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ANDEAN TRADE PREFERENCE EXPANSION ACT

DECEMBER 14, 2001.—Ordered to be printed

Mr. BAUCUS, from the Committee on Finance, submitted the following

R E P O R T

[To accompany H.R. 3009]

The Committee on Finance, to which was referred the bill (H.R. 3009) to extend the Andean Trade Preference Act, to grant additional trade benefits under the Act, and for other purposes, having considered the same, reports favorably thereon with an amendment and recommends that the bill (as amended) do pass.

The amendment is as follows:

Strike out all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Andean Trade Preference Expansion Act".

TITLE I—ANDEAN TRADE PREFERENCE

SEC. 101. FINDINGS.

Congress makes the following findings:

(1) Since the Andean Trade Preference Act was enacted in 1991, it has had a positive impact on United States trade with Bolivia, Colombia, Ecuador, and Peru. Two-way trade has doubled, with the United States serving as the leading source of imports and leading export market for each of the Andean beneficiary countries. This has resulted in increased jobs and expanded export opportunities in both the United States and the Andean region.

(2) The Andean Trade Preference Act has been a key element in the United States counternarcotics strategy in the Andean region, promoting export diversification and broad-based economic development that provides sustainable economic alternatives to drug-crop production, strengthening the legitimate economies of Andean countries and creating viable alternatives to illicit trade in coca.

(3) Notwithstanding the success of the Andean Trade Preference Act, the Andean region remains threatened by political and economic instability and fragility, vulnerable to the consequences of the drug war and fierce global competition for its legitimate trade.

(4) The continuing instability in the Andean region poses a threat to the security interests of the United States and the world. This problem has been partially addressed through foreign aid, such as Plan Colombia, enacted by Con-

gress in 2000. However, foreign aid alone is not sufficient. Enhancement of legitimate trade with the United States provides an alternative means for reviving and stabilizing the economies in the Andean region.

(5) The Andean Trade Preference Act constitutes a tangible commitment by the United States to the promotion of prosperity, stability, and democracy in the beneficiary countries.

(6) Renewal and enhancement of the Andean Trade Preference Act will bolster the confidence of domestic private enterprise and foreign investors in the economic prospects of the region, ensuring that legitimate private enterprise can be the engine of economic development and political stability in the region.

(7) Each of the Andean beneficiary countries is committed to conclude negotiation of a Free Trade Area of the Americas by the year 2005, as a means of enhancing the economic security of the region.

(8) Temporarily enhancing trade benefits for Andean beneficiaries countries will promote the growth of free enterprise and economic opportunity in these countries and serve the security interests of the United States, the region, and the world.

SEC. 102. TEMPORARY PROVISIONS.

(a) IN GENERAL.—Section 204(b) of the Andean Trade Preference Act (19 U.S.C. 3203(b)) is amended to read as follows:

(b) IMPORT-SENSITIVE ARTICLES.—

(1) IN GENERAL.—Subject to paragraphs (2) through (5), the duty-free treatment provided under this title does not apply to—

(A) textile and apparel articles which were not eligible articles for purposes of this title on January 1, 1994, as this title was in effect on that date;

(B) footwear not designated at the time of the effective date of this title as eligible articles for the purpose of the generalized system of preferences under title V of the Trade Act of 1974;

(C) tuna, prepared or preserved in any manner, in airtight containers;

(D) petroleum, or any product derived from petroleum, provided for in headings 2709 and 2710 of the HTS;

(E) watches and watch parts (including cases, bracelets, and straps), of whatever type including, but not limited to, mechanical, quartz digital, or quartz analog, if such watches or watch parts contain any material which is the product of any country with respect to which HTS column 2 rates of duty apply;

(F) articles to which reduced rates of duty apply under subsection (c);

(G) sugars, syrups, and sugar containing products subject to tariff-rate quotas; or

(H) rum and tafia classified in subheading 2208.40 of the HTS.

(2) TRANSITION PERIOD TREATMENT OF CERTAIN TEXTILE AND APPAREL ARTICLES.—

(A) ARTICLES COVERED.—During the transition period, the preferential treatment described in subparagraph (B) shall apply to the following articles:

(i) APPAREL ARTICLES ASSEMBLED FROM PRODUCTS OF THE UNITED STATES AND ATPEA BENEFICIARY COUNTRIES OR PRODUCTS NOT AVAILABLE IN COMMERCIAL QUANTITIES.—Apparel articles sewn or otherwise assembled in 1 or more ATPEA beneficiary countries, or the United States, or both, exclusively from any one or any combination of the following:

(I) Fabrics or fabric components formed, or components knit-to-shape, in the United States, from yarns wholly formed in the United States (including fabrics not formed from yarns, if such fabrics are classifiable under heading 5602 or 5603 of the HTS and are formed in the United States), provided that apparel articles sewn or otherwise assembled from materials described in this subclause are assembled with thread formed in the United States.

(II) Fabric components knit-to-shape in the United States from yarns wholly formed in the United States and fabric components knit-to-shape in 1 or more ATPEA beneficiary countries from yarns wholly formed in the United States.

(III) Fabrics or fabric components formed or components knit-to-shape, in 1 or more ATPEA beneficiary countries, from yarns wholly formed in 1 or more ATPEA beneficiary countries, if such fabrics (including fabrics not formed from yarns, if such fabrics are classifiable under heading 5602 or 5603 of the HTS and are formed in

1 or more ATPEA beneficiary countries) or components are in chief weight of llama, alpaca, or vicuna.

(IV) Fabrics or yarns that are not formed in the United States or in 1 or more ATPEA beneficiary countries, to the extent that apparel articles of such fabrics or yarns would be eligible for preferential treatment, without regard to the source of the fabrics or yarns, under Annex 401 of the NAFTA.

(ii) KNIT-TO-SHAPE APPAREL ARTICLES.—Apparel articles knit-to-shape (other than socks provided for in heading 6115 of the HTS) in 1 or more ATPEA beneficiary countries from yarns wholly formed in the United States.

