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Trade Promotion (Fast-Track) Authority: A Comparison of H.R. 3005 as Approved by the House and by the Senate Finance Committee

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Summary

This report compares H.R. 3005, the *Bipartisan Trade Promotion Authority Act of 2001*, as approved by the House on December 6, 2001, and as ordered reported by the Senate Finance Committee on December 18, 2001. The versions for the most part are identical, but there are differences on changes to trade remedy laws and dispute panel action.

Both versions outline almost identical objectives, although they have some differences on two principal objectives (“foreign investment,” where the Senate Finance Committee version has more language to address criticism of investor-state disputes under NAFTA and “dispute settlement and enforcement”), and the Senate Finance Committee version has an additional principal objective (“border taxes”). Both versions call for the President to take almost the same actions to maintain U.S. competitiveness, although they require different labor reports, and the Senate Finance Committee version requires the President to address market distortions leading to dumping and subsidies. Both are identical on consultations during negotiations.

Both versions have almost identical language on the President’s authority to negotiate trade agreements with expedited legislative procedures for an implementing bill. For example, they have the same deadline for negotiating agreements, the same requirements for extending the deadline, and the same conditions for a trade agreement and an implementing bill to have expedited procedures apply.

Both versions have identical language regarding notification and consultation before negotiation, special assessments for negotiations on agriculture and on textiles, and reports by private sector advisors and by the International Trade Commission. The Senate Finance Committee version contains the same language as the House version on consultation with Congress before the President enters into an agreement, but adds requirements that the President notify Congress of negotiated changes to trade remedy laws and justify those changes, and that the chairmen of the revenue committees report to their respective houses on the proposed changes.

Both versions have essentially identical provisions on documents that the President must submit to Congress with the trade agreement and a draft implementing bill, except the Senate Finance Committee version adds language on reporting changes to the trade remedy laws, on procedural action in the Senate, and on a new requirement that the Secretary of Commerce submit to Congress a report on a strategy to address certain actions by World Trade Organization dispute bodies.

Both versions are identical on establishing a Congressional Oversight Group, with the only difference that the Senate Finance Committee version requires a time frame for a labor rights report. Both versions are identical on adjustment to the pre-notification requirements where negotiations are already underway, on a required plan by the President to address implementing and enforcing the trade agreement, and on the need for congressional staff to accommodate increased trade-related activities.

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Section 1. Short Title and Findings	
H.R. 3005 (House)	H.R. 3005 (Senate Finance Committee)
<p>The title of the legislation is the “Bipartisan Trade Promotion Authority Act of 2001.” Section 1(a)</p> <p>Lists findings that (1) expansion of international trade is vital to U.S. security; and (2) national security depends on economic security, which is founded on a vibrant and growing U.S. industrial base. Section 1(b)</p>	<p>Identical</p> <p>Includes identical House-passed provisions and adds:</p> <p>(3) support for continued trade expansion requires that dispute settlement procedures not add to obligations or diminish rights under such agreements (includes reference to problems with actions by dispute settlement panels and the World Trade Organization (WTO) Appellate Body). Section 1(b)(3)</p>

