

Trade Policy Side-by-Side: Division K of the America COMPETES Act versus Division G of the U.S. Innovation and Competition Act

February 14, 2022

Overview

The divide between the two packages is among the widest and most strongly held when it comes to trade policy. In many areas, there are not overlapping provisions at all, and even in those areas where the bills do address the same program they often take different approaches and touch sensitive political areas. For example, the House-passed America Creating Opportunities for Manufacturing, Pre-Eminence in Technology and Economic Strength (COMPETES) Act includes an expansive reauthorization of the Trade Adjustment Assistance Act (TAA), a program that traditionally is reauthorized in tandem with Trade Promotion Authority. Yet, the Senate-passed U.S. Innovation and Competition Act (USICA) includes no mention of TAA reauthorization. In addition, USICA includes extensive provisions to reinstate previously expired tariff exclusions, refund importers on those lapsed exclusions, and require a new process for companies to apply for exclusions in the future. But, despite broad support for such provisions in the House, including more than half of Democrats on the House Ways & Means Committee, the America COMPETES Act does not include any provisions relating to tariff exclusions. Similar examples abound within the trade titles. As the two chambers prepare to negotiate a final deal, Senate leaders are quick to remind stakeholders that its trade title passed the Senate as its own amendment by an overwhelming bipartisan majority of 91-4 compared to the House bill, which passed by a narrow party line vote and whose trade title never received a hearing or vote in committee.

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	House: America COMPETES Act	Senate: USICA
Trade Adjustment Assistance	ü	û
Trade Remedy Law Reform	ü	û
De Minimis Reform	ü	û
Outbound Investment Screening	ü	û
Forced Labor	û	ü
Digital Trade Agreement Facilitation	û	ü
Section 301 Exclusions	û	ü
USTR Inspector General	û	ü
Supply Chain Resiliency	û	ü
Generalized System of Preferences (GSP)	ü	ü
Miscellaneous Tariff Bill (MTB)	ü	ü
World Trade Organization (WTO)	ü	ü

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Trade Adjustment Assistance	<p>The TAA program provides aid to those who are negatively impacted by trade—including workers who lose their jobs or whose hours of work and wages are reduced as a result of increased imports, firms that lose business and reduce production because of imports, and farms that are hurt by cheap imports. On July 1, 2021, many programs under TAA reverted to more limited forms that were in effect in 2011, and the entire support program is scheduled to expire on June 30, 2022.</p> <p>The House bill would provide long-term reauthorizations for different TAA programs—TAA for Workers (Subtitle A), TAA for Firms (Subtitle B) and TAA for Communities and Community Colleges (Subtitle C).</p> <p>The bill also makes many policy changes to make the benefit more generous and accessible and reduce eligibility restrictions, including but not limited to:</p> <ul style="list-style-type: none"> • Removes the requirement that imports contributed “importantly” to an applicant’s job loss (Sec. 101102) or a firm’s lost sales or employment (Sec. 101201). • Allows workers to successfully apply for TAA when a layoff has been announced but production has not yet decreased (Sec. 101102). • Clarifies that teleworkers are eligible for TAA (Sec. 101102). • Clarifies that decreased exports make workers 	No comparable provisions.

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	<p>eligible for TAA (Sec. 101102) and firms (Sec. 101201).</p> <ul style="list-style-type: none"> • Makes it easier for a worker to petition for TAA benefits by allowing the petition to be initiated by a single worker rather than three under current law (Sec. 101102). • Removes the requirement that a worker be employed for one year prior to losing the worker's job to receive income support under TAA (Sec. 101105). • Automatically extends income support for six months to workers who complete training but are unable to find suitable employment during a period of heightened unemployment (Sec. 101107). • Increases the cap on job search and relocation allowances from \$1,250 to \$2,000 (Sec. 101110). • Establishes a TAA child care allowance of up to \$2,000 (Sec. 101110). • Increases access to Reemployment TAA, which is a wage insurance program available to workers over 50 who obtain a new job but at a lower wage. This section makes the program available to workers making up to \$70,000 (up from \$50,000) and increases the maximum benefit to \$20,000 (up from \$10,000) (Sec. 101112). • Makes firms eligible for TAA if it has seen a decrease in employment or sales due to trade instead of 	

