of the bill include: strengthening trading partners’ capacity to protect the environment through the promotion of sustainable development; reducing or eliminating government practices or policies that unduly threaten sustainable development; seeking market access for U.S. environmental technologies, goods, and services; and ensuring that

environmental, health or safety policies or practices of the parties do not arbitrarily discriminate against U.S. exports or serve as disguised barriers to trade.

Other Environment-Relevant Objectives. The bills set forth other objectives that have implications for environmental laws and related disputes under trade agreements. These include the objectives on dispute settlement, foreign investment, transparency, and regulatory practices.

Dispute Settlement and Enforcement. The effectiveness of trade agreement obligations is related to the strength of an agreement's dispute settlement process. Environmental interests argue that environmental obligations should be included within trade agreements and that disputes involving these obligations should be treated the same as commercial disputes, including using the same remedies. Some business interests and others favor flexibility in addressing various kinds of disputes. Provisions in both versions of H.R. 3005 parallel the U.S.-Jordan FTA and go beyond NAFTA by calling for the inclusion of an obligation to enforce domestic environmental laws within the texts of trade agreements. The dispute settlement objectives of H.R. 3005, at Section 2(b)(12)(F), call for seeking provisions that treat all principal negotiating objectives equally with respect to the ability to resort to dispute settlement, and to have available equivalent dispute settlement procedures and remedies; thus, the bill envisions that environmental obligations in a trade agreement would be subject to dispute settlement under the agreement.

A further negotiating objective for dispute settlement shared by the House and Senate bills, set forth at Section 2(b)(12)(F), is to seek provisions to impose a penalty upon a party to a dispute that encourages compliance with the agreement and "is appropriate to the parties, nature, subject matter, and scope of the violation, and has the aim of not adversely affecting parties or interests not party to the dispute while maintaining the effectiveness of the enforcement mechanism." H.R. 3005, Section 2(b)(12), thus seeks to make all disputes equally subject to dispute settlement but would provide flexibility in procedures and remedies.

Foreign Investment. Investment provisions have become an environmental issue because of the types of claims that have been brought under NAFTA investment provisions allowing foreign investors to arbitrate disputes with NAFTA parties. In some cases, foreign investors have sought compensation for the negative impacts of government environmental regulations, claiming that the government action is a form of "indirect expropriation" or is "tantamount to expropriation." NAFTA provides that compensation must be equal to the fair market value of the expropriated investment. These NAFTA provisions and related claims have prompted concerns by some that this language may dampen the enforcement of environmental regulations in signatory countries, and that foreign investors may have greater rights under the NAFTA with respect to expropriations by federal, state, or local government in the United States than domestic investors have under the Fifth Amendment Takings Clause.¹¹

¹¹ For further discussion, see CRS Report RS20904, *International Investor Protection: "Indirect Expropriation" Claims Under NAFTA Chapter 11*, by Robert Meltz.

Both versions of H.R. 3005, Section 2(b)(3) in each, appear to attempt to address this concern to some degree, although the bills' provisions differ in several regards. The principal negotiating objectives for investment in each bill seek to reduce barriers to trade-related foreign investment, and to "secure for investors important rights comparable to those that would be available under United States legal principles and practice." The Senate-reported bill further calls for ensuring that U.S. investors in the United States "are not accorded lesser rights than foreign investors in the United States." Both bills call for achieving these objectives by seeking the establishment of "standards for expropriation and compensation for expropriation, consistent with United States legal principles and practice."

The bills also call for negotiators to seek to improve mechanisms used to resolve disputes between an investor and a government through various means, including mechanisms to eliminate frivolous claims. The Senate bill further calls for mechanisms that would in addition deter the filing of frivolous claims; procedures to enhance opportunities for public input into the formulation of government positions; and the establishment of an appellate body to review decisions in investor-to-government disputes and, thus, "provide coherence to the interpretations of investment provisions in trade agreements." In contrast, the House bill calls for negotiators to provide in trade agreements an appellate or "similar" review mechanism to correct "manifestly erroneous" legal interpretations.

Both bills call for negotiators to ensure the "fullest measure of transparency" in investment disputes by: ensuring that requests for dispute settlement are promptly made public, ensuring that proceedings, submissions, findings and decisions are made public; and establishing a mechanism for accepting *amicus curiae* submissions from businesses, unions, and nongovernmental organizations.

