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Trade Promotion (Fast-Track) Authority: H.R. 3005 Provisions and Related Issues

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Trade Promotion (Fast-Track) Authority: H.R. 3005 Provisions and Related Issues

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 (mandatory deadlines, limited debate, no amendment). The President must meet certain consultation and notification requirements. This authority, commonly called "fast-track authority" or "trade promotion authority" (TPA), lapsed in 1994.

This report analyzes a major TPA proposal, H.R. 3005, introduced by Representative Thomas, Chairman of the House Ways and Means Committee, and reported out of that Committee on October 16, 2001. Some comparisons are made between H.R. 3005 and the trade negotiating authority bill H.R. 3019, introduced by Representative Rangel, Ranking Member on the Ways and Means Committee.

Congressional debate of fast-track/TPA legislation arrives at a period of growing global economic uncertainty and of a changing world trading system. Proposed TPA legislation reflects, in part, the shifting global trade environment. Sharp differences divide the 107th Congress on trade policy objectives.

Both H.R. 3005 and H.R. 3019 are similar in their basic structure and in many provisions. However, they have major differences in their negotiating objectives, conditions for considering agreements under expedited procedures, congressional advisory bodies, and withdrawal of expedited procedures. Regarding labor provisions, H.R. 3005 aims to "promote respect for worker rights consistent with the International Labor Organization (ILO)," and to treat labor objectives "equally" with other negotiating objectives. H.R. 3019 aims to "promote enforcement of internationally recognized core labor standards by trading partners," and to provide for "all remedies to promote prompt and full compliance."

H.R. 3005 gives greater attention to the environment than previous fast-track authority, and has some similarities with H.R. 3019. For example, both seek to ensure that parties do not fail to enforce environmental laws and to make failures subject to enforcement. Environmental provisions in H.R. 3019, however, are more extensive; e.g., the bill seeks clear exceptions from trade obligations for environmental measures (including those to implement multilateral environmental agreements).

H.R. 3005 would establish the Congressional Oversight Group, a new body of congressional advisors on trade negotiations, and set out consultation and notification requirements for the executive branch. H.R. 3019 would not add a new body of advisors, but would require more consultation than H.R. 3005.

Both bills would allow withdrawal of expedited procedures for an implementing bill, but under different circumstances. H.R. 3005 provides for withdrawal if the President fails to meet the consultation requirements. H.R. 3019 provides for withdrawal of expedited procedures before or during negotiations or before the President enters into an agreement, but does not require that a reason be specified.

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One of the major trade issues in the 107th Congress is whether or not Congress might approve authority for the President to negotiate trade agreements and submit the agreements for approval and implementation under expedited legislative procedures. Under this authority, formerly called "fast-track authority" and now sometimes called "trade promotion authority," Congress agrees to consider legislation to implement the trade agreements (usually nontariff trade agreements) under a procedure with mandatory deadlines, no amendment, and limited debate. The President is required to consult with congressional committees on the negotiation and notify Congress before entering into an agreement.

The President was granted fast-track authority almost continuously from 1974 to 1994. In 1994, the authority lapsed and has not been renewed. Now, if a new trade agreement is reached and it requires congressional action, the implementing legislation is 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. Representative Thomas, Chairman of the House Ways and Means Committee introduced H.R. 3005 on October 3, 2001. The House Ways and Means Committee reported the bill on October 16, 2001.

The report begins with a review of the U.S. trade policy agenda and what role TPA plays in trade policy. It then summarizes the major provisions of the bill and discusses the labor and environmental 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 reviews expedited procedures for implementing bills for trade agreements (fast-track, or TPA, procedures) and other procedures included in the bill.

The report also includes some comparisons between H.R. 3005 and another important trade bill, H.R. 3019, the Comprehensive Trade Negotiating Authority Act of 2001. Representative Rangel, Ranking Member on the House Ways and Means Committee, introduced H.R. 3019 (also sometimes referred to as the "Rangel/Levin" bill) on October 4, 2001. Although not strictly the case, H.R. 3005 and H.R. 3019 are often considered the Republican and Democratic TPA/fast-track proposals respectively. The differences between these bills is especially noteworthy regarding trade negotiating objectives, in particular the objectives on labor and the environment, and the role of Congress in advising on trade negotiations. The different approaches of the two bills offer alternatives that Congress might consider in debate on a TPA bill.

Trade Promotion Authority and the U.S. Trade Policy Agenda*

Congressional consideration of trade promotion authority (TPA) legislation and the ensuing debate over U.S. trade policy priorities arrive during a period of growing global economic uncertainty and of a changing international trading system. The legislation and debate also occur in the midst of a very active U.S. trade agenda. The proposed legislation to grant the President TPA–also known as fast track–reflects, in part, the shifting global trade environment and U.S. trade policy objectives. 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 should be U.S. trade policy objectives in negotiating the agreements under this authority. Sharp differences divide the 107th Congress over U.S. trade policy objectives, mirroring the differences that exist among American voters.

