Order Code RS20968
Updated December 13, 2001

Jordan-U.S. Free Trade Agreement: Labor Issues

Mary Jane Bolle
Specialist in International Trade
Foreign Affairs, Defense, and Trade Division

Summary

The U.S.-Jordan Free Trade Agreement (FTA), implemented as P.L. 107-43, breaks new ground in including multiple worker rights provisions in the *body* of a U.S. trade agreement, rather than as a side agreement, for the first time. For this reason, it adds some controversy to the congressional debate over whether worker rights provisions should be included in future trade agreements. Some observers eye this configuration of worker rights protections as a model for future trade agreements; others view it as a one-time occurrence justified only because Jordan has a strong tradition of labor protections; still others oppose the inclusion of labor provisions in trade agreements under any circumstances. This report will be updated as events warrant.

This report examines the labor provisions of the U.S.-Jordan Free Trade Agreement (FTA) and compares them with those of the North American Free Trade Agreement (NAFTA). It also looks briefly at the larger issues of including worker rights provisions in trade agreements, and summarizes the positions of major stakeholders in the debate.

The U.S.-Jordan FTA was signed by then President Bill Clinton and King Abdullah II on October 24, 2000, and submitted to Congress on January 6, 2001. The agreement, which the Jordanian parliament endorsed on May 9, 2001, provides for a 10-year transitional period during which duties on almost all goods traded between the countries (except tobacco and related products) will be totally phased out.[1]

The trade effects of the U.S.-Jordan FTA are expected to be small. In 2000, the United States imported $73 million worth of commodities (.006% of all U.S. imports) from Jordan, ranking it 123rd among countries from which the United States imports goods. In return, the United States exported $306 million (.04% of all U.S. exports) worth of goods to Jordan, which placed it 76th among countries to which the United States exports goods.

[1] See *U.S.-Jordan Free Trade Agreement*, by Joshua Ruebner, CRS Report RL30652.

Companion bills to implement the U.S.-Jordan FTA were introduced in the Senate and House (S. 643, Baucus and H.R. 1484, Levin) at the end of March and early April, respectively. Action to consider the legislation is anticipated during the summer of 2001.

Major Provisions of the Agreement

The labor provisions of the U.S.-Jordan FTA, located in the body of the agreement, are relatively straightforward, and occupy one page of text. They require that each country enforce its own labor laws in manners affecting trade, and that those laws reflect both "internationally recognized worker rights" as defined by the U.S. Trade Act of 1974, as amended, and "core labor standards" as defined by the International Labor Organization. The provisions further require that the Parties to the agreement do not "waive" or "derogate from" their own labor laws as an encouragement for trade with the other Party. Finally, they provide that each Party will be considered in compliance with the agreement where any deviation from the requirements reflects a "reasonable exercise of . . .discretion" or "results from a bona fide decision regarding the allocation of resources."

The dispute settlement procedures, slightly longer than the labor provisions, occupy one and one-half pages of text. They provide for resolution of disputes that arise over: (a) interpretation of the agreement; (b) alleged failure of a Party to carry out its obligations under the agreement; and (c) measures taken by a Party that allegedly severely distort the balance of trade benefits or substantially undermine the fundamental objectives of the agreement.

Pursuing a dispute through the complete resolution procedure provided for in the agreement would take 270 days, or about nine months. Any dispute would move up the ladder for consideration first through consultations between "contact points." These would be followed with consideration by a Joint Committee, and further consideration by a Dispute Settlement Panel. The Panel is required to present a report containing its findings of fact and its determinations, which shall be non-binding. If the dispute is still not resolved within 30 days after the Joint Committee presents its report, the affected Party shall be entitled to take "*any appropriate and commensurate measure*."

Reaction to the Labor Provisions

Initial reaction to the labor provisions of the U.S.-Jordan FTA was mixed. Some policymakers support the provisions, and others oppose them.

Supporters, including many Democrats, argue that the labor provisions do not break much new ground. Most of the provisions are similar to those in the NAFTA labor side agreement. (Provisions of the two agreements are compared in table 1.) There are only two new elements. One is the provision that the parties agree to strive not to "waive or otherwise derogate from" their own labor laws as an encouragement for trade with the other Party. This provision had previously been proposed and debated in the context of 1997 bills reported out of House and Senate trade committees. These bills would have reauthorized presidential authority to negotiate trade agreements on a fast-track basis – without amendment and with limited debate. Neither bill passed.

The other new element is the inclusion of the labor provisions in the body of the agreement, where they share a dispute resolution procedure with trade in goods, intellectual property, and e-commerce. The interpretation of the consequence of this location is up for debate. At issue is whether or not the provision specifying that a Party shall be entitled to take "any appropriate and commensurate measure" if the dispute resolution procedure fails, authorizes sanctions.

