

# Report for Congress

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## **Trade Promotion Authority (Fast-Track Authority for Trade Agreements): Background and Developments in the 107<sup>th</sup> Congress**

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(name redacted)

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# Trade Promotion Authority (Fast-Track Authority for Trade Agreements): Background and Developments in the 107<sup>th</sup> Congress

## Summary

One of the major trade issues in the 107<sup>th</sup> Congress (2001-2002) was whether Congress would approve trade promotion authority (TPA; formerly called fast-track authority) for trade agreements. Under these provisions, Congress agrees to consider legislation to implement a trade agreement under special legislative procedures that limit debate and allow no amendment. The President is required to consult with congressional committees during negotiation and notify Congress at major stages.

This report gives background on the origin of TPA/fast-track legislation, trade agreements negotiated under such legislation in the past, the lapse of legislation in 1994, and attempts at renewal in the late 1990s. The report also follows TPA/fast-track authority legislation as it developed during the 107<sup>th</sup> Congress.

There were four major stages in the development of TPA legislation during the 107<sup>th</sup> Congress. First, after extensive debate on labor and the environment as trade negotiating objectives, the House passed a TPA bill (H.R. 3005) by a single vote (215-214) on December 6, 2001. Second, the Senate wrapped TPA into a comprehensive trade bill (H.R. 3009), with debate concentrated on health care subsidies under the trade adjustment assistance title of the bill, and approved the trade bill by a 66-30 vote on May 23, 2002. Third, the House considered a rule (H.Res. 450) that included broad trade language to match the scope of the Senate-approved bill. There was partisan disagreement on using the rule as a means to approve broad trade programs, and the House approved the rule on June 26, 2002, by another one-vote margin (216-215). Fourth, after some delays, conferees filed a report on trade bill H.R. 3009 on July 26, 2002. The House and Senate approved the conference report by votes of 215-212 and 64-34 respectively just before the summer recess. The President signed the bill into law (P.L. 107-210) on August 6, 2002.

The TPA provisions in P.L. 107-210 cover tariff and nontariff agreements entered into before June 1, 2005 (possible 2-year extension). For expedited procedures to apply to legislation to implement a trade agreement, the agreement must “make progress” toward meeting the outlined negotiating objectives and satisfy other specified conditions. Any changes to trade remedy laws are subject to greater congressional scrutiny. The President must consult with congressional bodies, including the newly established Congressional Oversight Group. Congress can withdraw expedited procedures, if consultation requirements are not met. This report will not be updated.

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# Trade Promotion Authority (Fast-Track Authority for Trade Agreements): Background and Developments in the 107<sup>th</sup> Congress

At the start of the 108<sup>th</sup> Congress, the United States was involved in an unprecedented number of trade negotiations. It was meeting with over 140 countries on a multilateral trade agreement under the World Trade Organization. It also was negotiating with 33 other countries in the western hemisphere to create a Free Trade Area of the Americas and was near conclusion to free-trade agreements with Chile and with Singapore. Furthermore, the Administration had given notice that it intended to begin free-trade negotiations with the Central American Common Market, the Southern African Customs Union, Morocco, and Australia.

These agreements, if concluded, are expected to be considered by the Congress under provisions of major trade legislation enacted during the 107<sup>th</sup> Congress. That legislation, the Bipartisan Trade Promotion Authority Act of 2002 (P.L. 107-210), provides that if the Administration consults with Congress and meets other specified conditions, Congress will vote on legislation to implement the trade agreements under limited debate and without amendment. This arrangement between the executive and legislative branches is commonly called trade promotion authority (TPA) and was formerly known as fast-track authority.

This report provides background on the origin of TPA/fast-track legislation, trade agreements negotiated under such legislation in the past, the lapse of legislation in 1994, and attempts at renewal in the late 1990s. The report follows TPA/fast-track authority legislation as it developed during the 107<sup>th</sup> Congress, and includes action on trade agreements in the first months after enactment.

## **Early Presidential Authority to Cut Tariffs**

The Constitution gives Congress the primary power over trade policy. Article 1 empowers Congress “to regulate commerce with foreign nations” and “to lay and collect taxes, duties, imposts, and excises.” The President, by virtue of his constitutional power to conduct foreign affairs, has authority to negotiate and enter into agreements with foreign countries, including those dealing with trade and tariff policy. The President, however, has no constitutional authority to impose a new tariff reached in a trade agreement, unless Congress delegates that authority.