The Economic and Political Environment

Most of the world's major economies are experiencing slow economic growth or recessions. The United States, for example, faces an economic slowdown and growing unemployment , and perhaps recession, after a decade of strong growth and low unemployment. The European economies confront a similar situation. Japan continues to suffer its worst economic slowdown during the post-World War II period, which has manifested itself in the form of record high unemployment rates. The economic problems in the industrialized countries have been felt, with some exceptions, by developing countries who have come to rely on the former as export markets.

The international trading system is undergoing change which will influence the U.S. trade debate and the U.S. trade policy priorities. For example, an increasing number of developing countries are active participants in the international trading system. One hundred of the 142 members of the WTO are developing countries; 30 of them are classified as least-developed countries. As demonstrated at the November 2001 WTO ministerial in Doha, Qatar, 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 membership, which was approved at the Doha ministerial, will give more weight to the developing country agenda. The international trading system is also changing with the emergence of the former communist countries of Central and Eastern Europe and of the former Soviet Union, who are integrating themselves into the international trading system.

U.S. trade policy priorities are influenced by the sharp increase in the number of bilateral and regional free trade agreements and other preferential trading arrangements which have changed the international trading system. According to the WTO, 150 bilateral and regional trade arrangements are in force–around 100 of them since 1995. The trade priorities also reflect the growth of new technologies, for

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example, biotechnology and e-commerce, and the industries which use them, but trade priorities also reflect the problems faced by entrenched industries and sectors that are adversely affected by growing foreign competition and other economic shifts.

U.S. Trade Policy Priorities and TPA Legislation

The United States is engaged in or will likely soon be engaged in a number of sets of negotiations to establish bilateral and regional preferential trade arrangements and multilateral negotiations to revise and broaden the WTO's coverage of international trade. These negotiations cut across geographical areas and economic sectors. Any agreements reached from these negotiations would probably require congressional approval for implementation. TPA would give some assurance that implementing legislation would be considered without amendment.

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, a consensus exists that agreements will be reached soon. 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. At the summit meeting of regional leaders in Quebec City in April 2001, President Bush signaled that these negotiations are a high priority for his Administration. In addition, Australia, New Zealand, Egypt, and other countries have either expressed strong interest in forming free trade areas with the United States or have been suggested as potential candidates for U.S.-based FTAs.

Under WTO auspices, trade ministers from 142 countries agreed on November 14, 2001, to launch wide-ranging multilateral negotiations. Dubbed the Doha development agenda, the new negotiations will cover various issues such as agricultural trade liberalization, industrial tariffs, trade-related intellectual property rights, and rules on antidumping and countervailing duty investigations.

The provisions of H.R. 3005 and H.R. 3019 would apply to agreements reached in regional and bilateral free trade negotiations as well as negotiations in the WTO. The former bill makes no distinction between the application of TPA to bilateral and regional agreements, on the one hand, and to multilateral agreements on the other. The latter bill tailors the application to the type of agreement. Both bills indicate that TPA would apply to agreements that might be reached with Chile, Singapore, and the FTAA partner-countries even though those negotiations began before the bills could be enacted.

The likely U.S. agenda in any of the negotiations that develop can be roughly divided into three main trade policy priorities. One priority is to seek the reduction of trade barriers and negotiate rules of conduct in trade and trade-related activities to promote a favorable trade environment for those industries and economic sectors in which U.S. producers are internationally competitive. The objective has been pursued by U.S. negotiators for some time in past administrations of both political

parties in various bilateral, regional and multilateral fora. Both H.R. 3005 and H.R. 3019 reflect these priorities in their respective principal objectives provisions, although their treatment of these priorities may differ.

A second priority is based on the fact that trade liberalization results in both winners and losers and strives to protect the ability of the U.S. government to reduce or eliminate the adverse impact of trade on import-sensitive industries. Some U.S. trading partners have challenged in the WTO the U.S. use of its antidumping, countervailing duty, and other trade remedy actions and trade laws. H.R. 3005 and H.R. 3019 contain language requiring negotiators to ensure that the United States not enter into any agreement which would weaken its ability to use its trade remedy laws.

A third set of priorities pertains to the impact of trade liberalization on society, particularly on labor and the environment. These issues have received increasing attention, and their treatment has become a significant point of contention during the debate on trade promotion authority, and during negotiations of and enactment of trade agreements. The division is mirrored in the treatment of the issues in H.R. 3005 and H.R. 3019. It is a debate that will likely continue and surface in trade negotiations and debates on implementing legislation.

Summary of Major Provisions*

Fast-track/trade promotion authority bills, including H.R. 3005, customarily have four major parts. First, they outline negotiating objectives for U.S. trade negotiators. Second, they set conditions under which Congress agrees to consider implementation and approval of trade agreements under expedited procedures. Third, they set out notification and consultation requirements that the executive branch must meet. Fourth, they specify procedures for implementation, such as documents the President must submit and required reports.

Although the executive branch conducts the actual negotiations, Congress communicates to negotiators, under the section on trade negotiating objectives, the goals that it expects a trade agreement to achieve. Similar to fast-track bills in the past, H.R. 3005 outlines general and specific goals. General goals are listed as "overall objectives." H.R. 3005 has three overall objectives that are similar to those enacted in the past–market access, elimination of trade barriers, stronger international trading disciplines–and has added overall objectives related to economic growth, environmental policies, and respect for worker rights.