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	<p>requiring both (Sec. 101201).</p> <ul style="list-style-type: none"> Accelerates the timeline for accepting and approving petitions from firms for TAA (Sec. 101201). Reestablishes the TAA for Communities and the TAA for Community College and Career Training programs (Sec. 101301). 	
Trade Remedy Law Reform	<p>Adopts the Eliminating Global Market Distortions to Protect American Jobs Act of 2021 (HR6121) introduced in the House by Reps. Terri Sewell (D-AL) and Bill Johnson (R-OH). This title of the America COMPETES Act would, among other things:</p> <ul style="list-style-type: none"> Make it easier for the International Trade Commission (ITC) to pursue repeat offenders of anti-dumping or countervailing duty orders and make it easier for companies to petition the ITC for relief when facing dumped or subsidized imports from repeat offenders (Secs 102002 and 102003). Allow the Commerce Department to address cross-border subsidization by reviewing and addressing petitions where the import comes from a different country than provided the subsidy (Sec. 102101). Allow the Commerce Department to require importers to provide a certification upon entry of an article into the U.S. that states the imported article is not subject to an antidumping or countervailing duty order (Sec 102202). Require the Commerce Department to investigate allegations of currency undervaluation as a 	<p>Although there is a Senate version of the Eliminating Global Market Distortions to Protect American Jobs Act (S1187) introduced by Sens. Brown (D-OH) and Portman (R-OH), it was not included in USICA.</p>

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	<p>countervailable subsidy if those allegations meet the criteria for investigation, eliminating the Departments discretion to decline to investigate (Sec. 102301).</p> <p>The America COMPETES Act also adds a new section that was not in HR6121 that repeals enforcement actions relating to cheese subject to an in-quota rate of duty.</p>	
De Minimis Reform	<p>Adopts the Import Security and Fairness Act (HR6412) introduced by Rep. Blumenauer (D-OR), which would:</p> <ul style="list-style-type: none"> • Prohibit duty free treatment for imports, including if they are valued below the current de minimis level of \$800, from countries that are identified (1) as a nonmarket economy country by the Department of Commerce and (2) as a country included on the Office of the U.S. Trade Representative's (USTR) priority watch list (Sec. 103002). • Give Customs and Border Protection (CBP) the authority to collect additional information on imports that receive de minimis treatment (Sec. 103003). • Simplify CBP's requirements for processing goods that receive de minimis treatment but have been detained by CBP (Sec. 103003). • Take effect 15 days after enactment (Sec. 103004). 	No comparable provisions.
Outbound Investment Screening	Adopts the National Critical Capabilities Defense Act of 2021 (HR6329) introduced in the House by Reps. DeLauro (D-CT), Spartz (R-IN), Pascrell (D-NJ) and	Although there is a Senate version of the National Critical Capabilities Defense Act of 2021 (S1854) introduced by Sens. Casey (D-PA), Cornyn (R-TX), Stabenow (D-MI), Rubio (R-FL), Kaine (D-VA) and Tillis

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	<p>Fitzpatrick (R-PA).</p> <p>This title of the America COMPETES Act would, among other things:</p> <ul style="list-style-type: none"> • Establish a process for the U.S. government to review and potentially block certain overseas investments being made by U.S. businesses to "nations of concern" if it is determined that offshoring certain "critical capabilities" or supply chains to those countries and nonmarket economies would cause supply chain vulnerabilities for the United States. • U.S. businesses that are considering transferring or relocating to a country of concern a U.S. national critical capability (or an essential element of a critical capability) must provide advance notification to an interagency Committee on National Critical Capabilities created by the bill. The committee, led by the U.S. Trade Representative, would then review the proposal to determine the risk associated with the transaction. • If the proposed transaction poses a risk, the committee must recommend that the President take action; the President could address any unacceptable risk by suspending or prohibiting the transaction. "National critical capabilities" are defined as systems and assets so vital to the United States that the inability to develop them would have a debilitating effect on U.S. national security or crisis preparedness. The committee must also identify articles, supply chains and services that should be 	<p>(R-NC), it was not included in USICA.</p>

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	<p>included in that definition.</p> <ul style="list-style-type: none"> The interagency review would be led by USTR and include the leader of OSTP, and the heads of the following Departments: Commerce, Treasury, Homeland Security, Defense, State, Justice, Energy, Health and Human Services, Agriculture and Labor, and any other agency the President deems appropriate. 	
Forced Labor	No comparable provisions.	<p>Establishes a Forced Labor Division within the Office of Trade at CBP to investigate allegations of imports made using forced labor, including by petition (Sec. 71001).</p> <p>The new division shall consult with the Departments of Labor and State in prioritizing its investigations, and take into account the complicity of the foreign government from which the import came in prioritizing which investigations to undertake (Sec. 71001).</p> <p>Requires CBP to issue regulations regarding the verification of seafood imports to ensure they are not harvested or produced with forced labor, and to develop and publish a strategy for identifying seafood at risk of being harvested or produced using forced labor (Sec. 71002).</p>
Digital Trade Agreement Facilitation	No comparable provisions.	As an addendum to the annual National Trade Estimate report, requires USTR to identify countries that engage in acts, policies or practices that disrupt digital trade, including coerced censorship, and to designate some of those countries as priority foreign countries that engage in the most onerous or egregious acts and are not