Environmental groups favor adding language in TPA investment objectives that directs negotiators to seek provisions in trade agreements that provide explicit protection for environmental measures that may affect foreign investors. Other stakeholders want to ensure checks are maintained against the potential for disguised or unfair barriers to foreign investment. Neither bill calls for negotiators to seek explicit exceptions for environmental measures in the investment-related provisions of trade agreements.

Transparency. Various interests, including the Administration, environmental groups and others, have put a priority on increasing transparency (i.e., openness) in trade matters and increasing public access to the dispute resolution process. Environmental and business interests agree that greater openness would allow increased awareness of the possible impacts of trade decisions relevant to their concerns. Both bills contain identical provisions to significantly increase public participation in trade matters, compared to current practice. Section 2(b)(5) provides that a principal negotiating objective is to obtain wider application of the principle of transparency through: increased and more timely public access to information on trade issues and activities of international trade institutions; increased openness at the WTO and other trade fora, including with regard to dispute settlement and investment; and increased and more timely public access to all notifications and supporting documentation submitted by WTO parties. Each bill contains additional transparency provisions for the principal trade negotiating objective on investment.

Regulatory Practices. Further, with respect to transparency, both versions of H.R. 3005, Section 2(b)(8), include an identical principal negotiating objective on regulatory practices, addressing the use of government practices to provide a competitive advantage for domestic producers, service providers, or investors. The goal of this provision is to lessen the use of regulations for the purpose of reducing market access for U.S. goods, services or investments. This objective calls for U.S. negotiators “to achieve increased transparency and opportunity for the participation of affected parties in the development of regulations.” This objective would seemingly benefit both U.S. business and environmental interests. Additionally, the negotiating objective is “to require that proposed regulations be based on sound science, cost-benefit analyses, risk assessment, or other objective evidence.” This language has drawn criticism from environmental groups that have called for language that would protect the ability of federal, state, and local governments to take precautionary measures against risks in cases where scientific or other knowledge may be suggestive but incomplete. Proponents argue that, without such disciplines, regulations can too easily be used to create barriers to trade.

Promotion of Certain Priorities. In addition to negotiating objectives, Section 2(c) in each bill requires the President to promote certain priorities “in order to address and maintain U.S. competitiveness in the global economy.” The Senate committee report accompanying H.R. 3005 (S. Rept. 107-139), explains that the priorities are not negotiating objectives themselves, but that they “should inform trade negotiations or be pursued parallel to trade negotiations.”¹²

Among these priorities, the bills contain several identical environmental provisions. Specifically, under each bill, the President must: (1) seek to establish consultative mechanisms to strengthen U.S. trading partners’ capacity to develop and implement standards for protecting the environment and human health based on sound science, and to report to the House Committee on Ways and Means and the Senate Committee on Finance; (2) conduct environment reviews of trade and investment agreements, consistent with Executive Order 13141,¹³ and report to the House Committee on Ways and Means and the Senate Committee on Finance; (3) take into account other legitimate U.S. domestic objectives including the protection of legitimate health or safety interests and related laws and regulations; (4) continue to promote consideration of multilateral environmental agreements (MEAs) and consult with parties to MEAs regarding the consistency of an MEA containing trade measures with existing environmental exceptions under the GATT; and (5) report to the House Ways and Means and Senate Finance Committees no later than 12 months after the United States imposes a penalty or remedy permitted by the trade agreement on its effectiveness in enforcing U.S. rights.

¹²U.S. Senate. *Bipartisan trade Promotion Authority Act of 2002*. Report to accompany H.R. 3005. S. Rept. 107-139. Feb. 28, 2002. p. 8.

¹³E.O. 13141, issued by President Clinton on November 16, 1999, commits the United States to “a policy of careful assessment and consideration of the environmental impacts of trade agreements and to factor environmental considerations into the development of its negotiating objectives.” The order requires an assessment be “undertaken sufficiently early in the process to inform the development of negotiating positions.”

Agriculture*

TPA and Agricultural Interest Groups

TPA enjoys support throughout most, but not all, of the agricultural community. For example, some 80 farm, agribusiness, and related organizations signed a June 18, 2001 letter to President Bush pledging their active support for TPA. On the other hand, some farm groups, including the National Farmers Union (NFU), have opposed TPA. The NFU joined nearly 50 labor, environmental, consumer, and allied organizations in signing a June 19, 2001, letter to Members of Congress opposing what then was the leading Republican alternative, because, they argued, it would not address labor, environmental, and related concerns.