More specific goals are called "principal objectives." H.R. 3005 has 12 principal objectives. Most are a somewhat standard core group of objectives in trade negotiations: trade barriers, services, investment, intellectual property rights, and agriculture, for example. Some of these objectives are intended to achieve open foreign markets for U.S.-produced goods or services. Others are intended to establish clear, fixed, and nondiscriminatory rules to cover trade in goods and services.

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In addition to these more traditional objectives, a contentious issue has been whether or not to include newer issues, specifically labor and the environment, among the principal objectives. H.R. 3005 includes a principal objective entitled "labor and the environment." This objective, among its provisions, calls for parties to enforce their own environment and labor laws, not use such policies as trade barriers, and retain domestic discretion on labor and environmental matters. H.R. 3005 also includes a third section under negotiating objectives that directs the President to take actions that further "certain priorities." Most of these actions are related to labor and environmental goals. (Labor and environmental provisions are discussed in more detail later in this report.)

After specifying negotiating objectives, trade negotiating authority bills often set out the conditions under which approval and implementation of certain trade agreements are considered. One condition under the provisions of H.R. 3005 is that a trade agreement must be entered into by June 1, 2005, with a two-year extension if certain 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 (usually nontariff), 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, and the President would have to satisfy the consultation requirements (essentially the same as under the 1988 Trade Act). Expedited legislative procedures would apply to an implementing bill with: (1) provisions approving a trade agreement and any statement of administrative action; and (2) provisions "necessary or appropriate" to implement an agreement, if changes in law are required to implement the agreement. The President could negotiate a trade agreement without meeting the above requirements, but in that case, the implementing legislation would be considered under the normal legislative process.

H.R. 3005 expands on prior consultation requirements. It adds a requirement that the President notify Congress at least 90 days before beginning negotiations. The President also, before beginning negotiations, must consult with the revenue committees, other committees the President deems appropriate, and a Congressional Oversight Group that would be established under the bill. Current law already provides for congressional trade advisors[1], who are informed of negotiations by the U.S. Trade Representative (USTR). However, the Congressional Oversight Group under H.R. 3005 seems intended to be a more active group of official advisors to negotiations. H.R. 3005 also includes requirements that the President consult with revenue committees, committees of jurisdiction, and the Congressional Oversight Group during negotiations and before entering into an agreement.

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[1] 19 U.S.C. 2101.

The section of H.R. 3005 on procedures for implementation is similar to previous law. The bill would require the President to notify the House and Senate at least 90 days before entering into the agreement. Within 60 days of signing the agreement, the President would have to describe to Congress any changes to law necessary under the agreement. The President would have to submit to Congress the agreement, a statement of administrative action, a draft implementing bill, and other specified information. As under prior law, there is no deadline for submission of these documents. H.R. 3005 includes a procedure that would disallow expedited legislative procedures, if Congress decided that the President did not give notice or consult as required. It also would require the President to submit a plan for implementing the agreement and request funding in the next budget.

Comparison with Selected Provisions of H.R. 3019

H.R. 3005 and the Rangel/Levin bill, H.R. 3019, have some important similarities and some important differences. Major similarities are seen in the general structure of the bills and in each of the four parts of trade negotiating bills that were described above. First, for example, they both set out negotiating objectives for trade agreements. (There are major differences between the bill here, though, as described below).

Second, they both set conditions under which Congress agrees to consider implementation and approval of trade agreements under expedited procedures. Both bills set time limits for entering into trade agreements (H.R. 3005 sets a specific date – June 1, 2005, while H.R. 3019 establishes a five-year period). Both allow a two-year extension to those time limits if certain conditions are met. For expedited procedures to apply, both require the agreements to work toward achieving the overall and principal objectives (a major difference here is discussed below). Both bills set out conditions for expedited procedures to apply to implementing legislation; one exception is that H.R. 3019 provides for trade adjustment assistance in the implementing bill.

Third, both bills would require expanded consultation by the executive branch at various stages of negotiations, although they have some important differences (see below). Both bills would require an environmental assessment and/or labor review early in the negotiations. H.R. 3019 (but not H.R. 3005) would require a report on the effect of a trade agreement on trade remedy laws before an agreement is signed.

Fourth, the bills are nearly the same with regard to implementation procedures. They both would require the President to notify Congress before entering into an agreement and would require later submission of identical documents with a draft implementing bill. Both bills would allow withdrawal of expedited procedures for an implementing bill, but for different circumstances.

Major differences between the bills are seen in their sections on negotiating objectives. A focus of debate has been differences in how labor and environment objectives are treated in the bills. Those differences are discussed in detail in the next two sections of this report.

Another difference is how the objectives are structured in the two bills. For example, H.R. 3005 lists one set of principal objectives for all negotiations, whereas H.R. 3019 lists one set of principal objectives for WTO agreements and another set of objectives for the Free Trade Area of the Americas (FTAA) and for bilateral agreements. Also, H.R. 3005 includes a third section under negotiating objectives that directs the President to take a list of actions that further "certain priorities," but H.R. 3019 does not have a similar list.

