

# CRS Report for Congress

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

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### Summary

The U.S.-Jordan Free Trade Agreement (FTA), implemented as P.L. 107-43, which went into effect December 17, 2001, breaks new ground by 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 ongoing debate on including labor provisions in trade agreements.

The U.S.-Jordan FTA was signed by then-President Bill Clinton and King Abdullah II on October 24, 2000, submitted to Congress as H.R. 2603 and S. 643 on January 6, 2001, approved by the Government of Jordan on July 15, implemented as P.L. 107-43 on September 28, and went into effect on December 17, 2001. It 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.<sup>1</sup>

The trade effects of the U.S.-Jordan FTA are expected to be small, but growing. In 2001, the United States imported \$229 million worth of commodities (about 0.02% of all U.S. imports) from Jordan, up more than 200% from 2000, and ranking it 95<sup>th</sup> among

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<sup>1</sup> See *U.S.-Jordan Free Trade Agreement*, by Mary Jane Bolle, CRS Report RL30652.

countries from which the United States imports goods. In return, the United States exported \$339 million (less than 0.05% of all U.S. exports) worth of goods to Jordan, which placed it 74<sup>th</sup> among countries to which the United States exports goods.

## Major Provisions of the Agreement

Labor issues over the agreement revolved around two sets of provisions: labor provisions and dispute settlement provisions. The labor provisions of the U.S.-Jordan FTA, located in the body of the agreement, are relatively straightforward, occupy one page of text, and require three things. First, they require: (a) that each country enforce its own labor laws in manners affecting trade; and (b) 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. Second, the provisions require that the Parties to the agreement not “waive” or “derogate from” their own labor laws as an encouragement for trade with the other Party. Third, 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 will be non-binding. If the dispute is still not resolved within 30 days after the Joint Committee presents its report, the affected Party will be entitled to take “*any appropriate and commensurate measure.*”

## Issues with the Labor Provisions

Supporters, including many Democrats, argued that the labor provisions did not break much new ground. Conceptually, the U.S.-Jordan provisions are similar to those in the NAFTA labor side agreement, in that in both agreements, each country must (a) enforce its own worker rights laws; while over the long term (b) strive toward adopting a complete body of worker rights principles; and (c) not waive or derogate from its own labor laws as an encouragement for trade. (Provisions of the two agreements are compared in **Table 1**.)

Opponents, including many Republicans, saw the labor provisions as breaking considerable new ground because they were located in the body of the agreement, where they would be subject to dispute settlement procedures and possibly sanctions. Moreover, the dispute resolution procedure entitled either party to take “any appropriate and

commensurate measure” if the dispute resolution procedure on the included labor provisions fails – and that would appear to include sanctions.

**The Call for a Memorandum of Understanding.** As a compromise measure, some observers suggested that the United States and Jordan exchange side letters or memoranda of understanding agreeing that any “appropriate and commensurate measure” does not mean sanctions, but leaving open what else the words might mean.<sup>2</sup> Such letters were actually exchanged by the ambassador of Jordan and U.S. Trade Representative Robert Zoellick on July 23, 2001. These identical letters pledged to resolve any differences that might arise between the two countries under the agreement, without recourse to formal dispute settlement procedures. They also specified 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 agreement to not use sanctions was 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 exchange of letters paved the way for House and Senate approval of the trade agreement. 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. The Government of Jordan had already approved it on July 15. 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.

If Congress had not been able to resolve the issue of sanctions with the exchange of memoranda of understanding or similar documents, 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.

## **The Larger Debate About Including Worker Rights Provisions in 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.

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<sup>2</sup> Jordan Opposes Reopening FTA, but Would Accept Side Letter, *Inside U.S. Trade*, April 13, 2001.

The most recent 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. The issue of debate in recent years has been which of three courses to follow – whether to include in new fast-track authority: (a) more limited presidential authority to include labor provisions than in the expired legislation; (b) similar authority; or (c) broader authority.

After fast-track renewal efforts spanning parts of nine years, Congress finally included language that is arguably more limited in some aspects, but which also includes more detailed requirements. P.L. 107-210, signed August 6, 2002, finally renewed presidential fast-track authority (or trade promotion authority – TPA, as it is more recently being called). The renewed authority to negotiate trade agreements on an expedited basis (without amendment and with limited debate) includes numerous labor provisions as both overall negotiating objectives, and principal negotiating objectives:

*Overall* negotiating objectives (typically advisory in nature) reiterate the two concepts included in the expired 1988 authority: (1) to promote respect for worker rights (but specifying that it shall be done in the international Labor Organization, which has virtually no enforcement powers – a limitation not included in the expired legislation); and (2) to ensure that domestic labor laws are not weakened as an encouragement for trade.