Key House Members with agricultural constituencies – including the chairman of the House Agriculture Committee – threatened to withhold support for TPA unless the Administration promised to support increases in U.S. farm subsidies in the House farm bill (H.R. 2646). The Administration initially criticized the House-passed omnibus farm bill for its cost (\$73.5 billion in new spending over 10 years) and potential for undermining U.S. efforts to expand agricultural trade. However, the House committee chairman, and the ranking Democrat, ultimately pledged their support for TPA after receiving assurances that the Administration would agree to the new farm spending. (The farm bill currently is in conference.)

Both the House-passed version of H.R. 3005 and the Senate Finance Committee version contain a principal negotiating objective with respect to agriculture as well as extensive provisions requiring consultation between the Office of the U.S. Trade Representative (USTR) and the House Agriculture Committee and the Senate Agriculture, Nutrition, and Forestry Committee. These provisions serve in part to shore up support for TPA among agricultural groups and to address their specific trade concerns, especially with respect to import-sensitive products.

Agricultural Negotiating Objectives

Both TPA bills state that the principal negotiating objective for agriculture is to obtain competitive, fairer, and more open market opportunities for U.S. agricultural exports by (among other things):

- Reducing or eliminating tariffs and other charges by a date certain, and reducing foreign ones to levels the same as or lower than U.S. levels;
- Reducing or eliminating subsidies that harm U.S. exports or unfairly distort markets;
- Allowing for the preservation of programs that support family farms and rural communities;

*Prepared by Charles E. Hanrahan, Senior Specialist in Agricultural Policy, Resources, Science and Industry Division.

- Developing disciplines for domestic farm support so that production in excess of domestic food security needs is sold at world prices, and eliminating policies that create price-depressing surpluses;
- Eliminating whenever possible state trading enterprises (STEs);
- Strengthening dispute settlement mechanisms in order to eliminate practices (including unfair or trade-distorting STE activities; unjustified labeling that affects new technologies, including biotechnology; unjustified technical, sanitary and other technical barriers to trade; and restrictive administration of tariff rate quotas) that impair U.S. market opportunities;
- Eliminating practices that adversely affect trade in perishable or cyclical products and addressing their trade problems; and ensuring that import relief mechanisms for such products are as accessible and useful to U.S. growers as they are to producers in other countries;
- Considering whether other countries have not lived up to existing trade agreements, and how such agreements have impacted U.S. agriculture;
- Eliminating agricultural export subsidies, while maintaining bona fide food assistance programs, and preserving U.S. market development and export credit programs.

The bills call for U.S. negotiators to establish, as the base year for calculating each country's "Aggregate Measurement of Support" (i.e., the level of spending on the most trade-distorting domestic agricultural subsidies), to be the end of its Uruguay Round Agreement on Agriculture (URAA) implementation period. Likewise, both bills call upon the USTR, before commencing negotiations on agriculture, in consultation with Congress, to seek to develop a position on the treatment of seasonal and perishable agricultural products in the negotiations. The position developed would be used in negotiations to develop an international consensus on treatment of seasonal or perishable products in dumping and safeguard investigations.

The Senate Finance Committee version of H.R. 3005 expands on the House bill's broadly worded objective of reducing or eliminating subsidies that decrease market opportunities or unfairly distort agricultural markets. The Senate version calls for eliminating all export subsidies on agricultural commodities while maintaining bona fide food aid and preserving U.S. agricultural market development and export credit programs that will allow the United States to compete with other foreign export promotion efforts.

Import-Sensitive Agricultural Products

To garner more support from agricultural members, the bill's House sponsors added language to the committee-passed version which removes import-sensitive agricultural products from the President's tariff proclamation authority. At the same time, the House bill expanded the consultation requirements that U.S. officials must follow before undertaking tariff reduction negotiations on agricultural products considered "import-sensitive" (defined in both House and Senate Finance Committee versions as those subject to the minimum 2.5% annual reduction required under the 1994 URAA). The USTR would have to identify such products – likely more than 200 specific items ranging from cheese and many other dairy products to citrus and various other fresh fruits and vegetables, sugar and other sweeteners, beef and lamb, oilseeds, wine, tobaccos, cotton, wool, and chocolate – and consult with Congress on

how domestic producers would be affected by tariff cuts, among other requirements.

The Senate Finance Committee version of H.R. 3005, which includes fish and shellfish in the requirement for special consultation, contains somewhat different language but with the same intent.