A further difference is that H.R. 3019 presents a greater number of objectives than H.R. 3005 does. H.R. 3019 presents 16 overall objectives, while H.R. 3005 has six. H.R. 3019 has 23 principal objectives for WTO negotiations and 17 for the FTAA and bilateral agreements, whereas H.R. 3005 has 12 principal objectives.

Even when objectives have similar titles, their details are often different. For example, under the objective on intellectual property rights, H.R. 3019 includes a number of provisions on related health and medical issues, whereas H.R. 3005 has no such provision.

For expedited procedures to apply, both require the agreements to work toward achieving the overall and principal objectives, but the wording is substantially different. Under H.R. 3005, the President may enter into a trade agreement only if it "...*makes progress in meeting* the applicable objectives...." and other specified conditions are met. In comparison, under H.R. 3019, the President may enter into a trade agreement only if it "...*substantially achieves* the applicable objectives...." and other specified conditions are met.

H.R. 3005 would establish a new body of congressional advisors, the Congressional Oversight Group, whereas H.R. 3019 would amend the existing system of congressional advisors. H.R. 3019 would require more consultation and notification than H.R. 3005. (Further details are given in the section of this report on congressional oversight and the President's consultations.)

Both bills would allow withdrawal of expedited procedures for an implementing bill, but under different circumstances. H.R. 3005 provides for withdrawal of expedited procedures if the President fails to meet the consultation requirements. H.R. 3019 provides for withdrawal of expedited procedures before or during negotiations or before the President enters into an agreement, but does not require that a reason be specified. (See the section of this report on expedited procedures.)

Labor Issues*

Negotiating Objectives

H.R. 3005 reflects an *overall negotiating objective* of promoting respect for worker rights. (See box for definition of worker rights.) Its provisions reflect labor authority and provisions previously included in the Omnibus Trade and Competitiveness Act of 1988 (OTCA), which was the last approval of trade negotiating authority, as well as the North American Free Trade Agreement (NAFTA), the U.S.-Jordan Free Trade Agreement (FTA), and reported bills from the 105th Congress. By comparison, H.R. 3019 includes an overall negotiating objective of promoting **enforcement** of "internationally recognized core labor standards" by U.S. trading partners.

Worker Rights Defined

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

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

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

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

- freedom from employment discrimination.

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

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

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

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

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

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*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.

The *principal negotiating objectives* of H.R. 3005 focus on (1) self-enforcement of a country's own worker rights (NAFTA and U.S.-Jordan FTA); (2) sovereignty – maintaining rights of countries to exercise discretion in allocating resources for enforcement (U.S.-Jordan FTA); (3) protections against businesses to ensure labor policies and practices do not unjustifiably discriminate against U.S. exports or serve as disguised barriers to grade (similar to H.R. 2621 in 105th Congress), and (4) flexible dispute resolution procedures which treat labor issues equally with other issues, and which seek penalties appropriate to parties, subject matter, and scope of the violation, and which would be effective but not adversely affect parties not involved in the dispute. It also includes a number of "new" provisions relating to congressional and administrative consultation and oversight.

The principal negotiating objectives of H.R. 3005 would apply to all trade negotiations, whereas H.R. 3019 has two sets of labor provisions: one for WTO agreements, and one for the FTAA and bilateral agreements. The principal negotiating objectives of H.R. 3019 targeted for inclusion in WTO trade agreements would aim to promote and enforce "core internationally recognized labor standards," primarily through WTO and the International Labor Organization (ILO). Specifically, H.R. 3019 would aim to include as principal negotiating objectives of WTO trade agreements, to: (a) Achieve a framework that leads to the adoption and enforcement of core labor standards in the WTO, the ILO, and other appropriate organizations; (b) establish a working group on trade and labor issues (without specifying the forum); (c) update WTO Documents to reflect ILO core labor standards and recommendations; (d) provide for regular review of WTO member adherence to core labor standards; (e) establish a regular working relationship between the WTO and the ILO; (f) improve WTO-ILO coordination; and (g) achieve enforcement by ensuring "prompt compliance by foreign governments with their obligations under the WTO."

Promotion and enforcement through the WTO is dependent on the political situation in the WTO and the limitations of the ILO constitution. The United States and other developed countries have been trying to raise the worker rights issue within the WTO since its inception, without success. Developing countries are against even discussing the relationship between worker rights and trade, lest a discussion lead to the imposition of standards upon them that they believe would harm their competitiveness. Whereas the WTO has enforcement authority, the ILO has promotion authority without enforcement power. The ILO's primary enforcement tools listed in its constitution are technical assistance, consultation, record-keeping, and persuasion.