For 145 years, Congress exercised its power in trade policy through frequent enactment of tariff acts, setting duty rates in detail for individual imports. The high

tariffs and economic depression of the early 1930s, however, led to a major change in the congressional and executive roles in tariff-setting. Under the Reciprocal Trade Agreements Act of 1934, Congress authorized the President to negotiate reciprocal reductions of tariffs, within a limited range and time period, and to implement them by proclamation without the need for implementing legislation.

This delegation of tariff-cutting authority to the President was intended to encourage lower tariff levels. Since Congress was elected by local interests that often benefitted from protection against imports, there were incentives for keeping tariffs at high levels. On the other hand, because the President was accountable to a broader constituency, the President could negotiate reciprocal reductions in tariffs (within the limits allowed) without the local political liability faced by Members.

For the next several decades, Congress extended the President's tariff-cutting authority a number of times. Under this authority, the President negotiated reductions in tariff levels multilaterally in five rounds under the General Agreement on Tariffs and Trade and afterward proclaimed the lower tariffs under the authority Congress had delegated.

## **Nontariff Barriers and Fast-Track Authority**

The sixth round of multilateral trade negotiations, called the Kennedy Round (1964-67), involved negotiations on nontariff as well as tariff barriers. Congress had extended presidential tariff-cutting authority for the Kennedy Round under the Trade Expansion Act of 1962. That authority did not include negotiation of nontariff barriers. Nonetheless, the Administration negotiated agreements that involved two nontariff barriers: (1) the American Selling Price (ASP), which was a relatively high U.S. import valuation based on domestic producers' prices that primarily protected the U.S. chemical industry; and (2) a code, or set of rules, on antidumping. Although the 1962 Act authorized (as did the 1934 Act) the President to negotiate a reduction of "any existing duty or other import restriction," the view in Congress at the time was that by entering into the antidumping agreement, the President had overstepped his delegated power. Congress subsequently did not enact legislation to implement the two agreements and even approved opposing measures.

The decision by Congress not to approve the nontariff commitments made by the President showed that there was a dilemma regarding negotiations on nontariff barriers. Nontariff barriers were becoming increasingly important in restricting trade, since tariffs had been reduced in prior rounds. Trading partners wanted assurance that U.S. negotiators could reach a deal with likelihood of approval back home. U.S. negotiators were concerned they would have no credibility in future trade talks without some "go-ahead" by Congress to negotiate on nontariff trade barriers.

In the early 1970s, in anticipation of a seventh round of multilateral negotiations that was sure to include nontariff barriers, President Nixon submitted legislation for a new type of negotiating authority. The proposed legislation would have granted to him proclamation authority for nontariff barriers much like the previously granted authority for tariffs. He proposed that he be able to reach a nontariff agreement,

submit it to Congress, and unless Congress legislatively disapproved the agreement, the President would put the changes into effect by proclamation. There would be no need for implementing legislation. The Nixon proposal was passed by the House but died in the Senate.

Senate Members and staff reached a different, substantially new arrangement with the Administration. Under this arrangement, which was endorsed by the House and enacted in the Trade Act of 1974 (P.L. 93-618), Congress agreed to consider and vote on legislation to implement a trade agreement negotiated by the President without amendment and with limited debate, as long as the President met the conditions set out in the Act. The President would have to consult with appropriate congressional committees before and during the negotiation and to notify Congress at least 90 days before entering into the agreement. The President also would have to submit implementing legislation, a statement of administrative actions to be taken to implement the agreement, and reasons why the agreement served the interests of U.S. commerce. The arrangement in the 1974 Act – an assured vote by Congress without amendment on a bill to implement a trade agreement, on the condition that the President consulted with Congress and took other required actions – became commonly known as “fast-track authority.” At the time, there was little controversy about the procedural restrictions that Congress imposed on itself. It was viewed that Congress had already achieved an enlarged role in trade negotiations through consultation and notification requirements.

The negotiating authority in the 1974 Act enabled the Administration to negotiate the Tokyo Round of multilateral trade negotiations (1974-79). After the Round was completed, when it was time to construct the implementing legislation, Senate staff argued that Congress should have an active part in that process. The result was that Congress took a draft bill through a “mock” legislative process, with committee consideration, amendments, and conference committee. The President then submitted legislation based on that final draft bill. Although not formally outlined in any document, the executive and legislative branches thus agreed on a process that allowed congressional involvement in crafting legislation that would eventually be formally considered under expedited procedures.