Requirements for Consultation with Agriculture Committees

In addition to consultation requirements for import-sensitive agricultural products, both bills establish additional requirements for consultation with House and Senate Agriculture Committees. Before initiating (or continuing) a negotiation, the President is required to assess whether U.S. tariffs are lower than tariffs of other WTO member countries and whether negotiations provide an opportunity to address tariff disparities. Following the assessment, the President must consult with the House Agriculture and the Senate Agriculture, Nutrition and Forestry Committees in addition to consulting with both House Ways and Means and Senate Finance Committees on the appropriateness of the United States agreeing to further tariff reductions. Both bills also require the USTR to consult closely and on a timely basis (including immediately before initialing an agreement) and to keep the agriculture committees in each chamber fully informed.

Both bills establish a new Congressional Oversight Group (see discussion *infra*). Membership in this group would include the chairman and ranking member, plus three additional members, from the House Ways and Means Committee and from of the Senate Finance Committee. Membership in this group also would include the chairman and ranking member of committees which would have jurisdiction over provisions of law affected by trade agreement negotiations. Thus agriculture committee leadership would become members of this group if provisions of agricultural laws were affected by negotiations.

TPA and Agricultural Negotiating Issues

Some analysts note that while both versions of H.R. 3005 would give the President the authority he sought to proceed with negotiations, provisions in those bills also could make it difficult for the President to achieve stated negotiating objectives for agriculture. In particular, analysts say both versions' requirement to consult in advance with Congress before negotiating cuts in tariffs on import-sensitive products, will make negotiating tariff reductions more difficult and could prevent negotiations of trade-offs between sectors. Similarly, the Senate committee bill, by including the preservation of U.S. export credit and food aid programs among the negotiating objectives for agriculture, may render negotiations on export subsidy reduction or elimination (a stated U.S. position in WTO agriculture negotiations) more difficult. The Administration, however, has expressed the view that while the fast track bills pose additional hurdles for lowering tariffs on import-sensitive products, in the long-run (because they involve extensive consultation with Congress) they provide a "better basis" for negotiations.

Congressional Oversight and President's Consultations with the Congress^{*}

There are only a few differences between the House-passed and Senate-reported versions of H.R. 3005. Such differences are identified by their alphanumeric designation in *italics*. The numbering of sections deferred to follows the Senate-reported version of the bill.

Congressional Oversight Group

The Bipartisan Trade Promotion Authority Act of 2001 (H.R. 3005), in Section 7, provides for the establishment of the Congressional Oversight Group, a new, formally constituted congressional body to facilitate timely exchange, with the U.S. Trade Representative (USTR), of information related to the negotiation of trade agreements, including regular briefings, access to pertinent documents, and coordination at all critical periods during the negotiations. The Group would consult with and provide advice to the USTR regarding the formulation of specific objectives, negotiating strategies and positions, the development of the applicable trade agreement, and compliance with and enforcement of the commitments negotiated under the agreement. The guidelines for the Group's functions would be developed by the USTR in consultation with the chairmen and ranking minority members of the House Ways and Means and the Senate Finance committees. Members of the Group would be accredited by the USTR on behalf of the President as official advisers to the U.S. delegation in the negotiations of trade agreements to which the Act applies.

The Group would be convened, initially within 60 days after the enactment date of the Act and subsequently within 30 days after the convening of each Congress, by the chairmen of the House Ways and Means, and the Senate Finance committees, and would consist of the chairmen and ranking members of those two committees, or their designees, and three additional members of each of those committees (not more than two of whom may be members of the same political party). Moreover, in the negotiations of a trade agreement concerning matters within the jurisdiction of any other House or Senate committee, the chairmen and ranking members of such committees, or their designees, would be included in the membership of the Group. The Group would be chaired by the chairmen of the House Ways and Means, and the Senate Finance committees.

In its functions, the Congressional Oversight Group would complement, with respect to agreements negotiated and implemented under the authority of the Act, the similar, but more general, functions of the slightly more numerous congressional advisers for trade policy and negotiations, provided for in Section 161 of the Trade Act of 1974, as amended (19 USC 2211) and appointed to their positions at the beginning of each session by the Speaker of the House and the President pro tempore of the Senate.

^{*}Prepared by Vladimir N. Pregelj; Specialist in International Trade and Finance; Foreign Affairs, Defense, and Trade Division.