(iii) REGIONAL FABRIC.—

(I) GENERAL RULE.—Knit apparel articles wholly assembled in 1 or more ATPEA beneficiary countries exclusively from fabric formed, or fabric components formed, or components knit-to-shape, or any combination thereof, in 1 or more ATPEA beneficiary countries from yarns wholly formed in the United States, in an amount not exceeding the amount set forth in subclause (II).

(II) LIMITATION.—The amount referred to in subclause (I) is 70,000,000 square meter equivalents during the 1-year period beginning on March 1, 2002, increased by 16 percent, compounded annually, in each succeeding 1-year period through February 28, 2006.

(iv) CERTAIN OTHER APPAREL ARTICLES.—

(I) GENERAL RULE.—Subject to subclause (II), any apparel article classifiable under subheading 6212.10 of the HTS, if the article is both cut and sewn or otherwise assembled in the United States, or one or more of the ATPEA beneficiary countries, or both.

(II) LIMITATION.—During the 1-year period beginning on March 1, 2003, and during each of the 2 succeeding 1-year periods, apparel articles described in subclause (I) of a producer or an entity controlling production shall be eligible for preferential treatment under subparagraph (B) only if the aggregate cost of fabric components formed in the United States that are used in the production of all such articles of that producer or entity that are entered during the preceding 1-year period is at least 75 percent of the aggregate declared customs value of the fabric contained in all such articles of that producer or entity that are entered during the preceding 1-year period.

(III) DEVELOPMENT OF PROCEDURE TO ENSURE COMPLIANCE.—The United States Customs Service shall develop and implement methods and procedures to ensure ongoing compliance with the requirement set forth in subclause (II). If the Customs Service finds that a producer or an entity controlling production has not satisfied such requirement in a 1-year period, then apparel articles described in subclause (I) of that producer or entity shall be ineligible for preferential treatment under subparagraph (B) during any succeeding 1-year period until the aggregate cost of fabric components formed in the United States used in the production of such articles of that producer or entity that are entered during the preceding 1-year period is at least 85 percent of the aggregate declared customs value of the fabric contained in all such articles of that producer or entity that are entered during the preceding 1-year period.

(v) APPAREL ARTICLES ASSEMBLED FROM FABRICS OR YARN NOT WIDELY AVAILABLE IN COMMERCIAL QUANTITIES.—At the request of any interested party, the President is authorized to proclaim additional fabrics and yarn as eligible for preferential treatment under clause (i)(IV) if—

(I) the President determines that such fabrics or yarn cannot be supplied by the domestic industry in commercial quantities in a timely manner;

(II) the President has obtained advice regarding the proposed action from the appropriate advisory committee established under section 135 of the Trade Act of 1974 (19 U.S.C. 2155) and the United States International Trade Commission;

(III) within 60 days after the request, the President has submitted a report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate that sets forth the action proposed to be proclaimed and the reasons for such actions, and the advice obtained under subclause (II);

(IV) a period of 60 calendar days, beginning with the first day on which the President has met the requirements of subclause (III), has expired; and

(V) the President has consulted with such committees regarding the proposed action during the period referred to in subclause (III).

(vi) HANDLOOMED, HANDMADE, AND FOLKLORE ARTICLES.—A handloomed, handmade, or folklore article of an ATPEA beneficiary country identified under subparagraph (C) that is certified as such by the competent authority of such beneficiary country.

(vii) SPECIAL RULES.—

(I) EXCEPTION FOR FINDINGS AND TRIMMINGS.—(aa) An article otherwise eligible for preferential treatment under this paragraph shall not be ineligible for such treatment because the article contains findings or trimmings of foreign origin, if such findings and trimmings do not exceed 25 percent of the cost of the components of the assembled product. Examples of findings and trimmings are sewing thread, hooks and eyes, snaps, buttons, 'bow buds', decorative lace, trim, elastic strips, zippers, including zipper tapes and labels, and other similar products. Elastic strips are considered findings or trimmings only if they are each less than 1 inch in width and are used in the production of brassieres.

(bb) In the case of an article described in clause (i)(I) of this subparagraph, sewing thread shall not be treated as findings or trimmings under this subclause.

(II) CERTAIN INTERLININGS.—(aa) An article otherwise eligible for preferential treatment under this paragraph shall not be ineligible for such treatment because the article contains certain interlinings of foreign origin, if the value of such interlinings (and any findings and trimmings) does not exceed 25 percent of the cost of the components of the assembled article.

(bb) Interlinings eligible for the treatment described in division (aa) include only a chest type plate, 'hymo' piece, or 'sleeve header', of woven or weft-inserted warp knit construction and of coarse animal hair or man-made filaments.

(cc) The treatment described in this subclause shall terminate if the President makes a determination that United States manufacturers are producing such interlinings in the United States in commercial quantities.

(III) DE MINIMIS RULE.—An article that would otherwise be ineligible for preferential treatment under this paragraph because the article contains yarns not wholly formed in the United States or in 1 or more ATPEA beneficiary countries shall not be ineligible for such treatment if the total weight of all such yarns is not more than 7 percent of the total weight of the good. Notwithstanding the preceding sentence, an apparel article containing elastomeric yarns shall be eligible for preferential treatment under this paragraph only if such yarns are wholly formed in the United States.

(IV) SPECIAL ORIGIN RULE.—An article otherwise eligible for preferential treatment under clause (i) of this subparagraph shall not be ineligible for such treatment because the article contains nylon filament yarn (other than elastomeric yarn) that is classifiable under subheading 5402.10.30, 5402.10.60, 5402.31.30, 5402.31.60, 5402.32.30, 5402.32.60, 5402.41.10, 5402.41.90, 5402.51.00, or 5402.61.00 of the HTS duty-free from a country that is a party to an agreement with the United States establishing a free trade area, which entered into force before January 1, 1995.

(V) CLARIFICATION OF CERTAIN KNIT APPAREL ARTICLES.—Notwithstanding any other provision of law, an article otherwise eligible for preferential treatment under clause (iii)(I) of this subparagraph, shall not be ineligible for such treatment because the article, or a component thereof, contains fabric formed in the United States from yarns wholly formed in the United States.