The 1974 Act granted fast-track authority to the President for agreements reached over the following 5 years. The Trade Agreements Act of 1979 (P.L. 96-39) extended the authority another eight years. After a brief lapse, the Omnibus Trade and Competitiveness Act of 1988 (P.L. 100-418) renewed the President’s fast-track authority for agreements reached through May 1993 (the latter two years of that renewal were granted because the President requested the additional two years and Congress did not disapprove). The 1988 Act was subsequently amended (P.L. 103-49) to extend fast-track authority for Uruguay Round multilateral agreements reached before April 16, 1994. After that, the President’s trade negotiating authority expired.

Fast-track authority had been instrumental in the negotiation and implementation of five major trade agreements. Two of those five agreements were multilateral agreements reached during the Tokyo Round and the Uruguay Round negotiations in the GATT. The other three agreements were bilateral and regional free trade agreements: the U.S.-Israel Free Trade Agreement, which was negotiated with special authority in the Trade and Tariff Act of 1984 (P.L. 98-573); the U.S.-

Canada Free Trade Agreement; and the North American Free Trade Agreement. No agreement has been disapproved under fast-track procedures.

## **Stalemate on Fast-Track Renewal**

During the 104<sup>th</sup> Congress (1995-1996), President Clinton proposed an extension of fast-track authority. The President's intent was to use the fast-track authority to extend the North American Free Trade Agreement to Chile. Democrats supported the President's proposal. A Republican-supported alternative, H.R. 2371, was approved by the House Ways and Means Committee. The bill did not reach floor vote. A major reason why legislation did not move forward was disagreement over inclusion of labor and environmental issues.

A major push to enact fast-track legislation occurred during the 105<sup>th</sup> Congress (1997-1998). In the first half of 1997, President Clinton did little on a fast-track bill because of attention to the budget and other priorities. In spite of warnings from both Democrats and Republicans, he waited until after Labor Day (September 16, 1997) to submit a proposal to Congress. The proposal met with criticism. Neither Democrats nor Republicans supported how labor and the environment were treated in the proposal.

Two weeks later, on October 1, 1997, the Senate Finance Committee approved a bill, S. 1269, by voice vote. The bill did not include labor and the environment as principal objectives. It did include them in a separate section under "policy objectives," but the Finance Committee stated in its bill report that those provisions were intended to encourage the President to develop initiatives outside of the context of trade agreements subject to fast-track approval. The bill stipulated that fast-track procedures would apply to only certain kinds of provisions in an implementing bill, further limiting how labor and the environment could be addressed. In early November, the Senate approved a motion to proceed to floor consideration of S. 1269, but paused to wait for the House to act.

Meanwhile in the House, on October 8, 1997, the Committee on Ways and Means approved H.R. 2621, which was similar to the bill in the Senate. The committee vote was 24-14, with only 4 of the 16 Democrats on the Committee voting for the bill. House Speaker Gingrich set the floor vote for November 7, then delayed it to November 9. President Clinton lobbied hard for Democratic votes, but was unsuccessful. House Speaker Gingrich and President Clinton agreed to hold off on the floor vote.

The following year, on July 1, 1998, the Senate Finance Committee voted 18-2 to approve S. 2400, a comprehensive trade bill that included essentially the same fast-track provisions that the Committee had approved the year before, together with other trade programs such as trade preferences for sub-Saharan Africa and the Caribbean and renewal of the Generalized System of Preferences. S. 2400 did not reach the Senate floor.

On July 23, 1998, House Speaker Gingrich announced that a vote would be scheduled on fast-track bill H.R. 2621 that September. President Clinton and some Democratic Members opposed a vote that close to the November elections. They wanted the vote postponed until the next year. Some Republicans claimed that the Democrats did not want to vote for trade authority against their labor supporters. Democrats claimed that the Republicans scheduled the vote to get agriculture and business support and to hurt the Democrats. On September 25, 1998, the House voted down fast-track bill H.R. 2621 by a vote of 180-243. The vote was along strongly partisan lines.