H.R. 3019's principal negotiating objectives for an FTAA agreement differ considerably from its objectives for WTO trade agreements. Instead of delegating promotion and enforcement of worker rights to the WTO and the ILO institutions, H.R. 3019 would seek to include strict enforcement guidelines in the FTAA itself, which could take worker rights promotion and enforcement to a new level beyond NAFTA and the U.S.-Jordan FTA by: (1) including in an FTAA enforceable rules for the adoption and enforcement of core labor standards (although each country would have the right to establish its own domestic labor standards consistent with core labor standards); (2) providing for phased-in compliance with labor market standards for least-developed countries; and (3) including enforcement provisions which would provide in *all contexts* for the use of *all remedies* that are demonstrably effective to

promote *prompt and full compliance* with decisions by the dispute settlement panel. (NAFTA limits remedies to fines and, for non-payment of fines, removal of NAFTA benefits to the amount of the penalty for one year.)

Congressional and Administrative Oversight

H.R. 3005 includes provisions for congressional and administrative oversight of trade agreements, and it includes reviews of the potential impact of new trade agreements on U.S. workers. H.R. 3019 has similar provisions, although the two bills differ on who would produce the report, as well as receive the report on the impact on workers and on timing requirements.

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

H.R. 3005 also includes additional provisions for reports and administrative oversight which would break new ground. It provides for:

- Consultative Mechanisms: The President is to seek consultative mechanisms among parties to an agreement to promote respect for core labor standards, and to report to the House Ways and Means and Senate Finance Committees;
- Consultations by the Secretary of Labor: The Secretary of Labor shall consult with any country seeking a U.S. trade agreement about its labor laws and provide technical assistance if needed;
- Survey on Prohibitions Against Exploitative Child Labor. The President shall submit to Congress a report describing the extent to which parties to a trade agreement have laws governing exploitative child labor; and
- Report on effectiveness of penalties in promoting worker rights: The President is to report to the House Ways and Means and Senate Finance Committees on the effectiveness of penalties in enforcing rights under the trade agreement and on whether the penalty was effective in changing the behavior of the targeted party and whether it had adverse impacts on parties not part of the dispute.

Environment-Related Provisions*

H.R. 3005 contains several environmental objectives and related provisions, and, overall, gives substantially greater consideration to environmental matters than did previous fast-track trade agreement authority under the Omnibus Trade and Competitiveness Act of 1988 (OTCA). In OTCA, 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

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> take into account legitimate United States domestic objectives including, but not limited to, the protection of legitimate health or safety, ... [or] environmental interests and the law and regulations related thereto (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 environmental directives in OTCA, 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

H.R. 3005 includes an *overall negotiating objective* on environment which 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" (Section 2(a)(5)).

Additionally, the bill contains several *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.

Other principal negotiating objectives on environment 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 bill sets 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 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. Because the dispute settlement objectives of H.R. 3005 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, 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 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)(11), 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.[2] H.R. 3005, Section 2(b)(3), appears to address this concern to some degree by seeking the establishment of "standards for expropriation and compensation for expropriation, consistent with United States legal principles and practice." This subsection also calls for negotiators to seek mechanisms to eliminate frivolous claims and procedures to increase transparency in investment disputes. Environmental groups would like language to provide explicit protection for environmental measures, while others want to maintain checks against the potential for disguised or unfair barriers to foreign investment.

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 better awareness of the possible impacts of trade decisions relevant to their concerns. 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 public access to all notifications and supporting documentation submitted by WTO parties.

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

Regulatory Practices. Further, with respect to transparency, H.R. 3005, Section 2(b)(8) includes a 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.

Promotion of Certain Priorities

In addition to negotiating objectives, H.R. 3005 (Section 2(c)) requires the President to promote certain priorities "in order to address and maintain U.S. competitiveness in the global economy." Among the environmental priorities, 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,[3] 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 that includes 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.

Comparison with Selected Provisions of H.R. 3019

H.R. 3019 and H.R. 3005 share a number of similarities. For example, both bills contain principal negotiating objectives to address a party's failure to enforce its environmental laws and to make such failures subject to dispute settlement. Both bills require environmental assessments of trade agreements, direct negotiators to seek more transparency in trade and investment matters, and call for increasing the

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[3]E.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."

environmental protection capacity of trading partners. However, H.R. 3019 contains more extensive, specific, and prescriptive negotiating objectives for environmental issues, and contains numerous provisions aimed at strengthening protections for environmental measures that may conflict with trade obligations, including measures taken to implement MEAs. Several differences are identified below.

In the principal negotiating objectives on environment, both H.R. 3005 and H.R. 3019 seek an obligation for parties to enforce their environmental laws. In H.R. 3019, the objective for FTAA and bilateral negotiations is *to obtain rules* providing for the enforcement of environmental laws and to establish as the trigger for invoking the dispute settlement process: (1) a member's "failure to effectively enforce such laws and regulations through a sustained or recurring course of action or inaction, in a manner affecting trade or investment," or (2) a member's waiver or derogation from its laws for the purpose of gaining a competitive advantage." While both bills seek to make enforcement failures subject to dispute settlement, H.R. 3019 calls for environmental disputes to be subject to the same dispute settlement processes and enforcement mechanisms and remedies as other provisions. H.R. 3005 would allow flexibility in procedures and remedies.