(viii) TEXTILE LUGGAGE.—Textile luggage—

(I) assembled in an ATPEA beneficiary country from fabric wholly formed and cut in the United States, from yarns wholly formed in the United States, that is entered under subheading 9802.00.80 of the HTS; or

(II) assembled from fabric cut in an ATPEA beneficiary country from fabric wholly formed in the United States from yarns wholly formed in the United States.

(B) PREFERENTIAL TREATMENT.—Except as provided in subparagraph (E), during the transition period, the articles to which subparagraph (A) applies shall enter the United States free of duty and free of any quantitative restrictions, limitations, or consultation levels.

(C) HANDLOOMED, HANDMADE, AND FOLKLORE ARTICLES.—For purposes of subparagraph (A)(vi), the President shall consult with representatives of the ATPEA beneficiary countries concerned for the purpose of identifying particular textile and apparel goods that are mutually agreed upon as being handloomed, handmade, or folklore goods of a kind described in section 2.3(a), (b), or (c) of the Annex or Appendix 3.1.B.11 of the Annex.

(D) PENALTIES FOR TRANSSHIPMENTS.—

(i) PENALTIES FOR EXPORTERS.—If the President determines, based on sufficient evidence, that an exporter has engaged in transshipment with respect to textile or apparel articles from an ATPEA beneficiary country, then the President shall deny all benefits under this title to such exporter, and any successor of such exporter, for a period of 2 years.

(ii) PENALTIES FOR COUNTRIES.—Whenever the President finds, based on sufficient evidence, that transshipment has occurred, the President shall request that the ATPEA beneficiary country or countries through whose territory the transshipment has occurred take all necessary and appropriate actions to prevent such transshipment. If the President determines that a country is not taking such actions, the President shall reduce the quantities of textile and apparel articles that may be imported into the United States from such country by the quantity of the transshipped articles multiplied by 3, to the extent consistent with the obligations of the United States under the WTO.

(iii) TRANSSHIPMENT DESCRIBED.—Transshipment within the meaning of this subparagraph has occurred when preferential treatment under subparagraph (B) has been claimed for a textile or apparel article on the basis of material false information concerning the country of origin, manufacture, processing, or assembly of the article or any of its components. For purposes of this clause, false information is material if disclosure of the true information would mean or would have meant that the article is or was ineligible for preferential treatment under subparagraph (B).

(E) BILATERAL EMERGENCY ACTIONS.—

(i) IN GENERAL.—The President may take bilateral emergency tariff actions of a kind described in section 4 of the Annex with respect to any apparel article imported from an ATPEA beneficiary country if the application of tariff treatment under subparagraph (B) to such article results in conditions that would be cause for the taking of such actions under such section 4 with respect to a like article described in the same 8-digit subheading of the HTS that is imported from Mexico.

(ii) RULES RELATING TO BILATERAL EMERGENCY ACTION.—For purposes of applying bilateral emergency action under this subparagraph—

(I) the requirements of paragraph (5) of section 4 of the Annex (relating to providing compensation) shall not apply;

(II) the term 'transition period' in section 4 of the Annex shall have the meaning given that term in paragraph (5)(D) of this subsection; and

(III) the requirements to consult specified in section 4 of the Annex shall be treated as satisfied if the President requests consultations with the ATPEA beneficiary country in question and the country does not agree to consult within the time period specified under section 4.

(3) TRANSITION PERIOD TREATMENT OF CERTAIN OTHER ARTICLES ORIGINATING IN BENEFICIARY COUNTRIES.—

(A) EQUIVALENT TARIFF TREATMENT.—

(i) IN GENERAL.—Subject to clause (ii), the tariff treatment accorded at any time during the transition period to any article referred to in any of subparagraphs (B), (D) through (F), or (H) of paragraph (1) that is an ATPEA originating good shall be identical to the tariff treatment that is accorded at such time under Annex 302.2 of the NAFTA to an article described in the same 8-digit subheading of the HTS that is a good of Mexico and is imported into the United States.

(ii) EXCEPTION.—Clause (i) does not apply to any article accorded duty-free treatment under U.S. Note 2(b) to subchapter II of chapter 98 of the HTS.

(B) RELATIONSHIP TO SUBSECTION (C) DUTY REDUCTIONS.—If at any time during the transition period the rate of duty that would (but for action taken under subparagraph (A)(i) in regard to such period) apply with respect to any article under subsection (c) is a rate of duty that is lower than the rate of duty resulting from such action, then such lower rate of duty shall be applied for the purposes of implementing such action.

(C) SPECIAL RULE FOR SUGARS, SYRUPS, AND SUGAR CONTAINING PRODUCTS.—Duty-free treatment under this Act shall not be extended to sugars, syrups, and sugar-containing products subject to over-quota duty rates under applicable tariff-rate quotas.

(D) SPECIAL RULE FOR CERTAIN TUNA PRODUCTS.—

(i) IN GENERAL.—The President may proclaim duty-free treatment under this Act for tuna that is harvested by United States vessels or ATPEA beneficiary country vessels, and is prepared or preserved in any manner, in airtight containers in an ATPEA beneficiary country. Such duty-free treatment may be proclaimed in any calendar year for a quantity of such tuna that does not exceed 20 percent of the domestic United States tuna pack in the preceding calendar year. As used in the preceding sentence, the term 'tuna pack' means tuna pack as defined by the National Marine Fisheries Service of the United States Department of Commerce for purposes of subheading 1604.14.20 of the HTS as in effect on the date of enactment of the Andean Trade Preference Expansion Act.

(ii) UNITED STATES VESSEL.—For purposes of this subparagraph, a 'United States vessel' is a vessel having a certificate of documentation with a fishery endorsement under chapter 121 of title 46, United States Code.