During the 106<sup>th</sup> Congress (1999-2000), there was little done on fast-track renewal. In 1999, the Senate Finance Committee considered the idea of another omnibus trade bill with fast track provisions, but decided to split up the proposals and didn't act on fast-track. With the presidential election in 2000, there was virtually no activity on fast-track that year.

## **Developments During the 107<sup>th</sup> Congress**

The Bush Administration pursued fast-track renewal from the start. During his first State of the Union address on February 27, 2001, President Bush asked Congress to "...give me the strong hand of presidential trade promotion authority, and to do so quickly." The Administration introduced the new phrase "trade promotion authority" or TPA, to replace "fast-track authority," and the two terms are now widely used interchangeably. The President called TPA his top trade priority. He said that he wanted TPA for a new round of multilateral trade talks in the World Trade Organization, a Free Trade Area of the Americas agreement, and other regional and bilateral negotiations, including free trade agreements with Chile and Singapore.

### **House Approval of H.R. 3005, Bipartisan Trade Authority Act of 2001**

A major issue during the first session of the 107<sup>th</sup> Congress was how labor and the environment should be treated in trade agreements. Some Members supported fast-track reauthorization, but only with strong labor and environmental provisions that could be enforced with sanctions. These provisions generally related to labor rights and environmental protection. Other Members supported labor and environmental provisions, but wanted the President to have discretion to choose from a "toolbox" of remedies to enforce those provisions. Yet other Members favored excluding labor and the environment completely and limiting the authority for fast-track implementation to provisions that related strictly to removal of trade barriers. There was a clear partisan split of these views, with Democrats generally favoring labor and the environment as enforceable objectives, and Republicans generally favoring them in less important roles.

The Administration and some Members offered early proposals. On May 10, 2001, in his legislative agenda for international trade, President Bush included labor rights and environmental protection as objectives, but "...in a manner consistent with U.S. sovereignty and trade expansion." He also included related actions among the



toolbox of actions that could be taken together with trade negotiations. On May 24, 2001, the House and Senate New Democrats “applauded” the President’s inclusion of labor and the environment, but argued that the President’s plan was “...silent on the critical issue of appropriate mechanisms for enforcing trade agreements.” They said that labor and the environment should have parity with the other negotiating objectives.

Partisan differences continued. On June 13, 2001, Representative Crane, Chairman of the Trade Subcommittee of the House Ways and Means Committee, introduced H.R. 2149, with 61 original cosponsors, all of whom were Republican (except one original Democratic cosponsor, who later withdrew). Labor and the environment were not specifically included in any of the provisions of H.R. 2149. House Democratic Leader Gephardt said that the bill “looks like another ‘my way or the highway’ solution to a problem.” A few months later, after the September 11<sup>th</sup> attack, the Administration promoted TPA as part of a national security package. Some Democrats strongly objected, saying that the Administration was unfairly suggesting that it was unpatriotic to oppose TPA.

On October 3, 2001, Representative Thomas, Chairman of the House Ways and Means Committee, introduced H.R. 3005, a bill to extend trade negotiating authority. Chairman Thomas has worked with a small number of Democrats on the bill through the summer. The Democrats included Representative Dooley, a leader of the New Democrats, and Representatives Jefferson and Tanner, both on the Ways and Means Committee. The three Democrats, Representative Crane, and Representative Dreier, Chairman of the House Rules Committee, were the original cosponsors. Although the bill’s title was entitled the “Bipartisan Trade Promotion Authority Act of 2001,” many Democrats charged that Chairman Thomas was not trying to build a bipartisan consensus, but was trying only to secure enough Democrats to win passage in the House.

The day after Chairman Thomas introduced his bill, Democratic leaders submitted their own bill. On October 4, Representative Rangel, Ranking Member of the Ways and Means Committee, and Representative Levin, Ranking Member of the Ways and Means Subcommittee on Trade, released H.R. 3019. They said that there were key differences between H.R. 3019 and H.R. 3005 in the areas of labor standards, environmental issues, enforcement, and the role of Congress.