Section 2. Trade Negotiating Objectives	
H.R. 3005 (House)	H.R. 3005 (Senate Finance Committee)
<p><i>Overall Negotiating Objectives</i></p> <p>Lists 7 overall objectives: (1) more open, equitable, and reciprocal market access; (2) reduction in or elimination of barriers and distortions related to trade; (3) stronger international trading disciplines, including dispute settlement; (4) economic benefits for the United States and the world; (5) mutually supportive trade and environmental policies; (6) respect for worker rights and the rights of children; and (7) provisions in trade agreements to discourage weakening environmental or labor laws to encourage trade. Section 2(a)</p>	<p>Identical</p>
<p><i>Principal Trade Negotiating Objectives</i></p> <p>Lists 13 principal negotiating objectives to (1) expand market opportunities for U.S. exports by reducing or eliminating <i>trade barriers and distortions</i> to trade; (2) reduce or eliminate barriers to international <i>trade in services</i>; (3) reduce or eliminate barriers to trade-related <i>foreign investment</i> and secure for investors rights comparable to those available in the United States; (4) further promote protection of <i>intellectual property</i> rights (IPR) and secure market access opportunities for U.S. persons that rely on IPR protection; (5) obtain wider and broader application of <i>transparency</i> through greater public access to information and more openness at the WTO; (6) obtain <i>anti-corruption</i> standards that prohibit attempts to influence government actions affecting trade; (7) seek <i>improvement of the WTO and multilateral trade agreements</i> by expanding coverage and expanding country participation; (8) establish disincentives for governments to use <i>regulatory practices</i> to give a competitive advantage to domestic interests; (9) attempt to ensure open and nondiscriminatory rules covering <i>electronic commerce</i>; (10) obtain <i>reciprocal trade in agriculture</i> so opportunities are substantially equivalent in U.S. and foreign markets, and achieve fairer and more open conditions for commodities; (11) ensure protections for <i>labor and the environment</i>, such as assurance that parties will not fail to enforce their own environmental and labor laws; (12) strengthen <i>dispute settlement and</i></p>	<p>Identical, with the following exceptions:</p> <p><i>foreign investment.</i> Adds language that objective should ensure that in the United States, U.S. investors are not accorded lesser rights than foreign investors; and a section on seeking to establish standards for fair and equitable treatment consistent with U.S. legal principles and practice. Sections 2(b)(3) and 2(b)(3)(E). Adds to provision on investor-government disputes: mechanisms to deter the filing of frivolous claims; procedures to enhance public input into the formulation of government positions; and establishment of a single appellate body to provide coherence to the interpretations of investment provisions in trade agreements. Section 2(b)(3)(G) Does not include House language (in section 2(b)(3)(G)) on an appellate or similar review mechanism to correct manifestly erroneous interpretations of law.</p> <p><i>dispute settlement.</i> Adds improved adherence by WTO dispute panels and by the WTO Appellate Body to the standard of review applicable under the relevant WTO Agreement, including greater deference to the fact finding and technical expertise of national investigating authorities. Section 2(b)(12)(C)</p> <p><i>border taxes.</i> Adds a 14th objective: obtain a revision of WTO rules on the treatment of border</p>

H.R. 3005 (House)	H.R. 3005 (Senate Finance Committee)
<p><i>enforcement</i> of trade agreements; and (13) achieve specified objectives in <i>WTO extended negotiations</i> on civil aircraft and rules of origin. Section 2(b)</p> <p><i>Promotion of Certain Priorities</i></p> <p>The President must take certain actions in order to address and maintain U.S. competitiveness in the global economy. These 12 actions (1) seek greater WTO-ILO cooperation; (2) seek consultative mechanisms among parties to promote respect for core labor standards; (3) seek consultative mechanisms among parties to develop and implement standards for protection of the environment; (4) conduct environmental reviews of future trade agreements; (5) review the impact of future trade agreements on employment; (6) take into account other domestic objectives such as health and safety, security, and consumer interests; (7) have the Secretary of Labor consult with other countries regarding their labor laws; (8) report to Congress on child labor laws in parties to prospective agreements; (9) preserve the ability of the United States to enforce rigorously its trade laws, including antidumping and countervailing duty laws; (10) continue to promote consideration of multilateral environmental agreements; (11) report to the revenue committees on the effectiveness of a trade remedy permitted by a trade agreement; and (12) seek a consultative mechanism with other parties to examine how currency movements or manipulation affect trade. Sections 2(c)(1)-2(c)(12)</p>	<p>adjustments to redress the disadvantage to countries that depend on direct taxes for revenue rather than indirect taxes. Section 2(b)(13)</p> <p>Identical, except:</p> <p>Replaces (8) in House bill with a related provision that requires the President to submit to the revenue committees a meaningful labor rights report on parties to a prospective agreement. Section 2(c)(8)</p> <p>Expands on (9) in House bill by specifically including safeguards under trade remedy laws, and adding that the President address and remedy market distortions that lead to dumping and subsidization, including overcapacity, cartelization, and market-access barriers. Section 2(c)(9)</p>
<p><i>Consultations</i></p> <p>During negotiations, the USTR shall consult closely and on a timely basis (including in most cases immediately before initialing an agreement) with, and keep fully apprised of the negotiations, the Congressional Oversight Group (COG), committees of jurisdiction, current congressional trade advisors, the revenue committees, and (with regard to negotiations relating to agricultural trade) the agriculture committees. Section 2(d)</p>	<p>Identical</p>

H.R. 3005 (House)	H.R. 3005 (Senate Finance Committee)
<p data-bbox="298 239 760 298"><i>Adherence to Obligations Under Uruguay Round Agreements</i></p> <p data-bbox="298 331 782 478">In determining whether to negotiate with another country, the President shall consider the other country's adherence to its obligations under the Uruguay Round Agreements. Section 2(e)</p>	Identical

