

## GRAMM PROVISION GUTS WORKER RIGHTS IN FAST TRACK TRADE LEGISLATION

The House Rules Committee quietly added a key new provision to the negotiating objectives on labor and environment as they amended the Thomas fast track bill, H.R. 3005, last December. This provision, reportedly demanded by Senator Phil Gramm (R-TX), is now also included in the Senate fast track bill authored by Senators Baucus and Grassley. If the Gramm language remains in a final grant of fast track trade negotiating authority, it will be extremely difficult, if not impossible, for our trade negotiators to include binding, enforceable provisions that protect and promote core workers' rights in our trade agreements.

### **Gramm Provision Widens Existing Enforcement Discretion Loophole**

The Gramm provision appears in section 2(b)(11)(B) of the Baucus-Grassley fast track bill, which already provides a huge loophole to one of the bill's only negotiating objectives on labor and the environment that is intended to result in enforceable commitments. Subparagraph B excuses a countries' repeated refusal to enforce its own labor laws – even if it is done to gain a trade advantage – whenever a country decides that they would prefer to direct their energies to enforcing other areas of their law instead. Thus, a country could allow trade unionists to be intimidated and killed or children to labor under hazardous conditions in export industries, as long as the government argued that the failure to enforce its own laws was the result of a reasonable exercise of discretion or of a *bona fide* decision about allocation of resources. As if this loophole were not broad enough, the Gramm amendment goes further to state, “and no retaliation may be authorized based on the exercise of these rights or the right to establish domestic labor standards and levels of environmental protection.” Under this language, a country that allows and even encourages companies to violate its own workers' rights laws in order to gain a trade advantage merely has to assert its “right” to do so as a matter of its own discretion in order to escape scrutiny.

### **Gramm Provision Guts Other Negotiating Objectives on Labor**

But the Gramm provision does not just bar retaliation based on a country's right to exercise enforcement discretion. It also states that retaliation may not be authorized based on a country's exercise of its “right to establish domestic labor standards and levels of environmental protection.” This language ensures that countries will be able to, first, set labor standards as low as they want, even far below the basic floor of the International Labor Organization's (ILO) core workers' rights; and, second, weaken or waive their existing labor laws with impunity. Though the Baucus-Grassley bill does contain negotiating objectives on promoting respect for ILO standards and not lowering domestic standards, these “overall” objectives are already less binding than the “principal” negotiating objectives. Even if a trade agreement were to include commitments to raise or maintain domestic labor standards, the Gramm provision would actually forbid our negotiators from applying any effective enforcement mechanisms to back up these commitments.

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### **Gramm Provision Makes a Mockery of Enforcement Parity**

Fast track supporters claim that the Baucus-Grassley bill guarantees enforcement parity among all principal negotiating objectives, including the negotiating objectives on labor and the environment. But the Gramm provision, which would severely constrain our ability to actually enforce any of the substantive labor and environment commitments made in a trade agreement, does not apply to any of the traditional commercial sections of the agreement. The amendment thus flies directly in the face of the idea of enforcement parity.

### **Gramm Provision Retreats from Jordan Standard and Previous Fast Tracks**

By expanding the enforcement discretion loophole, gutting any commitment to raise or even maintain domestic standards, and undermining the principle of parity among negotiating objectives, the Gramm provision regresses from labor language that has been in our trade law for years and retreats from even the basic standard established by the U.S.-Jordan Free Trade Agreement:

- The Jordan agreement includes commitments to meet ILO standards, not derogate from domestic standards, and effectively enforce domestic laws. The labor provisions of the Jordan FTA are enforced in the same manner as the commercial provisions of the agreement, an outcome that the Gramm provision would prohibit.
- The 1988 fast track legislation which became law unequivocally instructed our negotiators to promote respect for ILO core labor standards, without a broad exception allowing countries to set whatever standards they choose.
- Even the failed 1997 fast track legislation was stronger than the Baucus-Grassley bill: it contained negotiating objectives on non-derogation and effective enforcement that did not suffer from the gaping loophole created by the Gramm provision.

If allowed to remain in a final grant of fast track trade negotiating authority, the Gramm provision will ensure that our trade policy moves backwards instead of forwards on issues of labor and environment. The amendment severely undermines the few weak negotiating objectives that exist on labor and the environment in the Baucus-Grassley bill, and it directly contradicts the principle of parity among negotiating objectives.