(iii) ATPEA VESSEL.—For purposes of this subparagraph, an 'ATPEA vessel' is a vessel—

(I) which is registered or recorded in an ATPEA beneficiary country;

(II) which sails under the flag of an ATPEA beneficiary country;

(III) which is at least 75 percent owned by nationals of an ATPEA beneficiary country or by a company having its principal place of business in an ATPEA beneficiary country, of which the manager or managers, chairman of the board of directors or of the supervisory board, and the majority of the members of such boards are nationals of an ATPEA beneficiary country and of which, in the case of a company, at least 50 percent of the capital is owned by an ATPEA beneficiary country or by public bodies or nationals of an ATPEA beneficiary country;

(IV) of which the master and officers are nationals of an ATPEA beneficiary country; and

(V) of which at least 75 percent of the crew are nationals of an ATPEA beneficiary country.

(4) CUSTOMS PROCEDURES.—

(A) IN GENERAL.—

(i) REGULATIONS.—Any importer that claims preferential treatment under paragraph (2) or (3) shall comply with customs procedures similar in all material respects to the requirements of Article 502(1) of the NAFTA as implemented pursuant to United States law, in accordance with regulations promulgated by the Secretary of the Treasury.

(ii) DETERMINATION.—

(I) IN GENERAL.—In order to qualify for the preferential treatment under paragraph (2) or (3) and for a Certificate of Origin to be valid with respect to any article for which such treatment is claimed, there shall be in effect a determination by the President that each country described in subclause (II)—

(aa) has implemented and follows; or

(bb) is making substantial progress toward implementing and following,

procedures and requirements similar in all material respects to the relevant procedures and requirements under chapter 5 of the NAFTA.

(II) COUNTRY DESCRIBED.—A country is described in this subclause if it is an ATPEA beneficiary country—

(aa) from which the article is exported; or

(bb) in which materials used in the production of the article originate or in which the article or such materials undergo production that contributes to a claim that the article is eligible for preferential treatment under paragraph (2) or (3).

(B) CERTIFICATE OF ORIGIN.—The Certificate of Origin that otherwise would be required pursuant to the provisions of subparagraph (A) shall not be required in the case of an article imported under paragraph (2) or (3) if such Certificate of Origin would not be required under Article 503 of the NAFTA (as implemented pursuant to United States law), if the article were imported from Mexico.

(C) REPORT BY USTR ON COOPERATION OF OTHER COUNTRIES CONCERNING CIRCUMVENTION.—The United States Commissioner of Customs shall conduct a study analyzing the extent to which each ATPEA beneficiary country—

(i) has cooperated fully with the United States, consistent with its domestic laws and procedures, in instances of circumvention or alleged circumvention of existing quotas on imports of textile and apparel goods, to establish necessary relevant facts in the places of import, export, and, where applicable, transshipment, including investigation of circumvention practices, exchanges of documents, correspondence, reports, and other relevant information, to the extent such information is available;

(ii) has taken appropriate measures, consistent with its domestic laws and procedures, against exporters and importers involved in instances of false declaration concerning fiber content, quantities, description, classification, or origin of textile and apparel goods; and

(iii) has penalized the individuals and entities involved in any such circumvention, consistent with its domestic laws and procedures, and has worked closely to seek the cooperation of any third country to prevent such circumvention from taking place in that third country.

The Trade Representative shall submit to Congress, not later than October 1, 2002, a report on the study conducted under this subparagraph.

(5) DEFINITIONS AND SPECIAL RULES.—For purposes of this subsection—

(A) ANNEX.—The term "the Annex" means Annex 300–B of the NAFTA.

(B) ATPEA BENEFICIARY COUNTRY.—The term "ATPEA beneficiary country" means any "beneficiary country", as defined in section 203(a)(1) of this title, which the President designates as an ATPEA beneficiary country, taking into account the criteria contained in subsections (c) and (d) of section 203 and other appropriate criteria, including the following:

(i) Whether the beneficiary country has demonstrated a commitment to—

(I) undertake its obligations under the WTO, including those agreements listed in section 101(d) of the Uruguay Round Agreements Act, on or ahead of schedule; and

(II) participate in negotiations toward the completion of the FTAA or another free trade agreement.

(ii) The extent to which the country provides protection of intellectual property rights consistent with or greater than the protection afforded under the Agreement on Trade-Related Aspects of Intellectual Property Rights described in section 101(d)(15) of the Uruguay Round Agreements Act.

(iii) The extent to which the country provides internationally recognized worker rights, including—

(I) the right of association;

(II) the right to organize and bargain collectively;

(III) a prohibition on the use of any form of forced or compulsory labor;

(IV) a minimum age for the employment of children; and

(V) acceptable conditions of work with respect to minimum wages, hours of work, and occupational safety and health;

(iv) Whether the country has implemented its commitments to eliminate the worst forms of child labor, as defined in section 507(6) of the Trade Act of 1974.

(v) The extent to which the country has met the counter-narcotics certification criteria set forth in section 490 of the Foreign Assistance Act of 1961 (22 U.S.C. 2291j) for eligibility for United States assistance.

(vi) The extent to which the country has taken steps to become a party to and implements the Inter-American Convention Against Corruption.

(vii) The extent to which the country—

(I) applies transparent, nondiscriminatory, and competitive procedures in government procurement equivalent to those contained in the Agreement on Government Procurement described in section 101(d)(17) of the Uruguay Round Agreements Act; and

(II) contributes to efforts in international fora to develop and implement international rules in transparency in government procurement.

(C) ATPEA ORIGINATING GOOD.—

(i) IN GENERAL.—The term "ATPEA originating good" means a good that meets the rules of origin for a good set forth in chapter 4 of the NAFTA as implemented pursuant to United States law.

(ii) APPLICATION OF CHAPTER 4.—In applying chapter 4 of the NAFTA with respect to an ATPEA beneficiary country for purposes of this subsection—

(I) no country other than the United States and an ATPEA beneficiary country may be treated as being a party to the NAFTA;

(II) any reference to trade between the United States and Mexico shall be deemed to refer to trade between the United States and an ATPEA beneficiary country;

(III) any reference to a party shall be deemed to refer to an ATPEA beneficiary country or the United States; and

(IV) any reference to parties shall be deemed to refer to any combination of ATPEA beneficiary countries or to the United States and one or more ATPEA beneficiary countries (or any combination thereof).

