

TRADE PROMOTION AUTHORITY:

A COMPARISON

	<u>2002 TPA</u>	<u>2014 TPA (HR 3830)</u>
1.	No requirement to consult with individual Members. Only Committees and Congressional Oversight Group (COG) statutorily entitled to consultations.	USTR required to consult with <i>all</i> Members. USTR must consult with any interested Member, at any time, before, during, or after negotiations.
2.	No requirement to provide individual Members access to negotiating text. Only Committees and COG entitled to access negotiating text.	USTR required to provide <i>all</i> Members access to negotiating text. Statutorily requires USTR to provide access to pertinent documents relating to the negotiations, including classified information (e.g., negotiating text) to every Member.
3.	No requirement to provide all Members access to negotiations. Only some Members can be accredited to negotiations.	<i>All</i> Members can be accredited to negotiations. Allows any Member to be designated as a congressional adviser, accredited as official advisers to U.S. delegations to negotiating rounds relating to trade agreements.
4.	Only <i>some</i> consultation requirements made enforceable. Congress has no recourse if USTR fails to follow through on consultation requirements that are not covered by disapproval resolution.	<i>All</i> consultation requirements covered by disapproval resolution. If USTR fails to follow through on <i>any</i> consultation requirement, Congress can withdraw TPA.
5.	Unwieldy Congressional Oversight Group. Combined House and Senate Oversight group is unwieldy and effectively a dead letter.	Streamlined House and Senate Advisory Groups on Negotiations. Separates House and Senate groups, with provision to establish detailed briefings on a fixed timetable, in order to revive coordination.
6.	No requirements for public engagement and limited transparency. Statute does not set any rules for USTR to engage with the public and provide transparency in negotiations. Required reports do not need to be released to the public.	Strong requirements for public engagement and disclosure. Requires new rules for engagement with the public, to facilitate transparency, encourage public participation, and promote collaboration in the negotiation process. Requires USTR to make trade agreement reports public.
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No requirements for coordination with trade advisory committees. Statute does not address coordination with trade advisory committees.

8. **No requirement for notice or consultations before agreement enters into force.**

9. **Weak statement on currency.** Administration merely directed to establish consultative mechanisms to examine the trade consequences of currency movements and whether a country is manipulating its currency.

10. **Labor and environment limited to enforcement of domestic laws.** Trade agreements require trading partners to effectively enforce their own laws, but no consequences if those laws do not comply with core ILO labor standards or common multilateral environmental agreements. Even for these limited obligations, USTR not directed to seek dispute settlement and remedies on par with commercial obligations.

11. **No provisions on access to medicines.** Statute contains various directives to protect intellectual property rights but is silent on access to medicines.

12. **No negotiating directive on state owned enterprises.** Statute is silent on state owned enterprises, and fails to address unfair competition and trade distortions associated with these companies.

Strong requirements for engagement with trade advisory committees. Requires new rules for access to information and enhanced coordination with the trade advisory committees.

New notice and consultation obligations for entry into force.

Strong currency negotiating objective. Directs that trading partners avoid currency manipulation, and specifies ways to achieve this result, including enforceable rules.

Strong May 10 labor and environment negotiating objectives. Directs that trading partners *adopt and maintain, and not waive or derogate from*, core ILO labor standards and common multilateral environmental agreements, and ensures that these obligations are subject to the *same* dispute settlement and remedies as enforceable commercial obligations.

May 10 access to medicines. Ensures that trade agreements foster innovation and promote access to medicines.

Takes on state owned enterprises. Directs that trading partners eliminate trade distortions and unfair competition from state owned enterprises and ensure that they act based solely on commercial considerations.

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| <p>13. No negotiating directive on localization barriers to trade. Statute contains no guidance on how negotiators should address growing problem of forced localization of facilities and related barriers to U.S. exports.</p> | <p>Takes on localization barriers to trade. Directs that trading partners eliminate measures that condition U.S. market access on the requirement to locate facilities in country, including indigenous innovation measures.</p> |
| <p>14. Outdated objectives on “e-commerce” with no mention of cross border data flows. Statute contains antiquated guidance on e-commerce, and is silent on important issues such as restrictions on cross border data flows.</p> | <p>21st century objectives on digital trade, including cross border data flows. Recognizes the growing significance of the Internet as a trading platform in international commerce, with updated digital trade objectives that direct that trading partners allow cross border data flows.</p> |
| <p>15. Outdated intellectual property objectives do not address government-sponsored piracy and cybertheft. Statute contains no direction for addressing government involvement in IPR violations, including piracy and cybertheft of trade secrets.</p> | <p>Strong directive on piracy and cybertheft and facilitating legitimate digital trade. Directs that trading partners prevent or eliminate government involvement in IPR violations, including piracy and cybertheft of trade secrets.</p> |
| <p>16. Silent on government protection of trade secrets. Statute does not address growing problems relating to government involvement in disclosure of trade secrets.</p> | <p>Strong directive on trade secrets. Directs that governments protect undisclosed proprietary information against disclosure, including by limiting unnecessary collection.</p> |
| <p>17. Does not facilitate legitimate digital trade. IP provisions do not account for digital trade.</p> | <p>Facilitates legitimate digital trade. Provides strong protection for new and emerging technologies and new methods of transmitting and distributing products embodying intellectual property, including in a manner that facilitates legitimate digital trade.</p> |
| <p>18. Weak directive on sanitary and phytosanitary measures. Statute contains no specific guidance on how to address sanitary and phytosanitary (SPS) measures in trade agreements, despite the fact that unscientific SPS restrictions have become a growing impediment to U.S.</p> | <p>Strong, enforceable rules on sanitary and phytosanitary measures. Directs that trading partners comply with robust, enforceable rules on sanitary and phytosanitary measures, requiring the use of science based standards while ensuring that countries can still protect human, animal, or plant life or health.</p> |