President's Consultations with the Congress

In view of the fact that the legislation to implement a bilateral or multilateral trade agreement dealing with matters other than solely tariff concessions, as authorized by the Act, and qualifying for the expedited (“fast track”) legislative procedure, may not be amended, the Congress has — since the original authorization of such procedure by the Trade Act of 1974 — required that the President report to and/or consult with the Congress at various stages before and during the negotiation of such an agreement. With this requirement, the Congress has retained for itself a means whereby it can be currently informed on and play an active role in fashioning the language of the agreement and of the implementing legislation to reflect the agreement’s required statutory objectives as well as its own diverse interests and goals. Consultation with the Congress is also called for with respect to certain aspects of any type of trade agreement.

Like the earlier versions of comparable legislation, both versions contain virtually identical provisions which require the President (in this context including also the USTR as the President’s principal trade official) to consult with Congress at specified stages of the trade agreement negotiation process. Except for the addition of several requirements for advance notices of certain stages of negotiations, specific provisions regarding consultations on agricultural trade, and the inclusion of the newly created Congressional Oversight Group in the consultations, other consultation requirements and sanctions for failure to consult provided in H.R. 3005 do not differ essentially from those enacted most recently by the 1988 Trade Act.

The required consultations are arranged below in the approximate sequence in which they would take place.

(1) In the preliminary stage of setting the comprehensive trade negotiating objectives in agricultural trade, the USTR is required to seek to develop before commencing negotiations, in consultation with the Congress, a negotiating position with respect to the treatment of seasonal or perishable agricultural products, particularly in dumping and safeguards investigations (Section 2(b)(10)).

(2) With respect to agreements dealing with tariff barriers, the President is required to notify Congress of his intent to enter into an agreement (Section 3(a)(1)).

(3) With respect to agreements dealing with tariff and nontariff barriers (e.g., implementing free trade agreements), the President is required to submit to the Congress, at least 90 days before initiating negotiations, a written notice of his intention to enter into negotiations, together with sundry other information, and, before and after its submission, consult regarding the negotiations with the Senate Finance Committee, House Ways and Means Committee, such other House and Senate committees as the President deems appropriate, and the Congressional Oversight Group (Section 4(a)).

(4) Before initiating negotiations to provide a “level playing field” for American agriculture (one of the negotiating objectives), the President is required to assess whether there are disparities between the U.S. and foreign tariffs on agricultural products and to consult concerning the results of the assessment with respect to

objectives to be achieved in this regard, with the House Ways and Means, and Agriculture committees, and the Senate Finance, and Agriculture, Nutrition, and Forestry committees (Section 4(b)(1)).

(5) Before initiating negotiations with regard to agriculture, and, with respect to the Free Trade Area of the Americas and with regard to agriculture under the auspices of the World Trade Organization, as soon as practicable after enactment, the USTR is required to identify import-sensitive agricultural products and consult with the House Ways and Means, and Agriculture Committees, and the Senate Finance, and Agriculture, Nutrition, and Forestry Committees, on various aspects of their importation (Section 4(b)(2)).

(6) Before initiating negotiations on fish and shellfish trade, the President is required to consult with the House Ways and Means, and Resources Committees and the Senate Finance, and Commerce, Science, and Transportation Committees (*Section 4(b)(3)*).

(7) Before initiating negotiations on textiles and apparel, the President is required to assess the post-Uruguay Round disparities between U.S. and other countries' tariff rates on textiles and consult thereon with the House Ways and Means and the Senate Finance Committees (*Section 4(c)*).

(8) In the course of any negotiation conducted under the authority of the Act, the USTR must consult "closely and on a timely basis" with the Congressional Oversight Group and all committees of both Houses with jurisdiction over laws that would be affected by the agreement being negotiated (Section 2(d)(1)).

(9) At least 90 days before the President enters into a trade agreement, he must notify the House Ways and Means and the Senate Finance Committees of any amendments of the countervailing, antidumping, and safeguards law, proposed to be included in the agreement-implementing legislation, and report on the reasons for such changes (*Section 4(d)(3)*).

(10) The USTR must consult (including immediately before initialing an agreement) with the congressional trade advisers, the House Committee on Ways and Means, the Senate Committee on Finance, and the Congressional Oversight Group. In addition, such consultations must be held with the House Committee on Agriculture and the Senate Committee on Agriculture, Nutrition, and Forestry with regard to negotiations and agreements relating to agricultural trade (Section 2(d)(2)).