Section 3. Trade Agreement Authority	
H.R. 3005 (House)	H.R. 3005 (Senate Finance Committee)
<p><i>Agreements Regarding Tariff Barriers:</i></p> <p>The President may proclaim tariff cuts for agreements entered into before June 1, 2005, or before June 1, 2007, if expedited procedures are extended. Section 3 (a)(1)</p> <p>Tariffs over 5% ad valorem may not be reduced by more than half, nor may tariffs be increased. A special rule applies for certain agricultural products. Section 3(a)(2)</p> <p>Other rules are stipulated (e.g., rounding, exemption of reductions from staging). Sections 3(a)(3)-3(a)(7)</p>	<p>Virtually identical</p>
<p><i>Agreements Regarding Tariff and Nontariff Barriers</i></p> <p>The President may enter into a trade agreement on duties or other import restrictions before June 1, 2005, or before June 1, 2007, if expedited procedures are extended. Section 3(b)(1)</p> <p>A trade agreement may be entered into only if such agreement makes progress in meeting the overall and principal negotiating objectives and satisfies the conditions for consultation and assessment. Section 3(b)(2)</p> <p>Expedited procedures, called “trade authorities procedures,” apply to a bill which contains (1) a provision approving the trade agreement and the statement of administrative action if any; and (2) provisions that are necessary or appropriate to implement the trade agreement, if changes in existing laws or new statutory authority are required to implement the trade agreement. This type of bill is called an “implementing bill.” Section 3(b)(3)</p>	<p>Identical</p>

H.R. 3005 (House)	H.R. 3005 (Senate Finance Committee)
<p><i>Extension Disapproval Process for Congressional Trade Authorities Procedures</i></p> <p>Trade authorities procedures shall apply to an implementing bill for trade agreements that were entered into by June 1, 2005, or by June 1, 2007, if two conditions are met: (1) the President requests such extension; and (2) neither House of Congress adopts an extension disapproval resolution before June 1, 2005. Section 3(c)(1)</p> <p>If the President decides that trade authorities procedures should be extended, the President must submit to Congress, not later than March 1, 2005, a written request with specified information. Section 3(c)(2)</p> <p>The President must promptly report to the private sector Advisory Committee for Trade Policy and Negotiations (ACTPN) on the intent to pursue the 2-year extension in trade authorities procedures. ACTPN must report to Congress no later than May 1, 2005, on progress in the negotiations and whether the extension should be granted. Section 3(c)(3)</p> <p>The reports by the President and by ACTPN on the extension will be classified. Section 3(c)(4)</p> <p>The language and procedure for consideration of the extension disapproval resolution are described. Section 3(c)(5)</p>	<p>Identical</p>
<p><i>Commencement of Negotiations</i></p> <p>In cases where the President determines that certain negotiations are feasible and timely and could benefit the United States, the President shall commence negotiations covering tariff and nontariff barriers affecting any industry, product, or service sector, and expand existing sectoral agreements to countries that are not already parties. The list of such sectors includes agriculture, industrial and capital goods, environmental technology and services, civil aircraft, and other mentioned sectors. Section 3(d)</p>	<p>Identical</p>

Section 4. Consultations and Assessment

H.R. 3005 (House)	H.R. 3005 (Senate Finance Committee)
<p><i>Notice and Consultation Before Negotiation</i></p> <p>With regard to trade agreements negotiated under Section 3(b), the President shall:</p> <p>(1) provide, at least 90 calendar days before starting negotiations, written notice of intent to enter into negotiations and set forth the intended starting date, specific objectives, and whether the President will seek an agreement or changes to an existing agreement;</p> <p>(2) before and after the above notice, consult with the revenue committees, such other committees as the President deems appropriate, and the COG. Section 4(a)</p>	Identical
<p><i>Negotiations Regarding Agriculture</i></p> <p>Before undertaking negotiations on foreign tariffs and other charges on U.S. agricultural exports, the President shall assess whether U.S. tariffs bound on these products are lower than tariffs bound on U.S. exports in the other country or worldwide, and whether the negotiation gives an opportunity to address any disparity. The President shall consult with the revenue committees and agriculture committees on the results of the assessment, tariff reductions, and negotiating objectives. Section 4(b)(1)</p> <p>The USTR shall identify certain import sensitive agricultural products and consult with the revenue and agriculture committees on any further tariff reductions and whether the products face unjustified sanitary or phytosanitary restrictions. The USTR shall request an ITC assessment of the economic effects of any tariff reductions, and notify the revenue and agriculture committees of any intent to seek tariff cuts currently or in the future. Section 4(b)(2)</p>	Identical
<p><i>Negotiations Regarding Textiles</i></p> <p>Before undertaking negotiations on textiles and apparel products with another country, the President shall assess whether U.S. tariffs bound on such products are lower than the other country's bound tariffs and whether the negotiation gives an opportunity to address any disparity. The President shall consult with the revenue committees on the results of the assessment, tariff reductions, and applicable negotiating objectives. Section 4(c)</p>	Identical