Ways and Means Committee Chairman Thomas scheduled markup of H.R. 3005 for October 5, 2001. The markup of a TPA bill was postponed because of complaints by Democratic Committee members that more time was needed to debate key proposals. The Committee still met on October 5 to markup other trade bills: H.R. 3009 to extend Andean trade preferences, H.R. 3010 to reauthorize the Generalized System of Preferences, and H.R. 3008 to reauthorize trade adjustment assistance (TAA). The Committee met on October 9 for markup of TPA legislation, and on that day, it defeated H.R. 3019 by a 12-26 vote and approved H.R. 3005 by a 26-13 vote (H.Rept. 107-249, Part 1). Both votes were largely along party lines.

The legislation stalled after the Committee vote. House floor votes were repeatedly postponed. President Bush and House Speaker Hastert conferred with House Ways and Means Committee Ranking Member Rangel, but no compromise

resulted. Ways and Means Committee Chairman Thomas and Ranking Member Rangel had angry exchanges. The World Trade Organization ministerial conference took place in Doha, Qatar in early November without the President having TPA, which he had wanted for that meeting.

On December 6, 2001, the House approved H.R. 3005 by a vote of 215-214 along party lines (194 out of 221 Republicans voted for the bill, compared to 21 out of 211 Democrats). The version of H.R. 3005 considered and approved in the House had been amended in some significant ways under Rules Committee Resolution H.Res. 306. (Of note was a last-minute deal on the House floor between Republican leadership and representatives from textile states. That deal was outlined in a letter from House Republican leaders to Representative DeMint. It stated that no trade bills would be brought to the House floor until the House approved provisions that U.S. knit and woven fabrics must undergo all dyeing, finishing, and printing procedures in the United States in order to qualify for Caribbean or Andean trade preferences.)

### **Senate Approval of Trade Bill H.R. 3009, Trade Act of 2002**

On December 12, the Senate Finance Committee approved its version of H.R. 3005 on an 18-3 vote “subject to further amendment.” The Committee met again on December 18, rejected three amendments, and ordered the bill to be reported with an amendment in the nature of a substitute (S.Rept. 107-139). The version of H.R. 3005 approved by the Senate Finance Committee was similar to the House-passed version in most major respects, but it did have some differences regarding negotiated changes to trade remedy law, investor-government disputes, and dispute panel action.

The controversy over labor and the environment that was so heated in the House seemed to diminish as the TPA bill moved to the Senate. Two other issues, however, became increasingly important: trade adjustment assistance to help workers hurt by trade and trade remedy laws (e.g., antidumping and countervailing duty laws).

Democrats in the Senate wanted substantial TAA benefits to be part of any TPA legislation considered on the Senate floor. Finance Committee Chairman Baucus and Senate Majority Leader Daschle co-sponsored S. 1209, a TAA bill that included among its provisions a 75% subsidy of health care premiums for dislocated workers for up to a year under the Consolidated Omnibus Budget Reconciliation Act or COBRA (which allows workers to continue their coverage through the plans where they worked), benefits for secondary workers (i.e., those supplying parts to an injured firm), and assistance to farmers and fishermen. The Finance Committee approved S. 1209 on December 4, 2001. About a week later, at the start of the Finance Committee mark-up of TPA bill H.R. 3005, Chairman Baucus said that if fast track was to be taken up on the floor, he would use “every legislative option at my disposal to ensure that TAA and fast track are joined.” Early in January 2002, Majority Leader Daschle repeated that TPA renewal would be linked to TAA benefits for workers.

Republicans in the Senate did not necessarily oppose a TAA-TPA package, but they expressed concern about the cost of the increased benefits in S. 1209. They supported a tax credit for workers to privately buy their own health care policies (or

if not that, then a lower subsidy for health care premiums or a combination of tax credit and subsidy), no benefits for secondary workers, and other changes from provisions in S. 1209. They also opposed a Democratic proposal to use Customs user fees to pay for increased TAA benefits.

In addition to TAA, another major issue in the Senate debate on TPA was protection of U.S. trade remedy laws. Some Members of the Senate, especially those from steel-producing states, wanted provisions in a TPA bill that assured U.S. trade remedies would remain unchanged under trade agreements. They were furious that the U.S. Trade Representative had agreed to include trade remedy reform on the negotiating agenda for the new WTO round. That agenda was set in Doha, Qatar in November 2001. In March 2002, President Bush imposed tariffs of up to 30% on most steel imports, undoubtedly aware that he was using trade remedies to help domestic steel producers shortly before a vote on TPA was expected in the Senate.