Language in H.R. 3019 seeking to prohibit the weakening of environmental laws to gain a competitive advantage expands on hortatory language contained in the U.S.-Jordan FTA and the NAFTA (Chapter 11, Investment). The NAFTA provision states that a party should not waive or otherwise derogate from such measures to attract investment and also provides that a party may request consultations if it considers that another party has done so. Environmental groups have argued for language seeking to prevent countries from weakening environmental standards to promote a trade advantage and for making such action subject to dispute settlement procedures. Opponents of this language in H.R. 3019 have expressed concerns that legitimate changes in domestic environmental measures could be subject to challenge by U.S. trading partners. H.R. 3005 does not include this provision.

In the principal negotiating objectives on foreign investment for the FTAA and bilateral agreements, H.R. 3019 more extensively and explicitly addresses environmental concerns. Like H.R. 3005, H.R. 3019 calls for establishing standards for expropriation and compensation, consistent with United States legal principles and practice. However, H.R. 3019 further directs negotiators to secure rights for investors that are no greater than those afforded under U.S. law; to ensure that the investor protections do not interfere with exercise of police powers under local, state, and national laws (e.g., legitimate environmental laws), to include a clarification that the standards in an agreement do not require use of the least trade restrictive regulatory alternative; to provide an exception for actions taken in accordance with obligations under a multilateral environmental agreement; to provide a screening process for investor-state claims; and to open the dispute settlement process to the public.

Both bills contain provisions to increase transparency in trade matters. Overall, H.R. 3019 negotiating objectives go beyond those in H.R. 3005 and aim to markedly increase public participation in trade matters compared to current practice. For example, H.R. 3019 dispute settlement objectives for FTAA (and bilateral) negotiations seek to: require that all submissions by governments to dispute panels and appellate bodies be made available to the public and that dispute panel meetings

are open to all; to allow for the submission of *amicus curiae* briefs; and to seek procedures for panels and appellate bodies seek expert environmental advice. H.R. 3019 also directs negotiators to seek greater transparency in WTO proceedings.

Each bill addresses capacity building, with H.R. 3019 being more extensive and prescriptive. H.R. 3005 requires the President to seek to establish consultative mechanisms to strengthen U.S. trading partners' capacity to develop and implement environmental protection standards. H.R. 3019 includes as a principal negotiating objective for the FTAA (and bilateral agreements) the creation of a work program to assist trading partners in strengthening their environmental laws based on standards in existing international agreements or on the standards of other FTAA members.

Among other differences in the bills, H.R. 3019's principal negotiating objectives include several that are not in H.R. 3005, e.g.,: seeking (or clarifying) exceptions from trade agreement obligations to allow countries to take environmental protection and resource conservation measures (including measures to implement multilateral environmental agreements); seeking to reduce subsidies in natural resource sectors (including fisheries and forest products) and export subsidies in agriculture; and strengthening the role of the WTO Committee on Trade and Environment.

Congressional Oversight and President's Consultations with the Congress*

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 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

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designees, and three additional members of either 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.

The Comprehensive Trade Negotiating Authority Act of 2001 (H.R. 3019) contains no comparable provision but increases the present number of Section 161 advisers by adding to it six members: two members (each from a different party) from each the House and the Senate Committee on Agriculture, and from the general membership of each chamber *(Section 3)*.

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–in these two bills referred to as either the "trade promotion authority" (H.R. 3005) or "trade negotiating authority" (H.R. 3019)–both bills contain 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 Omnibus Trade and Competition Act of 1988. H.R. 3019, on the other hand, requires such notifications and/or consultations in several more instances than H.R. 3005.

The consultations are arranged below in the approximate sequence in which they would take place, and are identified in Roman font by the section of H.R. 3005 as reported by the Ways and Means Committee (H.Rept 107-249, pt. 1) and in *italics* by the section of H.R. 3019 as introduced. Topics for which no section reference in either measure is given are not covered in that measure.

(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); *Section 2(b)(1)(L)).*

(2) With respect to agreements dealing with tariff barriers, both bills require the President to notify Congress of his intent to enter into an agreement (Section 3(a)(1); *Section 4(a)(1)).*

(3) In developing strategies for pursuing the negotiating objectives of tariff-and-nontariff-barrier agreements (including free-trade agreements), i.e., agreements that would be enacted by the fast-track implementing procedure, H.R. 3019 requires the President to consult with the House Ways and Means Committee and the Senate Finance Committee, the congressional trade advisers, and other appropriate committees *(Section 5(b)(1))* and to assess whether U.S. tariffs on agricultural products are lower than those of the countries with which negotiations will be conducted, and whether world-wide tariffs on U.S. products are higher than U.S. tariffs on imports, and consult concerning the assessment with House Ways and Means, and Agriculture Committees, and with Senate Finance, and Agriculture, Nutrition, and Forestry Committees as to whether it is appropriate to further reduce U.S. tariffs *(Section 5(b)(2)).*

(4) With respect to agreements dealing with tariff and nontariff barriers, the President is required by both bills to submit to the Congress, at least 90 days before initiating negotiations, a written notice of his intent 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)), or the congressional trade advisers *(Section5(c)(1)).*

(5) 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, the Senate Finance, and Agriculture, Nutrition, and Forestry committees (Section 4(b)).