(11) Before entering into an agreement dealing with tariff and nontariff matters, the President is required to consult with the House Ways and Means Committee and the Senate Finance Committee, with any other committee of either House and any joint committee with jurisdiction over legislation in matters affected by the trade agreement, and with the Congressional Oversight Group, with respect to the nature of the agreement, how and to what extent the agreement will achieve applicable purposes policies and objectives of the Act, and the implementation of the agreement (Section 4(d)(1)).

(12) The President’s failure or refusal to notify or consult with Congress with respect to a tariff and nontariff agreement would result in the denial of the trade authorities (fast-track) procedures for the consideration of a bill implementing that agreement, if both Houses separately agree (under a specific expedited procedure) within 60 days of each other to a procedural disapproval resolution denying such procedures to the implementing bill in question due to failure to consult (Section 5(b)(1)(A)).

(13) Such disapproval resolution, however, is not in order in the event that the President’s failure to give the 90-days notice prior to initiating negotiations and to consult in connection with the negotiations of any of the four specified agreements (which are likely to be negotiated in the foreseeable future), if the negotiations were already in progress at the time of enactment of H.R. 3005. The President, however, must notify the Congress of such negotiations and consult on them with the entities listed in Section 4(a) (see (3) above) as soon as feasible (Section 6).

Expedited Procedures and Procedural Controls on Their Use*

Although H.R. 3005 is said to provide “trade agreements authority,” it does not itself grant the President any new authority. With or without specific statutory authority, the President can negotiate trade agreements, and their implementation would normally require new legislation. Instead, as its official title (“An Act to Extend Trade Authorities Procedures...”) indicates, H.R. 3005 only “extends trade authorities procedures.” That is, it extends to a specified class of trade agreements the eligibility for an implementing bill to be considered under certain expedited procedures. These expedited procedures, originally established by section 151 of the Trade Act of 1974,¹⁴ are also called “fast track” procedures. Their intent is to ensure that each house of Congress will (1) consider and vote on the implementing bill and (2) entertain no amendments to the bill.

The availability of this expedited treatment encourages trade negotiations, by assuring the President and other participants that Congress will vote on any agreement they reach in the form they negotiated it. For just this reason, however, these procedures significantly constrain the discretion Congress normally exercises over its legislative agenda. H.R. 3005 compensates for these constraints by (1) restricting the class of trade agreements that are eligible for expedited consideration, and (2) ensuring that procedural means are available for each house to ensure that these restrictions will not be breached. Through these procedural enforcement mechanisms, Congress retains substantial control over whether trade agreements may be considered under expedited procedures. Each mechanism is derived from similar ones that

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¹⁴ P.L. 93-618 (88 Stat. 1978), as amended; 19 U.S.C. 2191. The appendix provides specifics.

appeared in earlier statutes making trade authorities procedures available and proposals for doing so.

The restrictions H.R. 3005 would place on trade agreements eligible for expedited implementation, identified in earlier sections of this report, are principally of four kinds:

- the agreement must be reached within a specified time period;
- specified notifications to and consultations with Congress must occur during its negotiation;
- it must promote specified objectives; and
- the implementing bill must contain only specified kinds of provisions.

To enforce the first three restrictions, H.R. 3005 adapts specific mechanisms provided for in previous legislation. Also, all four could be enforced through various applications of the general constitutional power of each house of Congress to determine its own rules.

Enforcing Time Restrictions

H.R. 3005 makes the expedited procedures of section 151 available for bills to implement trade agreements entered into before June 1, 2005. This sunset provision is one way in which Congress limits the extent of the constraint that the trade authorities procedures place on its legislative discretion. H.R. 3005 also allows the President to extend the availability of the expedited procedures to agreements entered into until June 1, 2007, by so requesting, unless either house, before June 1, 2005, disapproves the request by adopting an “extension disapproval resolution” (referred to below as an “EDR”).

An EDR is to be considered under a separate set of expedited procedures, intended to guarantee consideration and prohibit amendment, which is contained in section 152 of the Trade Act of 1974.¹⁵ Under H.R. 3005, the House would refer the resolution to the Committees on Ways and Means and Rules, and the Senate to the Committee on Finance. In each house, the resolution could be considered on the floor only if reported. This requirement effectively affords the revenue committees control over this means regulating the availability of the trade authorities procedures.

Enforcing Notifications and Consultations

H.R. 3005 establishes a similar remedy if Congress finds that the notifications and consultations required for any covered trade negotiation have not occurred. The bill makes the expedited procedures of section 152 applicable to a “procedural disapproval resolution” (here called a “PDR”), stating that the President has “failed or refused to notify or consult” as required with respect to specified trade negotiations. If both houses adopt PDR’s with respect to the same negotiation, within 60 days of one another, the trade agreement becomes ineligible for expedited consideration.