Opponents, including many Republicans, see such labor provisions as potentially protectionist – especially located as they are in the body of the agreement, where they are subject to dispute settlement procedures and possibly sanctions.

The Larger Ongoing Debate About Linking Worker Rights Provisions with Trade Agreements

The labor provisions of the U.S.-Jordan FTA and reaction to them can also be viewed in the context of the larger ongoing debate in Congress about the linkage of worker rights and trade. That debate has been ongoing since 1994, when presidential fast-track authority to negotiate new trade agreements, contained in the Omnibus Trade and Negotiating Act (OCTA) of 1988 (P.L 100-418), expired. The OCTA included as a principal negotiating objective of the United States in trade agreements "*to promote worker rights.*" Under that authority, NAFTA was negotiated with its labor side agreement.

In contrast to this broad presidential authority, some of the bills introduced to extend or reauthorize fast-track authority since the OCTA expired in 1994 would have halted further promotion of the worker rights and trade linkage, and also would have placed limits on the linkage itself. For example, H.R. 2621 (H.Rept. 105-340) and S. 1269 (S.Rept. 105-102) would have permitted labor provisions in trade agreements *only* to prevent foreign governments from "derogating from" existing labor standards to attract investment or gain competitive advantage. Other current bills to reauthorize fast-track authority, including H.R. 2149 (Crane), contain no specific reference to worker rights.

Stakeholders

So, it is largely in the context of the larger issue of reauthorizing presidential fast-track authority that many stakeholders are reacting to the U.S.-Jordan FTA.

Many Republicans, for example, would prefer a "clean" U.S.-Jordan agreement with no environment or labor provisions. They argue that such provisions impede the flow of free trade and are not needed. In addition, some business groups, including the U.S. Chamber of Commerce, argue that any labor and environment provisions could put U.S. companies at serious disadvantage vis-a-vis their competitors in the World Trade Organization. Others might still find the agreement acceptable, but argue that it should be a "one time" occurrence rather than a precedent.

Instead of including worker rights provisions and dispute resolution procedures in the U.S.-Jordan or other trade agreements, some argue that any potential violations of core labor standards should be pursued multilaterally through the International Labor

Organization (ILO). The ILO, part of the United Nations, was established in 1919 to promote worker rights. It has no direct enforcement powers, working instead through technical assistance and moral suasion.

Many Democrats, however, are in favor of using the U.S.-Jordan FTA labor provisions as a model for other trade agreements. The AFL-CIO asserts that an even more elaborate mechanism than is included in the U.S.-Jordan FTA is needed (a) to ensure that foreign labor laws are brought up to international standards on a clear timetable, and (b) to prevent the use of trade and investment agreements as business tools to force down wages and working conditions in the United States and abroad.

Raising the Possibility of a Memorandum of Understanding

The U.S.-Jordan FTA language permitting an affected Party to take "any appropriate and commensurate measure" if the dispute is not resolved through prescribed procedures, has been controversial. Some observers suggested that the United States and Jordan exchange a side letter or memorandum of understanding agreeing that any "appropriate and commensurate measure" does not mean sanctions, but leaving open what else the words might mean.[2] Such letters were actually exchanged on July 23, 2001, paving the way for approval of the legislation by House and Senate committees on July 26, and by the whole House on July 31. (See legislation section below for details.)

If Congress had not been able to resolve the issue of sanctions with the exchange of memoranda of understanding or similar document, it would have had several other options other than to approve the agreement as negotiated. It could have (a) approved the agreement with conditions, and in effect required the President to renegotiate it; (b) amended any implementing legislation; or (c) as under the fast-track procedure, simply disapproved the agreement and the implementing legislation containing the language of the agreement as introduced.

Conclusion

The U.S.-Jordan FTA continues and arguably advances the linkage of worker rights provisions and trade beyond that contained in the NAFTA labor side agreement. It does this: (a) by including the worker rights provisions in the body of the agreement, and (b) as the language currently stands, by raising the possibility of "sanctions" in that either country may take "any appropriate and commensurate measure" if the dispute procedures do not lead to resolution. There is uncertainty over the extent to which the U.S.-Jordan FTA may have a bearing on the larger worker rights and trade issues connected with fast-track reauthorization.

---

[2] Jordan Opposes Reopening FTA, but Would Accept Side Letter, *Inside U.S. Trade*, April 13, 2001.

