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Trade Promotion Authority (TPA) Renewal: Core Labor Standards Issues: A Brief Overview

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Summary

This report is a brief overview of key issues addressed in CRS Report RL33864, *Trade Promotion Authority (TPA) Renewal: Core Labor Standards Issues*. Trade promotion authority (TPA), formerly known as "fast-track" authority, is scheduled to expire July 1, 2007. With it will expire the President's authority to negotiate trade agreements that Congress will then consider without amendment and with limited debate. For the 110th Congress, a likely issue in this debate is whether to include *enforceable core labor standards* as a principal negotiating objective in trade agreements. Accordingly, this report (1) identifies key labor provisions in the current TPA law and how they have translated into free trade agreements negotiated under it; (2) presents some legislative options, and summarizes arguments for and against listing enforceable core labor standards as a principal negotiating objective; and (3) looks at possible outcomes and implications of the legislative options. This report will be updated as events warrant.[1]

Introduction

Trade promotion authority (TPA), formerly known as "fast-track" authority, is scheduled to expire July 1, 2007. With it will expire the authority that Congress grants the President to enter into certain trade agreements, and the authority for Congress to consider the agreements' implementing legislation under expedited procedures. Currently, the Administration is negotiating a number of trade agreements that may not be completed before TPA is set to expire. If these activities are to continue, TPA renewal may be a

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

central issue in the 110th Congress. Within the debate, a major issue is expected to be whether to include as a principal negotiating objective in trade agreements, "enforceable core labor standards."

The current TPA is contained in the *Bipartisan Trade Promotion Authority Act of 2002* (Title XXI of the Trade Act of 2002, P.L. 107-210). A total of nine free trade agreements (FTAs) have been negotiated under this authority. They are with Chile, Singapore, Australia, Morocco, Bahrain, Oman, the Dominican Republic and Central America, Peru and Colombia. The last two await congressional consideration. The labor issue in these trade agreements is how key provisions in each reflect two principal negotiating objectives in TPA.

The first TPA principal negotiating objective is: "to ensure that a party *does not fail to enforce its own labor laws* through a sustained or recurring course of action or inaction, in a manner affecting trade between the parties." All nine FTAs track this principal negotiating objective by providing: that countries shall "not fail to enforce their own [labor] laws ... in a manner affecting trade between the Parties" — popularly called the "enforce-your-own" provision.

The second TPA principal negotiating objective is: "to seek dispute settlement and enforcement provisions *that treat U.S. principal negotiating objectives equally* with respect to the ability to resort to dispute settlement, the availability of *equivalent* dispute settlement procedures, and the availability of *equivalent* remedies." In what labor advocates see as a "departure" from the TPA provision, procedures for labor disputes differ in several respects from those for commercial disputes and include a cap on monetary penalties (while those for commercial disputes do not.)

Key Players and Their Positions

Those calling for expanded or strengthened labor provisions fault labor protections in the nine FTAs,[2] arguing that they (1) lack the enforceability of commercial provisions; (2) fail to meet some congressional negotiating objectives and barely comply with others; (3) represent a "big step back" from both the U.S.-Jordan FTA and U.S. unilateral trade preference programs such as the Generalized System of Preferences (GSP);[3] and (4) "completely exclude obligations for governments to meet such international standards as worker rights." These advocates further argue that in order to strengthen FTA provisions, the blueprint for their negotiation — the TPA language — needs to be strengthened.

Advocates of strengthened labor provisions, in promoting enforceable core labor standards, appear to have two objectives. The first objective could be characterized as

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

[3] The Jordan FTA (in which all provisions are technically equally enforceable) requires that parties reaffirm their obligations to uphold both *core labor standards* under the International Labor Organization (ILO), and *internationally recognized worker rights* under the U.S. Trade Act of 1974. The GSP and other U.S. trade preference laws require that eligible beneficiary countries be "taking steps to afford" their workers *internationally recognized worker rights* (defined on p. 4.)

humanitarian: to promote the protection of workers around the world, particularly those in developing countries where protections are weak and/or poorly enforced. The second objective could be interpreted as economic: to help "level the playing field" between U.S. and foreign workers so that U.S. workers can compete on a more equitable basis.