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		<p>making progress to end those acts (Sec. 71011).</p> <p>Directs USTR to consider negotiating digital trade agreements with “like-minded countries” to “provide an opportunity to address digital barriers, deter censorship, promote the free flow of information, support privacy, protect communications regarding human and worker rights, and promote digitally enabled commerce.”</p>
Section 301 Exclusions	No comparable provisions.	<p>USICA would take a number of important steps to revive the tariff exclusion program to offer exclusions from tariffs put in place as a result of current and future Section 301 investigations (Sec. 73001), including:</p> <ul style="list-style-type: none"> • Requires USTR to reinstate all tariff exclusions previously granted as a result of the Section 301 investigation into China’s unfair acts, policies or practices initiated in 2017, and requires refunds on imports made after December 31, 2020, for those firms whose exclusions lapsed. • Requires USTR to establish an exclusion process if duties are to be imposed pursuant to a future investigation under Section 301 unless USTR certifies to Congress that such a process would impair its ability to resolve the underlying issue or it would be impractical due to the low value of the duties. • Provides criteria for consideration in implementing the exclusion process. • Establishes greater oversight and transparency of the exclusion process, including requiring USTR to provide to the requester of a denied exclusion the

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		written reasoning for the denial.
USTR Inspector General	No comparable provisions included.	Adopts the USTR Inspector General Act of 2021 (S1489) introduced by Sens. Menendez (D-NJ) and Cornyn (R-TX), and directs the President to appoint an inspector general for USTR to increase transparency, accountability and oversight.
Supply Chain Resiliency	<p>No comparable provisions included in the trade title of the America COMPETES Act. However, supply chain related provisions are included in other titles of the bill, especially Division C Title II Subtitle A on Supply Chain Resilience and Division C Title IV on Medical Product Supply Chain Improvements.</p> <p>The America COMPETES Act directs the Commerce Department to establish a database and online toolkit where U.S. businesses can voluntarily submit information about the products they make and from where they source inputs. It also directs Commerce to conduct a national outreach campaign to raise awareness about the online database (Sec. 20207).</p>	<p>The trade title of USICA requires a more extensive and specific supply chain database and online toolkit than what is required by the America COMPETES Act.</p> <p>USICA:</p> <ul style="list-style-type: none"> • Establishes a Committee on Trade in Essential Supplies in the United States, chaired by the USTR, which would be responsible for examining U.S. trade flows and supply chains for essential supplies. • Directs the Committee to submit to Congress a report identifying essential supplies, detailing U.S. access to essential supplies, examining potential vulnerabilities in supply chains and making specific recommendations to ensure resilient and reliable supply chains. • Provides the President with limited authority to reduce or suspend duties on any essential medical supply for no more than 180 days. • Temporarily suspends duties on articles needed to combat the COVID-19 pandemic (Sec. 72001). <p>The bill also directs the Secretary of Commerce to establish a database and online toolkit to aid in the</p>

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		<p>identification of suppliers of certain inputs and finished products in the United States and abroad, to promote the database with a public outreach campaign, and to report to Congress on its effectiveness (Sec. 72002).</p> <p>USICA also includes a supply chain resiliency program, but it barely resembles the program in the America COMPETES Act. USICA's program, found in Section 2505, does not include any funding for grants, loans or loan guarantees. The mission of the USICA supply chain resilience program is far more limited. It is to help to promote U.S. leadership in critical industries and encourage public-private partnerships regarding supply chains. The activities of the program include:</p> <ul style="list-style-type: none"> • Map and monitor critical industry supply chains • Identify high-priority supply chain gaps and vulnerabilities • Identify opportunities to reduce supply chain gaps or vulnerabilities • Work with allies to promote diversified and resilient supply chains that ensure the supply of critical goods. <p>The bill lists interagency partners for coordination on the program's activities.</p> <p>The bill requires a report to Congress within one year that (i) identifies industries and supplies that are critical to the United States; (ii) describes the manufacturing base and supply chains for critical industries (iii) assesses the resiliency of the manufacturing base and supply chains for certain industries; and (iv) makes</p>