(6) Upon the commencement of negotiations of a tariff-and-nontariff-barrier agreement, the USTR is to initiate an assessment of the environmental effects and a review of effects on workers of the proposed trade agreement and submit to Congress

within 6 months preliminary drafts of the assessment and of the review, and, not later than 90 calendar days before the agreement is signed, their final versions *(Section 6(d) and (e)).*

(7) In the course of any negotiation conducted under the authority of the Act, the USTR must consult "closely and on a timely basis" (under H.R. 3005) with the Congressional Oversight Group and all committees of both Houses with jurisdiction over laws that would be affected by the agreement being negotiated (H.R. 3005, Section 2(d)(1)); or (under H.R. 3019) with the congressional trade advisers, the House Ways and Means and Senate Finance committees, any other appropriate committees, and, in negotiations relating to agriculture, specifically, with the House Agriculture Committee and Senate Agriculture, Nutrition, and Forestry Committee *(Section 6(a)).*– In consultation with the chairmen and ranking minority members of House Ways and Means and Senate Finance Committees, and with the congressional trade advisers, the USTR is to develop guidelines for such consultations *(Section 6(b)).*

(8) At least 90 calendar days before the President signs a tariff-and-nontariff-barrier agreement, the USTR is to notify Congress of the language and possible impact of the agreement on U.S. trade remedy laws or the U.S. rights or obligations under the WTO Antidumping, Subsidies and Countervailing, and Safeguards Agreements *(Section 6(f)).*

(9) Similarly, the President is to submit a report to Congress at least 90 days before he signs such an agreement with respect to trade and investment, a report explaining in detail the dispute settlement mechanism included therein *(Section 6(g)).*

(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(c)). Under H.R. 3019, such consultation is to take place with the congressional trade advisers rather than the Congressional Oversight Group *(Section 6(h)).*

(12) Under H.R. 3019, the President is required, at least 120 calendar days before he enters a tariff-and-nontariff-barrier agreement, to notify both Houses of his intention to enter into it; at least 90 calendar days before entering into it, to certify to the Congress that the agreement substantially achieves the principal negotiating objectives; and, at least 60 calendar days before entering it, to submit to the Congress

a description of changes in U.S. law required by the agreement. Failure to provide these notices would preclude the agreement from entering into force *(Section 7(a)(1))*. Fast- track procedure would be denied to an implementing bill unless the 90-day advance certification is concurred in by a majority vote of the congressional trade advisers; if no vote is taken within 30 session days, the concurrence is considered as granted *(Section 7(b)(1))*.

(13) Under H.R. 3005, the President's failure or refusal to 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)).

(14) 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 (4) above) as soon as feasible (Section 6).

(15) Similarly, under H.R. 3019, the requirement for notices, reports, and consultations (concerning negotiating objectives, environmental assessment, and labor review) due at specified times before or in the earlier stages of negotiations would not apply with respect to the specified agreements, if the relevant negotiations had begun before the enactment of the measure; they would have to take place, however, as soon as feasible, or within a specified deadline after the enactment *(Section 8)*.

Expedited Procedures and Procedural Controls on Their Use*

Although H.R. 3005 is said to provide "trade promotion 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. H.R. 3005 only makes legislation to implement a specified class of trade agreements eligible to be considered under the expedited procedures established by section 151 of the Trade Act of 1974[1] (also called "fast track" procedures). The intent of these expedited procedures 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.

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

The availability of this expedited treatment encourages trade negotiations, by assuring the President and other participants that Congress will vote on their agreements in the form they negotiated them. By the same token, however, these procedures narrowly constrain the discretion Congress normally exercises over its legislative agenda. Like previous statutes and proposals in this area, H.R. 3005 compensates for these constraints by (1) restricting the class of trade agreements that are eligible for expedited consideration, and (2) providing or protecting procedural means for each house to ensure that these restrictions will not be breached. Through these procedural enforcement mechanisms, Congress retains substantial control over what individual trade agreements it may obligate itself to consider under expedited procedures.

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 two restrictions, H.R. 3005 adapts specific mechanisms provided for in previous legislation. The others could be enforced through various applications of the general constitutional power of each house of Congress to determine its own rules.

Enforcing Time Restrictions

Under H.R. 3005, the President could extend the availability of the expedited procedures of section 151 to agreements entered into until June 1, 2007, by so requesting, unless either house disapproves the request by adopting an "extension disapproval resolution." If either house disapproves, however, the trade promotion authority would be available only for agreements entered into before June 1, 2005.

An extension disapproval resolution is to be considered under a separate set of expedited procedures, intended to guarantee consideration and prohibit amendment, contained in section 152 of the Trade Act of 1974.[2] Under H.R. 3005, the House would refer the resolution to the Committees on Ways and Means and on Rules, and the Senate to the Committee on Finance. In each house, the resolution could be considered on the floor only if reported by the respective committee(s). This requirement means that the revenue committees in each house would effectively control the use of this means to limit the trade promotion authority.

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[2] 19 U.S.C. 2192. The appendix provides specifics.

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," stating that the President has "failed or refused to notify or consult" as required with respect to specified trade negotiations. If both houses adopt procedural disapproval resolutions with respect to the same negotiation, within 60 days of one another, the trade agreement becomes ineligible for expedited consideration.