Opponents respond in support of the current TPA, noting that labor provisions in the nine FTAs negotiated under it: (1) are the strongest labor provisions attached to FTAs to date; (2) are the product of bilateral negotiation; and (3) both depend on and reflect mutual agreement by negotiating countries; 4) treat U.S. principal negotiating objectives "equally" in that the principal remedies for labor and commercial disputes are "equivalent;" and (5) are preferable to enforceable core labor standards because the latter could raise sovereignty issues.

Opponents have, as one key objective, promotion of U.S. investment. They often represent the viewpoints of businesses and investors, developing country governments, and the current Administration. Many business groups support the passage of TPA in order to facilitate the expansion of U.S. multinational corporations abroad — their most important avenue for continued growth. In fact, both TPA and trade agreements typically include many protections for investors. Developing countries care about protecting their ability to attract investment, and are concerned about anything that might jeopardize that ability. In the World Trade Organization (WTO), developing countries have long resisted U.S. proposals to study the relationship between worker rights and trade, concerned that such a study could lead to enforceable labor standards that could undercut their comparative advantage in low-cost labor. However, as with businesses and investors, their flexibility to compromise on the issue of enforceable core labor standards seems to be related to the strength of their desire to have an FTA with the United States.

Major Legislative Options and Arguments

Major legislative options for treatment of labor standards as principal negotiating objectives *if TPA were to be renewed*, include the following:

- **Option 1:** No enforceable labor standards provisions. This option would likely be viewed as a step back from the expiring TPA;

- **Option 2:** Renewal of the current "enforce-your-own" provisions aiming: (1) to ensure that a party *does not fail to enforce its own labor laws*; and (2) to seek dispute settlement provisions that treat U.S. principal negotiating objectives *equally*; and

- **Option 3:** "Enforceable core labor standards" as reflected in H.R. 3019, introduced in 2001 by Representative Charles Rangel which aimed: (1) to ensure that a party does *not fail to enforce core labor standards*; and (2) to provide that violation of these standards would be subject to enforcement under a *single set of dispute settlement procedures* that would be *applicable to all disputes* under an FTA.

The term *core labor standards* has been defined in two ways by two different sources: the International Labor Organization (ILO) which calls them "core labor standards," and U.S. trade law which refers to them as "internationally recognized worker rights." Both definitions are almost identical and share four standards or rights: (1) the right to organize, (2) the right to bargain collectively, (3) prohibition of forced labor, and (4) protections for child labor including the "worst forms of child labor"[4] They differ on the fifth standard. U.S. law identifies it as: (5) labor standards pertaining to minimum wages, maximum hours, and occupational safety and health. ILO conventions define it as: (5) freedom from employment discrimination.[5]

Should Enforceable Core Labor Standards Be Included as a Principal Negotiating Objective?

General Arguments.

For Enforceable Core Labor Standards. Those in favor of principal negotiating objectives that call for enforceable core labor standards include the AFL-CIO, Human Rights Watch, and the International Labor Rights Fund.[6] Labor advocates traditionally argue: (1) that enforceable core labor standards help guard against a "race to the bottom," as workers all over the world compete against each other for scarce jobs; and (2) that labor standards do not interfere with natural comparative advantage in developing countries because labor standards are only one basis for comparative advantage. Others include abundance, skills, and education of available workforce; infrastructure; level of technological development of the country; and natural resource base.

Against. Opponents typically argue that (1) the enforce-your-own standards model provides a more direct, less encumbered path to economic growth; (2) most developing countries have few resources to devote to labor standards enforcement; (3) once a developing country is more economially developed and relatively near full employment, labor standards and their enforcement begin to rise on their own; and (4) imposing core labor standards on developing countries too soon could interfere with their comparative advantage in abundant and inexpensive labor, and amount to protectionism.

Arguments Related to U.S. Workers.

For Enforceable Core Labor Standards. Supporters argue that a principal negotiating objective calling for enforceable core labor standards could help level the playing field for U.S. workers and make them more competitive internationally.