(D) TRANSITION PERIOD.—The term "transition period" means, with respect to an ATPEA beneficiary country, the period that begins on the date of enactment, and ends on the earlier of—

(i) February 28, 2006; or

(ii) the date on which the FTAA or another free trade agreement that makes substantial progress in achieving the negotiating objectives set forth in section 108(b)(5) of Public Law 103–182 (19 U.S.C. 3317(b)(5)) enters into force with respect to the United States and the ATPEA beneficiary country.

(E) ATPEA.—The term "ATPEA" means the Andean Trade Preference Expansion Act.

(F) FTAA.—The term "FTAA" means the Free Trade Area of the Americas.

(b) DETERMINATION REGARDING RETENTION OF DESIGNATION.—Section 203(e) of the Andean Trade Preference Act (19 U.S.C. 3202(e)) is amended—

(1) in paragraph (1)—

(A) by redesignating subparagraphs (A) and (B) as clauses (i) and (ii), respectively;

(B) by inserting "(A)" after "(1)"; and

(C) by adding at the end the following:

(B) The President may, after the requirements of paragraph (2) have been met—

(i) withdraw or suspend the designation of any country as an ATPEA beneficiary country; or

(ii) withdraw, suspend, or limit the application of preferential treatment under section 204(b) (2) and (3) to any article of any country, if, after such designation, the President determines that, as a result of changed circumstances, the performance of such country is not satisfactory under the criteria set forth in section 204(b)(5)(B).''; and

(2) by adding after paragraph (2) the following new paragraph:

(3) If preferential treatment under section 204(b)(2) and (3) is withdrawn, suspended, or limited with respect to an ATPEA beneficiary country, such country shall not be deemed to be a 'party' for the purposes of applying section 204(b)(5)(C) to imports of articles for which preferential treatment has been withdrawn, suspended, or limited with respect to such country.

(c) REPORTING REQUIREMENTS.—Section 203(f) of the Andean Trade Preference Act (19 U.S.C. 3202(f)) is amended to read as follows:

(f) REPORTING REQUIREMENTS.—

(1) IN GENERAL.—Not later than December 31, 2002, and every 2 years thereafter during the period this title is in effect, the United States Trade Represent-

ative shall submit to Congress a report regarding the operation of this title, including—

(A) with respect to subsections (c) and (d), the results of a general review of beneficiary countries based on the considerations described in such subsections; and

(B) the performance of each beneficiary country or ATPEA beneficiary country, as the case may be, under the criteria set forth in section 204(b)(5)(B).

(2) PUBLIC COMMENT.—Before submitting the report described in paragraph (1), the United States Trade Representative shall publish a notice in the Federal Register requesting public comments on whether beneficiary countries are meeting the criteria listed in section 204(b)(5)(B).

(d) CONFORMING AMENDMENTS.—

(1) IN GENERAL.—

(A) Section 202 of the Andean Trade Preference Act (19 U.S.C. 3201) is amended by inserting "(or other preferential treatment)" after "treatment".

(B) Section 204(a)(1) of the Andean Trade Preference Act (19 U.S.C. 3203(a)(1)) is amended by inserting "(or otherwise provided for)" after "eligibility".

(C) Section 204(a)(1) of the Andean Trade Preference Act (19 U.S.C. 3203(a)(1)) is amended by inserting "(or preferential treatment)" after "duty-free treatment".

(2) DEFINITIONS.—Section 203(a) of the Andean Trade Preference Act (19 U.S.C. 3202(a)) is amended by adding at the end the following new paragraphs:

(4) The term "NAFTA" means the North American Free Trade Agreement entered into between the United States, Mexico, and Canada on December 17, 1992.

(5) The terms "WTO" and "WTO member" have the meanings given those terms in section 2 of the Uruguay Round Agreements Act (19 U.S.C. 3501).".

SEC. 103. TERMINATION.

Section 208(b) of the Andean Trade Preference Act (19 U.S.C. 3206(b)) is amended to read as follows:

"(b) TERMINATION OF PREFERENTIAL TREATMENT.—No preferential duty treatment extended to beneficiary countries under this Act shall remain in effect after February 28, 2006.

TITLE II—MISCELLANEOUS TRADE PROVISIONS

SEC. 201. WOOL PROVISIONS.

(a) SHORT TITLE.—This section may be cited as the "Wool Manufacturer Payment Clarification and Technical Corrections Act".

(b) CLARIFICATION OF TEMPORARY DUTY SUSPENSION.—Heading 9902.51.13 of the Harmonized Tariff Schedule of the United States is amended by inserting "average" before "diameters".

(c) PAYMENTS TO MANUFACTURERS OF CERTAIN WOOL PRODUCTS.—

(1) PAYMENTS.—Section 505 of the Trade and Development Act of 2000 (Public Law 106–200; 114 Stat. 303) is amended as follows:

(A) Subsection (a) is amended—

(i) by striking "In each of the calendar years" and inserting "For each of the calendar years"; and

(ii) by striking "for a refund of duties" and all that follows through the end of the subsection and inserting "for a payment equal to an amount determined pursuant to subsection (d)(1).

(B) Subsection (b) is amended to read as follows:

(b) WOOL YARN.—

(1) IMPORTING MANUFACTURERS.—For each of the calendar years 2000, 2001, and 2002, a manufacturer of worsted wool fabrics who imports wool yarn of the kind described in heading 9902.51.13 of the Harmonized Tariff Schedule of the United States shall be eligible for a payment equal to an amount determined pursuant to subsection (d)(2).

(2) NONIMPORTING MANUFACTURERS.—For each of the calendar years 2001 and 2002, any other manufacturer of worsted wool fabrics of imported wool yarn of the kind described in heading 9902.51.13 of the Harmonized Tariff Schedule of the United States shall be eligible for a payment equal to an amount determined pursuant to subsection (d)(2).

(C) Subsection (c) is amended to read as follows:

(c) WOOL FIBER AND WOOL TOP.—

(1) IMPORTING MANUFACTURERS.—For each of the calendar years 2000, 2001, and 2002, a manufacturer of wool yarn or wool fabric who imports wool fiber or wool top of the kind described in heading 9902.51.14 of the Harmonized Tariff Schedule of the United States shall be eligible for a payment equal to an amount determined pursuant to subsection (d)(3).