agriculture exports.

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| 19. Silent on geographic indications that serve as a barrier to U.S. exports. Statute does not address trading partners' improper use of geographical indications, which undermine market access for U.S. products. | Strong directive to eliminate improper use of geographical indications. Directs elimination of improper use of GIs, including registration of generic terms. |
| 20. No directive addressing nontransparent tariff rate quotas for agriculture. Statute is silent on lack of transparency in tariff rate quota regimes, which has made it difficult for U.S. farmers, ranchers, and growers to take advantage of their market access rights. | Clear directive for trading partners to ensure transparency in TRQs. Ensures transparency in the administration of TRQ programs. |
| 21. U.S. domestic objectives secondary. Requirement that President take into account legitimate U.S. domestic objectives, including, but not limited to, the protection of legitimate health or safety, essential security, and consumer interests. | U.S. domestic objectives primary. Elevates requirement to take into account legitimate domestic objectives to overall negotiating objective, so that a trade agreement <i>cannot</i> be entered into if it does not make progress in meeting this objective. |
| 22. Limited directive on regulatory transparency. Mechanisms to improve regulatory practices limited to transparency in developing guidelines and other measures. | Broad directive on regulatory best practices. New and expanded provisions provide for increased transparency and opportunity for participation in the development of regulations, basing regulations on objective evidence, and improving regulatory practices. |
| 23. No clear directive to address regulatory barriers arising from differences in rules. Statute provides only limited guidance on addressing the costs that companies, especially small businesses, face when confronted with trading partners' disparate regulations. | New directive to promote regulatory compatibility. New provisions promoting regulatory compatibility through harmonization, equivalence, or mutual recognition of different regulations and standards and to encourage the use of international and interoperable standards, as appropriate. |

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| 24. | Outdated objectives on services trade and no directive to USTR on WTO services negotiation. Statute is silent on international services negotiations. Administration is currently negotiating international services agreement without clear Congressional directive. | Clear directive to USTR on pending WTO negotiations and updated objective to expand competitive opportunities for U.S. services providers. Directs USTR to pursue expansion of trade in services through all means, including a plurilateral agreement with countries willing and able to undertake high standard services commitments for both existing and new services. |
| 25. | Fails to acknowledge increasingly interrelated economy. | Addresses increasing interrelated, multisectoral nature of trade. Ensures that trade agreements reflect the increasingly interrelated and multisectoral nature of trade and investment activity. |
| 26. | Does not address increasingly dynamic value chains driving global trade. | Promotes global value chains. Addresses the ability of U.S. firms to participate in global value chains. |
| 27. | No objectives to address WTO trade remedies overreach. Statute contains findings that WTO panels have overreached on trade remedies, but provides no negotiating directive to address the problem. | New negotiating objective to address WTO overreach. Seeks to have WTO panels and Appellate Body adhere to their mandate, without adding to or diminishing U.S. rights and obligations. |
| 28. | Limited directives on capacity building and technical assistance. | Strong directive to strengthen trading partners' capacity to comply with trade agreements. Directive to strengthen the capacity of United States trading partners on a wide range of issues including trade facilitation, through outreach from the heads of <i>all</i> relevant Federal agencies, with technical assistance to be provided if needed. |

29.	Anti-corruption provisions do not address cooperation to support international anti-bribery initiatives.	Expanded anti-corruption provisions encourage and support anticorruption and antibribery initiatives. Directs that trading partners work jointly to encourage and support anticorruption and antibribery initiatives in international trade fora, including through the OECD anti-bribery convention.
30.	Silent on rule of law. Statute does not address rule of law.	New directive to strengthen rule of law and the effective operation of trading partners' legal regimes. New directive ensures implementation of trade commitments by strengthening the effective operation of legal regimes and the rule of law through capacity building and other appropriate means.
31.	Silent on U.S. sovereignty. Statute contains no specific guidance on effect of trade agreements on U.S. law.	Clear direction to preserve U.S. sovereignty. New provisions affirm that trade agreements cannot change U.S. law without Congressional action.