Against. Some opponents argue that the need or desire to earn a living is often incentive enough to encourage displaced workers to find new employment. Others argue

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[4] The "worst forms of child labor" include the employment of children for purposes including prostitution, pornography, drug trafficking, armed conflict, and forced labor.

[5] The U.S. definition can be found in the *Trade Act of 1974*, Sec. 507. The current TPA in the *Bipartisan Trade Promotion Authority Act of 2002*, Title XXI of the *Trade Act of 2002*, combines the ILO name and the U.S. list, defining the U.S. list as "core labor standards."

[6] Conversations with Thea Lee, Policy Director, AFL-CIO, Carol Pier, Labor Rights and Trade Senior Researcher, Human Rights Watch, and Bama Althreya, Executive Director of the International Labor Rights Fund, all January 16, 2007.

that there are better ways to help U.S. workers than trying to level the playing field, which, at best, may only slow the offshore movement (or technological elimination of) of some U.S. jobs. A better way, some argue, would be to expand adjustment assistance benefits, educational benefits, or other training and retraining programs to cover all displaced workers — whether the job loss results from trade or technology — and help them transition into new careers.

Arguments Related to Foreign Workers.

For Enforceable Core Labor Standards. Advocates of strengthened labor standards argue that enforceable core labor standards can help foreign workers share in the gains of increasing productivity and economic expansion, and thereby become consumers in their own right.

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

Sovereignty Issues.

For Enforceable Core Labor Standards. Those in favor of enforceable core labor standards as a principal negotiating objective could argue that the ILO already requires that countries comply with ILO core labor standards as a condition of continued membership in good standing, even if those countries do not formally approve the ILO conventions. Therefore, incorporating enforceable core labor standards into trade agreements does not add much more to this requirement.[7]

Against. Opponents might respond that enforceable core labor standards interfere with national sovereignty in a way that ILO membership does not, since enforcement powers of the ILO are limited to consensus and persuasion.

If So, What Should Be The Definition of Core Labor Standards?

Arguments on the Definition of Core Labor Standards.

For Enforceable ILO Core Labor Standards. If "enforceable core labor standards" is adopted as a principal negotiating objective for trade agreements, the AFL-CIO is strongly in favor of using the ILO definition over the U.S. definition (see p. 4 for definitions), because it is more current. Human Rights Watch, while not arguing for either definition specifically, stresses that the definition of core labor standards must include prohibitions against employment discrimination (which is in the ILO but not the U.S. definition.)

Against. If the ILO definition were adopted, opponents point out, foreign governments could hold existing U.S. labor laws up to scrutiny, arguing that they don't totally comply with ILO core labor standards. This is because the United States has ratified only two conventions (one on forced labor and one on the worst forms of child

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

labor). Accordingly, the U.S. Council for International Business (USCIB) argues that many U.S. labor laws would need to be changed to come into compliance with the ILO definition of core labor standards, especially in such areas as forced labor, minimum age for employment, and employment discrimination.[8]

Possible Outcomes and implications

Whether TPA is renewed, and whether the negotiation of enforceable core labor standards is included in any such renewal, international trade is likely to continue to expand in both volume and complexity. The economic effects on trade, investment, and labor markets of including enforceable core labor standards as a principal negotiating objective in TPA renewal could be relatively limited. They would likely depend on a number of factors including (1) the extent to which enforceable core labor standards were adopted and implemented in trade agreements; (2) the number of trade agreements affected; (3) the magnitude of U.S. trade with countries under such agreements; and (4) the extent of actual enforcement of those standards in trade agreements. In addition, the effects from any of these four factors could be dwarfed by shifts in the value of the dollar that might occur relative to other currencies.

If enforceable core labor standards were adopted as a principal negotiating objective in TPA legislation, whether or not the United States would need to make changes to its labor laws could depend on how the legislation defined the term "core labor standards."

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

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[8] CRS communication from Adam B. Greene, Vice President, Labor Affairs and Corporate Responsibility, USCIB, January 18, 2007, echoing the conclusion of a number of studies by the presidentially appointed Tripartite Advisory Panel on International Labor Standards (TAPILS), a research group made up of the USCIB, the AFL-CIO, and the U.S. government.