(2) NONIMPORTING MANUFACTURERS.—For each of the calendar years 2001 and 2002, any other manufacturer of wool yarn or wool fabric of imported wool fiber or wool top of the kind described in heading 9902.51.14 of the Harmonized Tariff Schedule of the United States shall be eligible for a payment equal to an amount determined pursuant to subsection (d)(3).

(D) Section 505 is further amended by striking subsection (d) and inserting the following new subsections:

(d) AMOUNT OF ANNUAL PAYMENTS TO MANUFACTURERS.—

(1) MANUFACTURERS OF MEN'S SUITS, ETC. OF IMPORTED WORSTED WOOL FABRICS.—

(A) ELIGIBLE TO RECEIVE MORE THAN $5,000.—Each annual payment to manufacturers described in subsection (a) who, according to the records of the Customs Service as of September 11, 2001, are eligible to receive more than $5,000 for each of the calendar years 2000, 2001, and 2002, shall be in an amount equal to one-third of the amount determined by multiplying $30,124,000 by a fraction—

(i) the numerator of which is the amount attributable to the duties paid on eligible wool products imported in calendar year 1999 by the manufacturer making the claim, and

(ii) the denominator of which is the total amount attributable to the duties paid on eligible wool products imported in calendar year 1999 by all the manufacturers described in subsection (a) who, according to the records of the Customs Service as of September 11, 2001, are eligible to receive more than $5,000 for each such calendar year under this section as it was in effect on that date.

(B) ELIGIBLE WOOL PRODUCTS.—For purposes of subparagraph (A), the term 'eligible wool products' refers to imported worsted wool fabrics described in subsection (a).

(C) OTHERS.—All manufacturers described in subsection (a), other than the manufacturer's to which subparagraph (A) applies, shall each receive an annual payment in an amount equal to one-third of the amount determined by dividing $1,665,000 by the number of all such other manufacturers.

(2) MANUFACTURERS OF WORSTED WOOL FABRICS OF IMPORTED WOOL YARN.—

(A) IMPORTING MANUFACTURERS.—Each annual payment to an importing manufacturer described in subsection (b)(1) shall be in an amount equal to one-third of the amount determined by multiplying $2,202,000 by a fraction—

(i) the numerator of which is the amount attributable to the duties paid on eligible wool products imported in calendar year 1999 by the importing manufacturer making the claim, and

(ii) the denominator of which is the total amount attributable to the duties paid on eligible wool products imported in calendar year 1999 by all the importing manufacturers described in subsection (b)(1).

(B) ELIGIBLE WOOL PRODUCTS.—For purposes of subparagraph (A), the term "eligible wool products" refers to imported wool yarn described in subsection (b)(1).

(C) NONIMPORTING MANUFACTURERS.—Each annual payment to a nonimporting manufacturer described in subsection (b)(2) shall be in an amount equal to one-half of the amount determined by multiplying $141,000 by a fraction—

(i) the numerator of which is the amount attributable to the purchases of imported eligible wool products in calendar year 1999 by the nonimporting manufacturer making the claim, and

(ii) the denominator of which is the total amount attributable to the purchases of imported eligible wool products in calendar year 1999 by all the nonimporting manufacturers described in subsection (b)(2).

(3) MANUFACTURERS OF WOOL YARN OR WOOL FABRIC OF IMPORTED WOOL FIBER OR WOOL TOP.—

(A) IMPORTING MANUFACTURERS.—Each annual payment to an importing manufacturer described in subsection (c)(1) shall be in an amount equal to one-third of the amount determined by multiplying $1,522,000 by a fraction—

(i) the numerator of which is the amount attributable to the duties paid on eligible wool products imported in calendar year 1999 by the importing manufacturer making the claim, and

(ii) the denominator of which is the total amount attributable to the duties paid on eligible wool products imported in calendar year 1999 by all the importing manufacturers described in subsection (c)(1).

(B) ELIGIBLE WOOL PRODUCTS.—For purposes of subparagraph (A), the term "eligible wool products" refers to imported wool fiber or wool top described in subsection (c)(1).

(C) NONIMPORTING MANUFACTURERS.—Each annual payment to a nonimporting manufacturer described in subsection (c)(2) shall be in an amount equal to one-half of the amount determined by multiplying $597,000 by a fraction—

(i) the numerator of which is the amount attributable to the purchases of imported eligible wool products in calendar year 1999 by the nonimporting manufacturer making the claim, and

(ii) the denominator of which is the amount attributable to the purchases of imported eligible wool products in calendar year 1999 by all the nonimporting manufacturers described in subsection (c)(2).

(4) LETTERS OF INTENT.—Except for the nonimporting manufacturers described in subsections (b)(2) and (c)(2) who may make claims under this section by virtue of the enactment of the Wool Manufacturer Payment Clarification and Technical Corrections Act, only manufacturers who, according to the records of the Customs Service, filed with the Customs Service before September 11, 2001, letters of intent to establish eligibility to be claimants are eligible to make a claim for a payment under this section.

(5) AMOUNT ATTRIBUTABLE TO PURCHASES BY NONIMPORTING MANUFACTURERS.—

(A) AMOUNT ATTRIBUTABLE.—For purposes of paragraphs (2)(C) and (3)(C), the amount attributable to the purchases of imported eligible wool products in calendar year 1999 by a nonimporting manufacturer shall be the amount the nonimporting manufacturer paid for eligible wool products in calendar year 1999, as evidenced by invoices. The nonimporting manufacturer shall make such calculation and submit the resulting amount to the Customs Service, within 45 days after the date of enactment of the Wool Manufacturer Payment Clarification and Technical Corrections Act, in a signed affidavit that attests that the information contained therein is true and accurate to the best of the affiant's belief and knowledge. The nonimporting manufacturer shall retain the records upon which the calculation is based for a period of five years beginning on the date the affidavit is submitted to the Customs Service.