TPA legislation was delayed in the Senate for the early part of 2002 because of other legislative priorities and by partisan differences over TAA provisions to accompany TPA. Finally, at the end of April 2002, Senate leadership pushed trade legislation forward. On May 1, 2002, the Senate invoked cloture and agreed by a 77-21 vote to proceed to consideration of the vehicle for a trade package, H.R. 3009. The House had passed H.R. 3009 on November 16, 2001, as a bill to reauthorize the Andean Trade Preference Act (ATPA), and the Senate Finance Committee had approved H.R. 3009, also as an Andean trade preferences bill, on December 14, 2001. The Senate was going to amend H.R. 3009 to add other trade measures.

On the same day that the Senate voted to proceed to consideration of H.R. 3009, Senate Majority Leader Daschle introduced a manager's amendment (S.Amdt. 3386) that had several components. It included Democrat-supported TAA provisions for workers that offered a 73% refundable tax credit for workers' health care and controversial health care benefits for retired steelworkers ("legacy costs"). It also included the TPA and ATPA language reported out of the Senate Finance Committee. Republican Senators opposed the Daschle amendment and called its TAA provisions "partisan." As debate on H.R. 3009 stalled, Senate Majority Leader Daschle said he would pull the bill if Democrats and Republicans couldn't reach an agreement on TAA.

On May 9, 2002, Senators Baucus and Grassley, the Chairman and Ranking Member respectively of the Senate Finance Committee, announced they had reached a major agreement on TAA provisions. The next day they introduced S.Amdt. 3401 as a substitute to H.R. 3009. The Baucus-Grassley amendment included a 70% tax credit for workers' health insurance, benefits for secondary workers, and a pilot program for wage insurance for workers over 50, but no legacy-cost benefits for steelworkers. The Baucus-Grassley amendment also included TPA, ATPA, and a 5-year reauthorization of the Generalized System of Preferences (GSP) program.

A number of amendments to the Baucus/Grassley amendment were proposed, and many were approved. The most controversial was S.Amdt. 3408, which was sponsored by Senators Dayton and Craig. This amendment stated that trade authorities (fast-track) procedures would not apply to any provision in an implementing trade bill that weakened U.S. trade remedy law. A motion to table the

Dayton-Craig amendment was defeated 38-61, and the amendment passed on a voice vote. Supporters of the amendment claimed that the amendment was necessary to ensure that U.S. safeguards, antidumping and countervailing duty laws were not undermined during trade negotiations. The Bush Administration strongly opposed the Craig-Dayton amendment., claiming that the amendment would tie the hands of U.S. negotiators by restricting their ability to negotiate.

On May 23, 2002, the Senate approved the Baucus-Grassley substitute amendment (which included the Dayton-Craig provision above) by voice vote and approved H.R. 3009 as amended by the Baucus-Grassley substitute by a 66-30 vote. TPA provisions were Title XXI of the approved H.R. 3009.

### **House Vote (H.Res. 450) Following Senate Approval of H.R. 3009**

Following Senate passage of H.R. 3009, House Ways and Means Committee Chairman Thomas sought a rule that, he argued, would strengthen the position of the House in the conference. In a departure from usual practice, he recommended a rule (H.Res. 450) to go to conference that essentially included language for a new, comprehensive trade bill. He pushed for a rule that included the House-approved TPA bill, new TAA language (significantly different from previously passed H.R. 3008), House-approved reauthorization of Andean trade preferences, extension of the Generalized System of Preferences (passed in House committee but not on the floor), and other provisions.

Almost all House Democrats and some House Republicans opposed the Thomas rule. Some opponents said that, because the Thomas rule included new language that the House had not previously approved, the rule bypassed the legislative process. Further, according to some reports, House Democrats opposed the broader language that was in the Thomas rule, because they wanted the higher TAA benefits and stronger trade remedy protections in the Senate version.

After some delay, which Democrats said reflected lack of support but Republican leaders said was used to explain the rule, the House Rules Committee reported out H.Res. 450 (H.Rept. 107-518) on June 19, 2002. As reported, H.Res. 450 stated that upon its adoption, the House “shall be considered to have insisted” on the provisions in the rule as an amendment to the Senate amendment of H.R. 3009. In other words, the language of the Thomas rule would become the working document for House conferees.

Several days later, the House voted on H.Res. 450. Press reports suggested that the delay was needed to secure support for the measure. On June 26, 2002, the House approved H.Res. 450 by a one-vote margin: 216-215. House conferees were appointed the same day.