Table 1. Comparison of Key Provisions of U.S.-Jordan Free Trade Agreement and NAFTA

Provision	U.S.-Jordan Free Trade Agreement, Article 6	NAFTA (P.L. 103-182)
Where are labor provisions?	In body of the agreement	In labor side agreement
Definition of worker rights	**"Internationally Recognized Worker Rights" from Trade Act of 1974**: (P.L. 93-618 as amended by Sec. 503 of P.L. 98-573): a) right of association; b) right to organize and bargain collectively c) prohibition of forced or compulsory labor; d) minimum age for employment of children; e) acceptable conditions re: minimum wages, hours; and occupational safety and health. **"Core Labor Standards" from the International Labor Organization (ILO)**. a) freedom of association; b) right to organize and bargain collectively; c) prohibition on the use of forced labor; d) prohibition of exploitative child labor; e) prohibition of employment discrimination	**"Internationally Recognized Worker Rights" from Trade Act of 1974 (at left) plus the following additions:** f) the right to strike g) minimum employment standards relating to overtime pay; h) elimination of employment discrimination; i) equal pay for men and women; j) compensation in cases of occupational injuries and illnesses; k) protection of migrant workers.
Basic labor requirements	a) All countries must enforce their own labor laws and standards in trade-related situations. b) Each Party shall strive to "*not waive or otherwise derogate from*" its laws as an encouragement for trade.	All countries must enforce own labor laws and standards in trade-related situations and shall strive toward the entire list of worker rights. No comparable provision
Which worker rights are subject to dispute resolution?	All of them. No similar provision	Only three standards out of 11 (for child labor, minimum wages, and occupational safety and health) are enforceable through dispute settlement and ultimately sanctions. Dispute resolution may be undertaken only for failure to enforce one's own worker rights laws and regulations, and if alleged failure to enforce is trade-related and covered by mutually recognized labor laws.
Enforcement body and dispute resolution procedure	Each country shall designate an office to serve as a contact point on the agreement. Any issue not resolved through consultation within 60 days may be referred to a **Joint Committee**, and, if still not resolved within 90 days, to a **Dispute Settlement Panel** chosen by the parties.	Trade ministers (the Ministerial Council) meet occasionally, supported by a 15-member Secretariat to resolve issues with consultation and persuasion. In each country a **National Administrative Office (NAO)** oversees the law; Then an: **Evaluation Committee of Experts (ECE)** and subsequently an **Arbitral Panel (AP)** are appointed as needed to debate cases.
Ultimate penalties	If the issue is still not resolved in 30 days, after the panel reports, the affected party may take *any appropriate and commensurate measure.*	The AP may issue a monetary assessment; and if this is not paid, issue sanctions. **Maximum penalties:** suspension of NAFTA benefits to the amount of the monetary penalty (which may be no greater than NAFTA benefits from tariff reductions) for one year.

Legislation

S. 643 (Baucus, identical to H.R. 1484, Levin) would implement the U.S.-Jordan FTA. It contains provisions modifying tariffs, governing rules of origin, and providing for relief from imports that cause injury. An amendment in the nature of a substitute offered by Chairman Baucus, correcting technical and typographical errors in the original bill was considered by the committee on July 17. The committee rejected an amendment by Sen. Phil Gramm aimed at protecting U.S. sovereignty in enacting labor and environmental laws. On July 26, the Senate Finance Committee approved S. 643 by a voice vote. Also on July 26, the House Ways and Means Committee approved similar legislation, H.R. 2603 (Thomas) implementing the U.S.-Jordan FTA, an amendment in the nature of a substitute, by a voice vote.

Committee approval of the implementing legislation came after the ambassador of Jordan and Robert Zoellick, the U.S. Trade Representative, exchanged identical letters (dated July 23, 2001) pledging to resolve any differences that might arise between the two countries under the agreement, without recourse to formal dispute settlement procedures, and specifying that each government "would not expect or intend to apply the Agreement's dispute settlement enforcement procedures . . .in a manner that results in blocking trade." In House floor debate, the letters were viewed alternately as: (1) part of "a cooperative structure. . . to help secure compliance without recourse to . . .traditional trade sanctions that are the letter of the agreement (Thomas); and (2) "a step backwards for future constructive action on trade" (Levin).

The House approved H.R. 2603 by a voice vote on July 31, 2001. The Senate approved H.R. 2603 by a voice vote on September 24. It became law as P.L. 107-43 on September 28, 2001. During the Senate debate, Senator Phil Gramm warned that he will oppose any effort to turn the U.S.-Jordan FTA into a model for how future trade agreements should deal with worker rights (and environmental protection issues). He argued that they should not be part of trade deals. Conversely, Senate Finance Committee Chairman Max Baucus indicated he hoped the U.S.-Jordan FTA would set a precedent for how future trade agreements would address issues like labor and the environment. He also refuted a statement made by Senator Graham that the provisions would undermine U.S. sovereignty or prevent lawmakers from enacting and enforcing U.S. labor and environmental laws.