¹⁵19 U.S.C. 2192. The appendix provides specifics.

Like an EDR, a PDR (1) is to be referred in the House to the Committees on Ways and Means and on Rules, and in the Senate to the Committee on Finance, and (2) in each house, may be considered on the floor only if reported. As with the EDR, these arrangements vest in the revenue committees effective control over this means to limit the availability of the trade authorities procedures.

As currently proposed in H.R. 3005, this mechanism is stronger and more flexible than in either previous law or earlier versions. First, the House-passed and Senate-reported versions contain new language providing explicitly that “failure to consult” includes failure to develop guidelines for consultations with the Congressional Oversight Group (described in earlier sections) or to meet with the Group on request.

Second, under the 1988 Trade Act, adoption by both houses of PDR’s terminated the trade promotion authority altogether. H.R. 3005 as introduced would have allowed Congress to use this procedure to make a single trade agreement ineligible for expedited implementation, while reserving its potential use for any subsequent agreement. Under the House-passed and Senate-reported versions, the mechanism can be used against any specified set of otherwise eligible trade agreements. These versions, however, also introduce the new restriction that each house may consider only one PDR with respect to any given trade agreement under the expedited procedure during the same Congress.

Third, under both the 1988 Trade Act and the House-reported version of H.R. 3005, a PDR could be introduced in the House only by the chairman or ranking minority member of the Committee on Ways and Means or on Rules, and in the Senate had to be originated by the Committee on Finance. The House-passed bill and Senate committee substitute eliminate this restriction, which increases the ability of individual Members to influence the availability of the trade authorities procedure. The retention of the reporting requirement nevertheless preserves committee control over this decision.

The Senate committee substitute also excludes agreements negotiated under the auspices of the World Trade Organization (WTO) from expedited consideration unless the Secretary of Commerce submits a report to Congress on plans for correcting dispute resolutions by the WTO that have “added to obligations or diminished rights of the United States.” This requirement, however, is not specifically associated with any procedural enforcement mechanism.

Enforcing Pursuit of Objectives

As reported in the House, H.R. 3005 established no specific procedural means for Congress to enforce the requirements it places on the objectives covered trade agreements must serve. This limitation maintained the situation that existed under the 1988 Trade Act and other earlier statutes. For example, one of the revenue committees might become convinced, through the required consultations, that a given negotiation was not fostering the statutory negotiating objectives. Under the House-reported version of H.R. 3005, the committee could not use a PDR to withdraw eligibility for expedited consideration for this reason, as long as the consultations were in fact taking place.

The House-passed version of H.R. 3005 and the Senate committee substitute, however, introduce a new provision under which “failure or refusal to notify or consult” also includes failure of the pertinent trade agreement to “make progress in achieving the purposes, policies, priorities, and objectives” the bill would establish. This language extends the applicability of the PDR mechanism, enabling Congress to withdraw eligibility for expedited consideration from a bill to implement a trade agreement that Congress believes does not promote the established objectives.

Enforcing Restrictions on Contents

H.R. 3005 also contains no specific procedural mechanisms to enforce the requirements it establishes for the contents of implementing bills and supporting information required to be submitted to Congress. Instead, each house would presumably be able to enforce these requirements by use of its constitutional power to determine its own rules and their application. (In principle, the various means by which the two houses exercise this power might also be available as additional, non-statutory means for enforcing the other restrictions on trade authorities procedures already discussed.)

For example, if an implementing bill included provisions of kinds not authorized under H.R. 3005, it might be possible in either house to raise a point of order that the measure did not meet the statutory description of a measure eligible for expedited consideration. If the chair sustained the point of order, it would in effect vitiate the opportunity for that trade agreement to receive expedited consideration. Each house also always retains the ability permanently to alter or supersede any statutory procedure by adopting a resolution amending the procedure, just as it may do for its own standing rules. Like most statutes establishing expedited procedures, existing trade law and H.R. 3005 explicitly reserve to each house this use of the constitutional rulemaking power.