### **The Conference Report, Final Floor Votes, and Enactment**

In early July, conference action was delayed by a disagreement over the number of Senate conferees on the conference committee. Senate Majority Leader Daschle

reportedly wanted 5 conferees, while Senate Minority Leader Lott reportedly wanted at least 7 conferees and preferably more.<sup>1</sup> According to some press reports, the argument for a larger number of Senate conferees was to allow Senator Gramm, who opposed higher TAA benefits, to serve on the conference committee.<sup>2</sup> Finally on July 12, 2002, the Senate Republican leadership consented, and 5 conferees were named.

Conference action was further delayed by a disagreement between House Ways and Means Committee Chairman Thomas and Senate Finance Committee Baucus over who will chair the conference.<sup>3</sup> The chair usually alternates between the House and the Senate. On July 18, 2002, an agreement was reached that Chairman Thomas would be chairman of the trade conference committee.

Conferees held their first meeting on Tuesday, July 23, during the week before the House was scheduled to leave for August recess. They reached an agreement on the trade package late in the evening of Thursday, July 25. On the controversial issue of tax credits for displaced workers to help pay for health care insurance, conferees split the difference (60% House versus 70% Senate) and agreed on a 65% level. On another difficult issue, the Dayton-Craig provisions in the Senate version, conferees dropped the provision but agreed to additional reports and oversight if negotiations might result in possible changes to U.S. trade remedy laws.

Just before midnight on Friday, July 26, the conference report for H.R. 3009 (H.Rept. 107-624) was filed. Just after midnight, on Saturday, July 27, the Rules Committee reported and the House passed a waiver (H.Res. 507) allowing same-day consideration for the conference report for H.R. 3009. Around 3:30 A.M. on July 27, the House approved the conference report by a 215-212 vote and then recessed.

The Senate had scheduled its summer recess to begin a week later. On August 1, the Senate approved the conference report for H.R. 3009 by a 64-34 vote. Although some Senators objected on constitutional grounds or because of specific provisions such as those affecting textiles and apparel, the measure received solid and bipartisan support in the Senate relative to the House. The President signed the measure (P.L. 107-210) on August 6, 2002.<sup>4</sup>

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<sup>1</sup> See Norton, Stephen. Squabbles Over Conference Size Keeps Trade Bill Stalled In Senate. *Congress Daily*. National Journal. July 9, 2002; and Brevetti, Rossella. Senate Leaders Continue to Disagree About Size of Conference on TPA Bill. *Daily Report for Executives*. Bureau of National Affairs, Inc. July 10, 2002.

<sup>2</sup> See Schatz, Joseph J. Trade Negotiating Authority. *CQ Daily Monitor*. Congressional Quarterly. July 15, 2002; and Brevetti, Rossella. Stalemate Ends on Appointment of Senate Conferees on Trade Package. *Daily Report for Executives*. Bureau of National Affairs, Inc.. July 15, 2002.

<sup>3</sup> See Brevetti, Rossella. Trade Promotion Bill Hits Another Snag As Lawmakers Dispute Conference Chair. *Daily Report for Executives*. Bureau of National Affairs, Inc. July 16, 2002; and Norton, Stephen. Thomas, Baucus Play 'Who's on First?' *Congress Daily*. National Journal. July 18, 2002.

<sup>4</sup> Further information is available in: CRS Report 97-817, *Agriculture and Fast Track (Trade Promotion) Legislation*, by (name redacted) and (name redacted); CRS

## Enactment to Year-End 2002

On August 1, 2002, U.S. Trade Representative (USTR) Zoellick issued a statement upon Senate approval of the conference report for H.R. 3009. In the statement, he said that the United States had fallen behind other countries that had been aggressively negotiating trade agreements. He said, however, that passage of the trade legislation would offer "...a boost to the U.S. and global market." He pointed to immediate results in opening U.S. markets to developing countries in Latin America, Africa, and the Caribbean. He also said that TPA would be used to complete free trade agreements with Chile and Singapore, initiate new negotiations for free-trade agreements with Central America and Morocco, and consider free-trade agreements with other countries such as Australia and in southern Africa. With TPA, he said, the United States will "...push to complete negotiations regarding the Free Trade Area of the Americas on the same aggressive time frame as the global talks." He also stated that the legislation gave the United States "...the credibility and the ability to advance our agenda in the new global trade negotiations...."<sup>5</sup>