H.R. 3005 (House)	H.R. 3005 (Senate Finance Committee)
<p><i>Consultation with Congress Before Agreements Entered Into</i></p> <p>Before entering into an agreement under Section 3(b), the President shall consult with the revenue committees, other committees with jurisdiction, and the COG. Section 4(d)(1)</p> <p>The consultation shall cover the nature of the agreement, how the agreement will achieve applicable policies and objectives, and implementation of the agreement (including the effect on existing laws). Section 4(d)(2)</p>	<p>Contains the identical House language but adds:</p> <p>At least 90 calendar days before entering into a trade agreement, the President shall notify the revenue committees of any amendments to Title VII of the Tariff Act of 1930 or Chapter 1 of Title II of the Trade Act of 1974 [provisions covering antidumping and countervailing duties and safeguards] that will be proposed in an implementing bill. Section 4(d)(3)(A)</p> <p>On the same date as the above notification, the President shall report to the committees the reasons the amendments are necessary and the reasons they are consistent with the purposes, policies, and objectives of Section 2(c)(9) [the President shall preserve the ability to rigorously enforce U.S. trade laws]. Section 4(d)(3)(B)</p> <p>Within 60 days of the above notification, the chairman and ranking member of the revenue committees in each house, based on consultations with their respective committee members, shall report to their respective house on whether the proposed amendments are consistent with the purposes, policies, and objectives of Section 2(c)(9). The reports shall contain any differences in views of the chairmen and ranking members. Sections 4(d)(3)(C) and 4(d)(3)(D)</p>
<p><i>Advisory Committee Reports</i></p> <p>Private sector advisors shall submit reports on Section 3(a) and Section 3(b) trade agreements to the President, Congress, and the USTR, not later than 30 days after the President notifies Congress of the intent to enter into the trade agreement. Section 4(e)</p>	<p>Identical</p>

H.R. 3005 (House)	H.R. 3005 (Senate Finance Committee)
<p><i>ITC Assessment</i></p> <p>The President, at least 90 calendar days before entering into an agreement under Section 3(b), shall give the International Trade Commission (ITC) details of the agreement and request that the ITC prepare and submit an assessment of the agreement. Not later than 90 calendar days after the President enters into the agreement, the ITC shall submit to the President and to Congress a report assessing various economic impacts of the agreement. The ITC shall review and assess empirical literature regarding the agreement.</p> <p>Section 4(f)</p>	<p>Identical</p>

<h2 style="text-align: center;">Section 5. Implementation of Trade Agreements</h2>	
<p style="text-align: center;">H.R. 3005 (House)</p>	<p style="text-align: center;">H.R. 3005 (Senate Finance Committee)</p>
<p><i>In General</i></p> <p>Any agreement under Section 3(b) shall enter into force if, and only if: (1) the President, at least 90 calendar days before entering into an agreement, notifies the House and the Senate of the intention to enter into the agreement, and publishes notice in the Federal Register; (2) within 60 days of entering into the agreement, the President submits to Congress a description of legal changes required for compliance with the agreement; (3) after entering into the agreement, the President submits to Congress the text of the agreement, together with a draft implementing bill, a statement of administrative action, and other supporting information; and (4) the implementing bill is enacted. Section 5(a)(1)</p> <p>Supporting information to be submitted along with the text of the agreement and the draft implementing bill consists of an explanation of how the implementing bill and administrative action might change existing law, a statement of how the agreement makes progress in achieving the objectives, and other information as described. Section 5(a)(2)</p> <p>The implementing bill shall provide that the benefits and obligations under the agreement apply only to the parties to the agreement. The implementing bill may provide that the benefits and obligations do not apply uniformly to all parties. Section 5(a)(3)</p>	<p>Identical, except:</p> <p>Adds that the President must also transmit the notification and report on trade remedy laws required under Section 4(d)(3)(A) and (B) to the revenue committees when he makes his notification before entering into an agreement. Section 5(a)(1)(A)(ii)</p> <p>Requires the following additional supporting information be submitted along with the text of the agreement and other documents: in the event that the congressional reports in Sections 4(d)(3)(C) and (D) find that proposed amendments to trade remedy laws are inconsistent with the purposes, policies, and objectives of Section 2(c)(9), the President must explain why those findings are incorrect. Section 5(a)(2)(B)(ii)(VI)</p>