(B) ELIGIBLE WOOL PRODUCT.—For purposes of subparagraph (A)—

(i) the eligible wool product for nonimporting manufacturers of worsted wool fabrics is wool yarn of the kind described in heading 9902.51.13 of the Harmonized Tariff Schedule of the United States purchased in calendar year 1999; and

(ii) the eligible wool products for nonimporting manufacturers of wool yarn or wool fabric are wool fiber or wool top of the kind described in heading 9902.51.14 of such Schedule purchased in calendar year 1999.

(6) AMOUNT ATTRIBUTABLE TO DUTIES PAID.—For purposes of paragraphs (1), (2)(A), and (3)(A), the amount attributable to the duties paid by a manufacturer shall be the amount shown on the records of the Customs Service as of September 11, 2001, under this section as then in effect.

(7) SCHEDULE OF PAYMENTS; REALLOCATIONS.—

(A) SCHEDULE.—Of the payments described in paragraphs (1), (2)(A), and (3)(A), the Customs Service shall make the first installment on or before December 31, 2001, the second installment on or before April 15, 2002, and the third installment on or before April 15, 2003. Of the payments described in paragraphs (2)(C) and (3)(C), the Customs Service shall make the first installment on or before April 15, 2002, and the second installment on or before April 15, 2003.

(B) REALLOCATIONS.—In the event that a manufacturer that would have received payment under subparagraph (A) or (C) of paragraph (1), (2), or (3) ceases to be qualified for such payment as such a manufacturer, the amounts otherwise payable to the remaining manufacturers under such subparagraph shall be increased on a pro rata basis by the amount of the payment such manufacturer would have received.

(8) REFERENCE.—For purposes of paragraphs (1)(A) and (6), the 'records of the Customs Service as of September 11, 2001' are the records of the Wool Duty

Unit of the Customs Service on September 11, 2001, as adjusted by the Customs Service to the extent necessary to carry out this section. The amounts so adjusted are not subject to administrative or judicial review.

(e) AFFIDAVITS BY MANUFACTURERS.—

(1) AFFIDAVIT REQUIRED.—A manufacturer may not receive a payment under this section for calendar year 2000, 2001, or 2002, as the case may be, unless that manufacturer has submitted to the Customs Service for that calendar year a signed affidavit that attests that, during that calendar year, the affiant was a manufacturer in the United States described in subsection (a), (b), or (c).

(2) TIMING.—An affidavit under paragraph (1) shall be valid—

(A) in the case of a manufacturer described in paragraph (1), (2)(A), or (3)(A) of subsection (d) filing a claim for a payment for calendar year 2000, only if the affidavit is postmarked no later than 15 days after the date of enactment of the Wool Manufacturer Payment Clarification and Technical Corrections Act; and

(B) in the case of a claim for a payment for calendar year 2001 or 2002, only if the affidavit is postmarked no later than March 1, 2002, or March 1, 2003, respectively.

(f) OFFSETS.—Notwithstanding any other provision of this section, any amount otherwise payable under subsection (d) to a manufacturer in calendar year 2001 and, where applicable, in calendar years 2002 and 2003, shall be reduced by the amount of any payment received by that manufacturer under this section before the enactment of the Wool Manufacturer Payment Clarification and Technical Corrections Act.

(g) DEFINITION.—For purposes of this section, the manufacturer is the party that owns—

(1) imported worsted wool fabric, of the kind described in heading 9902.51.11 or 9902.51.12 of the Harmonized Tariff Schedule of the United States, at the time the fabric is cut and sewn in the United States into men's or boys' suits, suit-type jackets, or trousers;

(2) imported wool yarn, of the kind described in heading 9902.51.13 of such Schedule, at the time the yarn is processed in the United States into worsted wool fabric; or

(3) imported wool fiber or wool top, of the kind described in heading 9902.51.14 of such Schedule, at the time the wool fiber or wool top is processed in the United States into wool yarn.

(2) FUNDING.—There is authorized to be appropriated and is appropriated, out of amounts in the General Fund of the Treasury not otherwise appropriated, $36,251,000 to carry out the amendments made by paragraph (1).

SEC. 202. CEILING FANS.

(a) IN GENERAL.—Notwithstanding any other provision of law, ceiling fans classified under subheading 8414.51.00 of the Harmonized Tariff Schedule of the United States imported from Thailand shall enter duty-free and without any quantitative limitations, if duty-free treatment under title V of the Trade Act of 1974 (19 U.S.C. 2461 et seq.) would have applied to such entry had the competitive need limitation been waived under section 503(d) of such Act.

(b) APPLICABILITY.—The provisions of this section shall apply to ceiling fans described in subsection (a) that are entered, or withdrawn from warehouse for consumption—

(1) on or after the date that is 15 days after the date of enactment of this Act; and

(2) before July 30, 2002.

SEC. 203. CERTAIN STEAM OR OTHER VAPOR GENERATING BOILERS USED IN NUCLEAR FACILITIES.

(a) IN GENERAL.—Subheading 9902.84.02 of the Harmonized Tariff Schedule of the United States is amended—

(1) by striking "4.9%" and inserting "Free"; and

(2) by striking "12/31/2003" and inserting "12/31/2006".

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall apply to goods entered, or withdrawn from warehouse for consumption, on or after January 1, 2002.

I. SUMMARY

H.R. 3009 extends and expands a trade preference program for four beneficiary countries—Bolivia, Colombia, Ecuador and Peru—established in 1991 and expired on December 4, 2001. The Andean

Trade Preference Act (19 U.S.C. §§ 3201–06) ("ATPA") provides duty-free treatment for most products that are the growth, product, or manufacture of any of the four ATPA beneficiary countries and that are imported directly into the customs territory of the United States. The present bill extends the ATPA through February 28, 2006 and expands the program by giving duty-free or reduced-duty treatment to most products currently excluded from ATPA.

Additionally, the bill contains three miscellaneous provisions. The first establishes a procedure for importers of certain wool products to obtain refunds of duties paid in calendar year 1999. The second waives quantitative restrictions on ceiling fans imported from Thailand eligible for duty-free treatment under the Generalized System of Preferences. The third provides duty-free treatment for steam or other vapor generating boilers used in nuclear facilities, imported into the United States from January 1, 2002 through December 31, 2006.