The *principal* negotiating objectives on “labor and the environment” (typically enforceable) include three goals new to fast-track language, but somewhat reflective of both NAFTA and Jordan trade agreements, and also of previous attempts to renew fast-track authority. These are: (1) to strengthen the capacity of U.S. trading partners to promote respect for worker rights; (2) to ensure that a party does not fail to enforce its own labor laws in a manner affecting trade; and (3) to ensure that labor policies do not unjustifiably discriminate against U.S. exports or serve as disguised barriers to trade.

With the passage of new trade promotion authority in August of 2002, the debate now has shifted once more, and the new focus is on monitoring the kinds of labor provisions that will be negotiated as part of new trade agreements currently in negotiation.

**Stakeholders.** Stakeholders are watching to see how provisions of the new trade promotion authority law will become translated into trade agreements, to the extent that negotiators attempt to and are able to include them in future trade agreements.

Stakeholders against actually including labor provisions in the body of trade agreements argue that (1) such provisions impede the flow of free trade and are not needed; (2) any labor and environment provisions could put U.S. companies at serious disadvantage vis-a-vis their competitors in the World Trade Organization; (3) the U.S.-Jordan language should be a “one time” occurrence rather than a precedent; and (4) that potential violations of core labor standards should be pursued multilaterally through the International Labor Organization (ILO) rather than through trade agreements. The ILO, part of the United Nations, was established in 1919 to promote worker rights. As

mentioned, it has no direct enforcement powers, working instead through technical assistance and moral suasion.

Stakeholders in favor of including labor provisions in the body of trade agreements argue 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.

## 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) 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 – even though letters exchanged by U.S. and Jordan governments have pledged not to exercise those sanctions with regards to potential labor violations. The Jordan agreement’s influence was also felt in the reauthorization of TPA language which would continue to permit new trade agreements to include provisions similar to those in the Jordan agreement in the body of the agreement.

**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)
<b>Where are labor provisions?</b>	In body of the agreement	In labor side agreement
<b>Definition of worker rights</b>	<p><b>“Internationally Recognized Worker Rights” from Trade Act of 1974:</b> (P.L. 93-618 as amended by Sec. 503 of P.L. 98-573):</p> <ul style="list-style-type: none"> <li>a) right of association;</li> <li>b) right to organize and bargain collectively</li> <li>c) prohibition of forced or compulsory labor;</li> <li>d) minimum age for employment of children;</li> <li>e) acceptable conditions re: minimum wages, hours; and occupational safety and health.</li> </ul> <p><b>“Core Labor Standards” from the International Labor Organization (ILO).</b></p> <ul style="list-style-type: none"> <li>a) freedom of association;</li> </ul>	<p><b>“Internationally Recognized Worker Rights” from Trade Act of 1974 (at left) plus the following additions:</b></p> <ul style="list-style-type: none"> <li>f) the right to strike</li> <li>g) minimum employment standards relating to overtime pay;</li> <li>h) elimination of employment discrimination;</li> <li>i) equal pay for men and women;</li> <li>j) compensation in cases of occupational injuries and illnesses;</li> <li>k) protection of migrant workers.</li> </ul>

Provision	U.S.-Jordan Free Trade Agreement, Article 6	NAFTA (P.L. 103-182)
	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	
<b>Basic labor requirements</b>	a) All countries must enforce their own labor laws and standards in trade-related situations.  b) Each Party shall strive to “ <i>not waive or otherwise derogate from</i> ” 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
<b>Which worker rights are subject to dispute resolution?</b>	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.
<b>Enforcement body and dispute resolution procedure</b>	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 <b>Joint Committee</b> , and, if still not resolved within 90 days, to a <b>Dispute Settlement Panel</b> 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 <b>National Administrative Office (NAO)</b> oversees the law; Then an: <b>Evaluation Committee of Experts (ECE)</b> and subsequently an <b>Arbitral Panel (AP)</b> are appointed as needed to debate cases.
<b>Ultimate penalties</b>	If the issue is still not resolved in 30 days, after the panel reports, the affected party may take <i>any appropriate and commensurate measure</i> .	The AP may issue a monetary assessment; and if this is not paid, issue sanctions. <b>Maximum penalties:</b> 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.