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		<p>recommendations to improve resiliency.</p> <p>In addition, it will be administered by the Commerce Secretary “acting through 1 or more bureaus” since USICA does not create a new Assistant Secretary for Supply Chain Resilience and Crisis Response (Sec. 72002).</p>
Generalized System of Preferences (GSP)	<p>GSP provides duty-free access to the U.S. market for certain products from developing countries and expired on December 31, 2020.</p> <p>The America COMPETES Act will reauthorize the program until December 31, 2024, and provide complete retroactivity, allowing importers to seek refunds on duties paid since the GSP program expired.</p> <p>The program includes mandatory criteria that countries must meet in order to be eligible for GSP. The America COMPETES Act modifies the mandatory criteria in the following ways:</p> <ul style="list-style-type: none"> • Strengthening the labor criteria from requiring that countries “take steps” to afford internationally recognized worker rights to prohibiting countries that “fail to effectively” afford workers those rights. • Adds a new human rights criteria that would prohibit countries from being eligible for GSP if it “engages in gross violations of internationally recognized human rights in that country.” • Adds a new environmental criterion that would prohibit countries from the program if it “fails to 	<p>Like the America COMPETES Act, USICA will provide complete retroactivity for importers using the program but reauthorize it for an even longer period of time—until January 1, 2027.</p> <p>USICA also modifies the mandatory criteria of the GSP program:</p> <ul style="list-style-type: none"> • Unlike the America COMPETES Act, USICA does not modify the mandatory labor criteria. • Using the same language as the America COMPETES Act, USICA adds a criterion regarding human rights. • Using similar language as the America COMPETES Act, USICA adds a criterion regarding the environment. <p>USICA also modifies the discretionary criteria of the GSP program:</p> <ul style="list-style-type: none"> • Unlike the America COMPETES Act, USICA does not modify the discretionary labor criteria. • Using similar language as the America COMPETES Act, USICA adds a discretionary criterion on the

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	<p>effectively enforce its environmental laws, regulations or other measures, or to fulfill its international environmental obligations.”</p> <p>The GSP program also includes discretionary criteria that the President must take into account when considering a country’s eligibility. The COMPETES Act modifies the discretionary criteria in the following ways:</p> <ul style="list-style-type: none"> • Strengthening the labor criteria from requiring that countries “take steps” to afford internationally recognized worker rights to prohibiting countries that “fail to effectively” afford workers those rights. • Adding new criteria on the environment, rule of law, poverty reduction and combatting corruption. <p>The bill also requires the President to assess whether all GSP beneficiary countries are meeting the program’s criteria every three years (Sec. 105001).</p>	<p>environment.</p> <ul style="list-style-type: none"> • Unlike the America COMPETES Act, USICA adds a discretionary criterion related to women’s economic empowerment. • Using the same language as the America COMPETES Act, USICA adds discretionary criteria on the environment, rule of law, poverty reduction and combatting corruption. • Unlike the America COMPETES Act, USICA adds a new discretionary criterion related to digital trade. <p>Like the America COMPETES Act, USICA also requires the President to assess whether all GSP beneficiary countries are meeting the program’s criteria every three years (Sec. 74002).</p>
Miscellaneous Tariff Bill (MTB)	<p>The MTB temporarily suspends or reduces tariffs on certain imported goods, especially when no U.S. producer of those goods exists. The most recent MTB expired on December 31, 2020, leading to tariff hikes on thousands of imported products.</p> <p>The America COMPETES Act would temporarily suspend or reduce tariffs on certain imported goods through December 31, 2023, and provide retroactive duty relief for the 120 days prior to enactment.</p> <p>The America COMPETES Act also authorizes two more cycles of the MTB program, one beginning in 2022 and</p>	<p>Like the America COMPETES Act, USICA would also temporarily suspend or reduce tariffs on certain imported goods through December 31, 2023, provide retroactive duty relief for the 120 days prior to enactment and would authorize two more cycles of the MTB program beginning in 2022 and 2025.</p> <p>Unlike the America COMPETES Act, USICA does not include a prohibition on suspending or reducing tariffs in an MTB for finished goods.</p>

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	<p>another beginning in 2025, with each generating lists of imports that could see its duty suspended or reduced by future MTB bills.</p> <p>The America COMPETES Act also adopts a prohibition on suspending or reducing the tariff in an MTB for any finished goods.</p>	
World Trade Organization (WTO)	Using similar language as USICA, this sense of the Congress resolution provides that the United States should continue to lead reform efforts at the WTO, including efforts related to dispute settlement, notifications and ensuring that there are platforms to discuss matters related to labor, the environment and women's economic empowerment (Sec. 106003).	Using similar language as the America COMPETES Act, this sense of the Congress resolution expresses support for the WTO's role in fulfilling the needs of the United States, and other free and open economies, while also recognizing the need for significant reform to restore its effectiveness. Expresses the sense of the Senate that the United States should continue to lead other WTO members in pursuing reform (Sec. 73006).