Like an extension disapproval resolution, a procedural disapproval resolution 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. Unlike the extension disapproval resolution, however, the procedural disapproval resolution may be introduced only by the chairman or ranking minority member of one of the committees named. As with the extension disapproval resolution, these arrangements vest in the revenue committees control of this means for Congress to retain control over the availability of the trade promotion authority.

Previous law provided for this mechanism in a less flexible form. Under the Omnibus Trade and Competitiveness Act of 1988 (OTCA), adoption in each house of procedural disapproval resolutions terminated the trade promotion authority altogether. Under H.R. 3005, Congress could use this procedure to exclude a single trade agreement from the expedited process, while retaining its potential availability for any subsequent agreement.

Enforcing Restrictions on Objectives and Contents

H.R. 3005 establishes no specific procedural means for Congress to enforce the requirements it places on (1) the objectives covered trade agreements must serve, or (2) the provisions their implementing bills may contain. For example, the required consultations might convince the revenue committees that the designated objectives were not being served. H.R. 3005 would not authorize the use of procedural disapproval resolutions to withdraw eligibility for expedited consideration for that reason, as long as the consultations were in fact taking place. Instead, each house would presumably be able to enforce these requirements for objectives and contents by use of its constitutional power to determine its own rules and their application.

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. By sustaining the point of order, the chair could in effect withdraw the opportunity for that trade agreement to receive expedited consideration. Alternatively, each house always retains the ability to alter or supersede any statutory procedure permanently by adopting a resolution amending it, just as it may do for its own standing rules. Like most rulemaking statutes, existing trade law and H.R. 3005 explicitly reserve to each house this use of the constitutional rulemaking power.

In the House, it would be more likely that if an implementing bill did not meet statutory requirements, the Committee on Ways and Means would 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. It also retains the ability, however, to reject the motion to proceed to consider an implementing bill authorized by statute, and then to 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. All three kinds of resolutions have the function of regulating procedure. Whereas special rules establish the procedures under which a specified measure shall be considered, the two kinds of 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.

Enforcement Mechanisms Proposed by H.R. 3019

H.R. 3019 resembles H.R. 3005 in affording similar presidential trade negotiating authority and establishing the same four kinds of limitations on that authority. For example, H.R. 3019 retains the time limits on the negotiating authority, the possibility of their extension, and the mechanism of the extension disapproval resolution. The only significant change in this respect is that the periods for which the negotiating authority is provided are calculated from the date of enactment rather than by dates fixed in the bill itself.

Concurrent with its restructuring of specific requirements for objectives and consultations, however, H.R. 3019, also restructures some of the procedural mechanisms allowing Congress to enforce these requirements. It affords no fewer than three means for Congress to make the results of a trade negotiation ineligible for expedited implementation. None of the three requires Congress to invoke a failure to consult, or any other specific reason, as grounds for its action, so that each could be used to enforce any limitation Congress may place on the negotiating authority.

Two of these three mechanisms adapt the device of the procedural disapproval resolution, which H.R. 3019 calls simply a disapproval resolution. The first would permit Congress to withdraw eligibility for expedited consideration from a negotiation in advance, if both houses adopt disapproval resolutions during the 90-day period between the required presidential notice and the start of negotiations. Inasmuch as H.R. 3019 also directs that consultations on objectives occur during this period, Congress could use this form of disapproval especially to ensure that the negotiations would adhere to its view of appropriate objectives. Negotiations that H.R. 3019

would authorize to begin before enactment would be exempt from this first form of disapproval.

Second, once negotiations are in progress, Congress could withdraw expedited consideration through adoption by both houses of disapproval resolutions within 120 days of each other, excluding weekend and recess days on which either house was not in session (rather than the 60 calendar days of H.R. 3005). Each resolution could disapprove several negotiations; if those named by the two houses differ, only those included in both resolutions become ineligible. A resolution disapproving negotiations authorized to begin before enactment would apparently have to be separate from one disapproving others.

By comparison with the procedural disapproval resolutions of H.R. 3005, both forms of disapproval resolution in H.R. 3019 are less fully under control by the revenue committees, because H.R. 3019 (1) omits the requirement that the resolutions be introduced by the chair or ranking minority member, and (2) extends to them the provision of section 152 that the committee be automatically discharged if it does not report. For the second kind of resolution, disapproving negotiations in progress, however, the bill also introduces new restrictions. It permits the resolution to be considered under the expedited procedures of section 152 only once per Congress in each house, and only if one-third of the Members of that house cosponsor it.

Third, H.R. 3019 permits the Congressional Trade Advisors (roughly equivalent in purpose to the Congressional Oversight Group of H.R. 3005) to withdraw expedited consideration from a trade agreement. The bill requires the President, at least 90 days before entering into each agreement, to certify that it "substantially achieves the principal negotiating objectives." If, within 30 days thereafter, the Congressional Trade Advisors vote not to concur in this certification, the implementing legislation shall not receive expedited consideration. This mechanism seems modeled on one contained in OTCA, in which either revenue committee could similarly withdraw eligibility for expedited consideration.

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.