In the months remaining in 2002, the Office of the USTR moved ahead quickly on many of these proposals. A U.S.-Chile free-trade agreement (FTA) was concluded on December 11, 2002. A month earlier, on November 19, the USTR had announced that an FTA with Singapore had been reached "in substance," although the issue of capital controls was still unresolved. As required under P.L. 107-210, the President notified Congress of the intent to initiate trade negotiations with Central America (formal notice given on October 1), Morocco (October 1), Southern African Customs Union (November 4), and Australia (November 13). Under the Act, such notice is required at least 90 days before initiating the negotiations.

Under provisions of the Trade Act of 2002, the executive branch and Congress began work on a new consultative relationship on trade negotiations. The Congressional Oversight Group met for the first time on September 19, 2002. At that meeting, Finance Committee Chairman Baucus called for the Administration to provide negotiating documents, allow congressional observers at the negotiations, and ensure that Members can "provide input" before negotiating positions are fixed. In the days following, he complained that the Administration was meeting none of these and repeatedly offered plans for consultation. Under the 2002 Trade Act, the USTR was required to submit guidelines for the exchange of information between the USTR and the Congressional Oversight Group within 120 days of enactment. The USTR submitted these guidelines on December 4, 2002. With several trade negotiations underway in 2003, the effect of these guidelines and the other provisions of the 2002 Trade Act will be seen quickly.

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<sup>4</sup> (...continued)

Report RS21078, *Trade Adjustment Assistance for Workers: Legislation in the 107<sup>th</sup> Congress*, by (name redacted); and CRS Report RS21078, *Trade Promotion Authority: Environment-Related provisions of P.L. 107-210*, by (name redacted).

<sup>5</sup> Office of the United States Trade Representative. Statement of Robert B. Zoellick, U.S. Trade Representative, upon Senate Approval of Trade Promotion Authority. August 1, 2002. Available at [<http://www.ustr.gov/releases/2002/08/index.shtml>].

## **Selected Major Provisions of P.L. 107-210, The Trade Act of 2002**

### **Trade Adjustment Assistance**

- Provides a 65% tax credit for health insurance for workers who lose their jobs because of trade or because their firms relocated production;
- Consolidates trade adjustment assistance and the adjustment assistance program under NAFTA;
- Would expand eligibility for workers hurt by a shift in production to another country (benefits previously available for shifts to NAFTA countries only, H.R. 3009 would provide benefits for shifts to certain other countries);
- Extends benefits to workers previously ineligible: secondary workers, downstream workers in the case of NAFTA countries, and farmers and ranchers (but not fishermen or taconite workers);
- Adds 52 weeks of possible TAA benefits;
- Establishes a 5-year demonstration project to pay up to half of the wage difference for older workers who move into new jobs or industries;
- Raises the ceiling for training from \$110 million to \$220 million;
- Raises the job search and relocation allowance for workers; and
- Speeds the process for workers to petition for eligibility.

### **Trade Promotion Authority**

- Sets objectives for trade negotiations, including labor and the environment;
- Provides that, for certain trade agreements entered into before June 1, 2005 (possible 2-year extension), if the President negotiates the agreements under the conditions specified, Congress will consider legislation to implement the agreements under expedited procedures (no amendment, limited debate);
- Includes provisions on trade remedy laws: (1) makes enforcement of such laws a “principal negotiating objective,” and (2) requires a report on possible changes to these laws 6 months before an agreement is signed, and provides for a congressional resolution expressing opposition;
- Establishes a new Congressional Oversight Group; and
- Requires notification and consultation by the President at different stages of negotiation, and withdraws expedited procedures for an implementing bill for lack of notice or consultation.

### **Andean Trade Preferences**

- Reauthorizes Andean trade preferences through December 31, 2006, with duty-free benefits applied retroactively; and
- Expands duty-free treatment to many articles previously excluded: specific groups of apparel articles, footwear, tuna shipped in airtight containers, petroleum products, watches, and selected leather goods.

### **Generalized System of Preferences**

- Reauthorizes the Generalized System of Preferences through December 31, 2006, with duty-free benefits applied retroactively, and expands the list of internationally recognized workers' rights.

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