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# Fast-Track Legislation: A Giant Leap *Backwards* on Labor & Environment

Fast-track trade legislation now making its way through Congress represents a significant step *backward* in the effort to include enforceable labor and environmental standards in trade agreements. This chart compares the fast-track bills passed by the House (HR 3005) and the Senate (HR 3009) with two recent trade agreements that made significant progress on linking trade with enforceable labor and environmental standards. While the comparisons drawn here are clearly unfavorable to fast track, the final outcome of any trade negotiation may be even worse than what this chart shows. Since fast track includes only *guidance* to US trade negotiators, and not binding *mandates*, there is absolutely no guarantee that even the weak objectives on labor and environment in current fast-track legislation will ever appear in future trade agreements.

The first two rows of the chart compare the environmental standards that are applied in two recent trade agreements (NAFTA and the US-Jordan FTA) with the standards that are called for in current fast-track legislation. Since there are no internationally recognized environmental standards, US trade negotiators have focused environmental negotiations on two issues: (1) whether a country adopts and maintains strong domestic environmental laws and (2) whether a country effectively enforces the laws it has on the books.

The next two rows of the chart consider the enforcement mechanisms applied in the two trade agreements or called for in current fast-track legislation. The question here is whether the trade agreement will enforce labor and environmental standards with the same enforcement mechanism that is used to enforce commercial provisions of the trade agreement (sanctions), or whether labor and environmental standards are relegated to a second-tier enforcement mechanism (such as fines) or, worse, are not enforced at all.

	NAFTA – ‘94	US-Jordan FTA – ‘00	Fast Track – ‘02
1. Requirement to adopt & maintain strong domestic environmental laws	Yes <sup>1</sup>	Yes <sup>2</sup>	No <sup>3</sup>
2. Requirement to effectively enforce domestic environmental laws	Yes <sup>4</sup>	Yes <sup>5</sup>	Maybe <sup>6</sup>
3. Sanctions for weakening environmental laws	No <sup>7</sup>	Yes <sup>8</sup>	No <sup>9</sup>
4. Sanctions for failure to enforce environmental laws	No <sup>10</sup>	Yes <sup>11</sup>	No <sup>12</sup>

<sup>1</sup> NAFTA was accompanied by a side agreement on the environment, which required that “each Party shall ensure that its laws and regulations provide for high levels of environmental protection and shall strive to continue to improve those laws and regulations.” North American Agreement on Environmental Cooperation (NAAEC), Part Two, Article 3.

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<sup>2</sup> The US-Jordan FTA provides that “each Party shall strive to ensure that it does not waive or otherwise derogate from...[its environmental] laws as an encouragement for trade....” US-Jordan FTA, Article 5(1). It also provides that “each Party shall strive to ensure that its laws provide for high levels of environmental protection and shall strive to continue to improve those laws.” US-Jordan FTA, Article 5(2).

<sup>3</sup> The current House and Senate fast-track bills are silent on whether a Party adopts & maintains strong environmental laws.

<sup>4</sup> The NAFTA environmental side agreement created a dispute mechanism that could settle allegations concerning a Party’s “persistent pattern of failure...to effectively enforce its environmental law.” NAAEC, Part Five, Article 33

<sup>5</sup> “A Party shall not fail to effectively enforce its environmental laws, through a sustained or recurring course of action or inaction, in a manner affecting trade.” US-Jordan FTA, Article 5

<sup>6</sup> The current versions of fast track provide guidance for US trade negotiators “to ensure that a party to a trade agreement does not fail to effectively enforce its environmental or labor laws, through a sustained or recurring course of action or inaction, in a manner affecting trade,” language that is pulled directly from the US-Jordan FTA. Bipartisan Trade Promotion Authority Act of 2001 (Fast Track), HR 3005, Section 2(11)(A). However, since this language is merely a negotiating objective, and not a binding negotiating mandate, there is no guarantee whatsoever that future trade agreements will actually include this standard. Given that future trade agreements might or might not achieve this objective, we have scored the current fast track bills “maybe” on the comparison chart with respect to the requirement to effectively enforce environmental laws.

<sup>7</sup> While NAFTA’s environmental side agreement established an obligation for a Party to “provide for high levels of environmental protection,” it provides no mechanism to enforce this obligation.

<sup>8</sup> The US-Jordan FTA improved on NAFTA by including environmental standards in the core of the trade agreement rather than in a side agreement. Accordingly, the obligation in the US-Jordan FTA to maintain strong environmental standards can be enforced with the same sanctions mechanism that is used for violation of the agreement’s commercial provisions.

<sup>9</sup> Language proposed by Sen. Phil Gramm and included in both the House and Senate versions of fast track prohibits US trade negotiators from allowing enforcement of labor or environmental standards in future trade agreements. Coming at the end of a paragraph which recognizes the right of Parties to a trade agreement to exercise discretion on enforcement of environmental and labor standards, the Gramm language reads “no retaliation may be authorized based on the exercise of these rights [of discretion] or the right to establish domestic labor standards and levels of environmental protection.” Fast Track, HR 3005, Section 2(11)(B).

<sup>10</sup> In lieu of sanctions for failure to effectively enforce environmental laws, the NAFTA environmental side agreement provided for the weaker penalty of fines. NAAEC, Part III(B)(36)

<sup>11</sup> The US-Jordan FTA improved on NAFTA by including environmental standards in the core of the trade agreement rather than in a side agreement. Accordingly, the obligation in the US-Jordan FTA to “effectively enforce” its environmental laws can be enforced with the same sanctions mechanism that is used for violation of the agreement’s commercial provisions.

<sup>12</sup> Language proposed by Sen. Phil Gramm and included in both the House and Senate versions of fast track prohibits US trade negotiators from allowing enforcement of labor or environmental standards in future trade agreements. Coming at the end of a paragraph which recognizes the right of Parties to a trade agreement to exercise discretion on enforcement of environmental and labor standards, the Gramm language reads “no retaliation may be authorized based on the exercise of these rights [of discretion] or the right to establish domestic labor standards and levels of environmental protection.” Fast Track, HR 3005, Section 2(11)(B).