H.R. 3005 (House)	H.R. 3005 (Senate Finance Committee)
<p data-bbox="300 237 651 296"><i>Limitations of Trade Authorities Procedures</i></p> <p data-bbox="300 327 732 688">Trade authorities procedures shall not apply to any implementing bill for a Section 3(b) trade agreement if, during the 60-day period beginning on the date that a house agrees to a procedural disapproval resolution for lack of notice or consultations, the other house separately agrees to a procedural resolution with regard to the same trade agreement. The term “procedural disapproval resolution” is defined. Section 5(b)(1)</p> <p data-bbox="300 720 712 808">The procedures for considering procedural disapproval resolutions are given. Section 5(b)(2)</p> <p data-bbox="300 840 745 1108">Provisions covering procedural disapproval resolutions (Section 5(b)) and extension disapproval resolutions (Section 3(c)) are enacted by Congress as an exercise of the rulemaking power of the House and the Senate and with full recognition of the constitutional right of either house to change the rules. Section 5(c)</p>	<p data-bbox="779 237 1268 296">Identical (with some changes in numbering), except for the following:</p> <p data-bbox="779 327 1321 569">Adds that a procedural disapproval resolution shall be referred to the Finance Committee, and it is not in order for the Senate to consider a procedural disapproval resolution not reported by the Finance Committee. [Similar language referring to the Ways and Means Committee is in the House-passed bill.] Sections 5(b)(1)(C)(i)(bb) and (ii)(iv)</p> <p data-bbox="779 569 1321 926">Adds a section requiring that, prior to December 31, 2002, the Secretary of Commerce transmit to Congress a report with the U.S. strategy for correcting instances in which WTO dispute settlement panels and Appellate Body have added to obligations or diminished rights as described in Section 1(b)(3). Trade authorities procedures shall not apply to an implementing bill with regard to an agreement negotiated under the WTO unless the Commerce Secretary has issued the report in a timely manner. Section 5(b)(2)</p>

Section 6. Treatment of Certain Trade Agreements for Which Negotiations Have Already Begun

H.R. 3005 (House)	H.R. 3005 (Senate Finance Committee)
<p>If a trade agreement under Section 3(b) (1) is entered into under the WTO, is entered into with Chile, is entered into with Singapore, or establishes a Free Trade Area for the Americas, and (2) results from negotiations that started before enactment, then different treatment would apply. Section 6(a)</p> <p>Under that treatment, the applicability of the trade authorities procedures to implementing bill shall be determined without regard to certain requirements regarding notification before initiating negotiations. Also, the President would be required to notify the Congress of the negotiations and consult regarding the negotiations with the revenue committees, other committees as the President deems appropriate, and the COG. Section 6(b)</p>	<p>Virtually Identical</p> <p>Identical</p>

Section 8. Additional Implementation and Enforcement Requirements

H.R. 3005 (House)	H.R. 3005 (Senate Finance Committee)
<p>At the time the President submits to Congress the final text of the trade agreement, the President shall also submit a plan for implementing and enforcing the agreement. The plan shall include (along with an analysis of the costs associated with each): (1) a description of additional personnel required at border entry points; (2) a description of additional personnel required by Federal agencies for monitoring and implementing the trade agreement; and (3) a description of the additional equipment and facilities needed by the U.S. Customs Service; and a description of the impact of the agreement on State and local governments. Section 8(a)</p> <p>In the first budget after the above plan is submitted, the President shall request the resources necessary to support the plan. Section 8(b)</p>	Identical

Section 9. Committee Staff

H.R. 3005 (House)	H.R. 3005 (Senate Finance Committee)
<p>The grant of trade promotion authority is likely to increase the activities of the primary committees of jurisdiction in international trade. Further, more Members will participate in the formulation of U.S. trade policy and oversight of the trade agenda through the creation of the Congressional Oversight Group. The primary committees of jurisdiction should have adequate staff to accommodate these increased activities.</p>	Identical