In the House, if an implementing bill did not meet statutory requirements, it would be more likely for the Committee on Ways and Means to ask the Committee on Rules to report a special rule proposing that the measure be considered other than under the statutory expedited procedures. This special rule could make amendments in order, or even provide that some alternative measure be considered instead of the implementing bill. Even when a measure does meet the criteria of eligibility for expedited consideration, in fact, the House has sometimes considered it under the terms of a special rule instead. The Senate normally alters its established procedures for considering a measure only by entering into a unanimous consent agreement. Yet it also retains the ability to reject the motion to proceed to consider an implementing bill that the statute authorizes, and then instead take up the measure (or an alternative) under its general procedures.

In this context, extension and procedural disapproval resolutions appear as having a function parallel to, though in a sense opposite from, special rules in the House. Like special rules, the two kinds of disapproval resolution have the function of regulating procedure. Whereas special rules establish the procedures under which a specified measure shall be considered, disapproval resolutions determine that certain procedures shall not be used to consider specified measures. In this light, for example, the statutory prohibition on amending an implementing bill appears not as

a conclusive limitation on the authority of Congress, but rather as parallel to the closed rule that the Committee on Ways and Means customarily requests for consideration of revenue measures.

Appendix: Expedited Procedures in Current Law*

Section 151: Implementing Bills

Section 151 of the Trade Act of 1974 establishes expedited procedures for bills to implement trade agreements. The following paragraphs list provisions of this section that would apply to the new class of implementing bills that H.R. 3005 would establish.

The implementing bill is to be introduced in each house, jointly by the two floor leaders or their designees, on the first day each house meets after the President submits his draft bill.

The bill is to be referred to the committees of jurisdiction. The principal committees involved will normally be the House Committee on Ways and Means and the Senate Committee on Finance. In each chamber, if committees of referral do not report by the end of 45 days of session, they are automatically discharged. (If the implementing bill contains revenue provisions, however, the Senate must for constitutional reasons pass the House bill. In this case, the Senate committee is to report the House bill, received after House passage. If necessary, the 45-day deadline is extended so that the Senate committee has 15 days to report after it receives the House bill.)

Once the committees have reported or been discharged, a motion to proceed to consider the bill is privileged (and nondebatable) in each house, so that no special rule (in the House) or other special leadership action is necessary to call it up. The motion to consider may not be amended, and the vote on it may not be reconsidered.

The time for floor consideration is limited to 20 hours, equally divided and controlled (between the two party floor leaders, in the Senate; between supporters and opponents, in the House). A nondebatable motion to reduce this time further is made in order. Each house is to complete floor action within 15 days of session after committees report or are discharged. No separate mechanism to enforce this deadline is established.

In the House, no motion to recommit the bill is in order. Also, appeals and motions to postpone consideration or turn to other business are nondebatable. In the Senate, debate on an appeal or debatable motion is limited to one hour.

In both chambers, no amendment may be offered to the implementing bill, either in committee or on the floor. This prohibition may not be suspended by motion or unanimous consent.

Because the bills must be introduced in identical form and cannot be amended, the versions passed by both chambers will presumably be identical. After one house passes an implementing bill, the final vote in the other house is to occur on the bill

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already received from the house that acted first. Since both bills will be identical, no action to resolve House-Senate differences can become necessary, and this action will clear the measure to be presented to the President.

If the President were to veto the bill, any attempt to override the veto would take place under the general rules of each house. Section 151 establishes no special procedures for this purpose.

Section 152: Extension and Procedural Disapproval Resolutions

Section 152 of the Trade Act of 1974 establishes expedited procedures for certain congressional actions to make certain implementing bills ineligible for expedited consideration under section 151. As explained in the body of the report, H.R. 3005 makes these extension disapproval resolutions and procedural disapproval resolutions eligible for expedited consideration only if they are reported from the committees of referral (the respective revenue committees and, in the House, the Committee on Rules). The following paragraphs list provisions of section 152 that would apply to these resolutions under the terms of H.R. 3005.

Once the resolution is reported, a motion to proceed to consider it is privileged and not debatable in both houses. Amendments to, or motions to reconsider the vote on, the motion are not in order.

Debate on the resolution is limited to 20 hours, equally divided (in the House, between supporters and opponents; in the Senate, between the two floor leaders).

In both houses, amendments to, or motions to recommit, the resolution are not in order. In the House, motions to reconsider the vote on the resolution also are not in order.

In the House, appeals and motions to postpone consideration of the resolution, or to proceed to consider other business, are not debatable. In the Senate, debate on an appeal or debatable motion is limited to one hour. A nondebatable motion is in order to limit this debate time further.

No provisions are made for the resolution of any differences between the houses, because both extension and procedural disapproval resolutions are simple resolutions of each house separately