II. GENERAL EXPLANATION

A. Current Law

The ATPA was enacted in 1991 as Title II of Public Law Number 102–182. It is codified at 19 U.S.C. §§ 3201–06. The ATPA in its current form expired on December 4, 2001. A measure to continue the ATPA in its current form for six months (through June 4, 2002) was included in section 502 of H.R. 3090 as reported in the Senate by the Committee on Finance on November 9, 2001.

Under the ATPA, most categories of goods that are the growth, product or manufacture of Bolivia, Colombia, Ecuador, and Peru receive duty-free treatment when imported directly into the customs territory of the United States. The ATPA grew out of a commitment that President Bush made at the February 1990 Cartagena Drug Summit to provide economic benefits to the four listed Andean countries as part of an effort to reduce illegal drug production and trafficking in those countries. By promoting legitimate economic activity in the beneficiary countries, ATPA was designed to displace investment and employment in illegitimate sectors.

For a good to qualify as the growth, product or manufacture of an ATPA beneficiary country or countries, the value of materials produced in a beneficiary country or countries, plus the direct cost of processing operations performed in such country or countries must equal not less than 35 percent of the appraised value of the good upon entry into the customs territory of the United States. The statute provides that materials produced in beneficiary countries under the Caribbean Basin Economic Recovery Act, as well as operations performed in those countries, may contribute towards this 35 percent threshold. Materials produced in the Commonwealth of Puerto Rico and the United States Virgin Islands, as well as operations performed in those territories, also may contribute toward the threshold. Finally, up to 15 percent of the 35 percent threshold may consist of materials produced in the customs territory of the United States (excluding Puerto Rico).

Under the ATPA as expired on December 4, 2001, certain categories of goods are treated as import-sensitive and, therefore, are excluded from duty-free treatment on importation into the United States. These excluded categories are: (1) textile and apparel arti-

cles which are subject to textile agreements; (2) certain footwear; (3) tuna, prepared or preserved in any manner, in airtight containers; (4) petroleum and petroleum products; (5) certain watches and watch parts; (6) certain handbags, luggage, flat goods, work gloves, and leather apparel; (7) certain sugars, syrups and molasses; and (8) rum and tafia. Further, the articles in category (6) in the latter list of exceptions are subject to reduced (though not zero) duty rates.

In order to qualify for ATPA benefits, each of the four countries must be designated by the President as a "beneficiary country." To attain that designation, each of the countries must meet certain mandatory criteria, as follows: (1) the country cannot be a communist country; (2) the country cannot have taken measures the effect of which is to nationalize, expropriate or otherwise seize ownership or control of property owned by U.S. citizens or companies, absent the provision of prompt, adequate and effective compensation; (3) the country must act in good faith to recognize as binding and to enforce arbitral awards in favor of U.S. citizens and companies; (4) the country cannot give trade preferences to developed countries that have a significant adverse effect on U.S. commerce; (5) the country must provide adequate and effective protection of intellectual property rights; (6) the country must be signatory to a treaty, convention, protocol or other agreement regarding the extradition of U.S. citizens; and (7) the country must be taking steps to afford internationally recognized worker rights to workers in the country.

Of the foregoing criteria, items (1), (2), (3), (5), and (7) can be waived for a given country, if the President determines and reports to Congress that doing so is in the national economic or security interest of the United States.

Additionally, the ATPA sets forth certain discretionary criteria for the President to take into account in deciding whether to designate any of the four listed countries as beneficiary countries. These criteria are: (1) the country's expressed desire to be so designated; (2) economic conditions in the country; (3) the country's assurances to the United States of equitable and reasonable access to its markets and to basic commodity resources; (4) the country's compliance with the rules of the World Trade Organization; (5) the degree to which the country uses export subsidies or imposes local content requirements which distort trade; (6) the degree to which the country's trade policies are contributing to regional revitalization; (7) the degree to which the country is helping its own economic development; (8) whether the country is taking steps to protect internationally recognized worker rights; (9) the extent to which the country's laws give foreign nationals adequate and effective means to secure, exercise, and enforce intellectual property rights; (10) the extent to which the country prohibits broadcast of U.S. copyrighted material without the copyright owner's express consent; (11) whether the country is certified as cooperating in anti-narcotics trafficking efforts; and (12) the extent to which the country is prepared to cooperate with the United States in administering the ATPA.

By presidential proclamations, Colombia and Bolivia have been designated as ATPA beneficiary countries since July 22, 1992. Ecuador has been designated an ATPA beneficiary country since April

30, 1993. And, Peru has been designated an ATPA beneficiary country since August 31, 1993.

The ATPA further authorizes the President to withdraw or suspend a country's beneficiary country status, or to withdraw, suspend, or limit benefits with respect to particular articles, as a result of changed circumstances. Such actions may be taken only after public notice and an opportunity for comment and a public hearing have been provided. Further, the President may suspend duty-free treatment under the ATPA pursuant to action taken under either the general safeguard provision of the Trade Act of 1974 (chapter 1 of title II of such Act) (i.e., when increased imports of a good, regardless of origin, are causing or threatening serious injury to a U.S. producer of like or directly competitive goods), or section 232 of the Trade Expansion Act of 1962 (i.e., when it is determined that goods are being imported in such quantities or under such circumstances as to threaten to impair national security).

B. IMPACT OF ATPA

The ATPA required the United States International Trade Commission ("the ITC") to submit to Congress annual reports on the operation of the ATPA, including its impact on U.S. industries and consumers. In its most recent report (Andean Trade Preference Act: Impact on U.S. Industries and Consumers and on Drug Crop Eradication and Crop Substitution, Inv. No. 332–352, USITC Pub. 3385 (Sep. 2000)) ("ITC Report"), the ITC found that the overall impact of "ATPA-exclusive" imports (i.e., imports not also eligible for preferences under other programs, primarily the Generalized System of Preferences ("GSP")) on the U.S. economy and consumers was negligible in 1999. ITC Report at i.[1] However, the ITC also identified "potentially significant effects on domestic industries producing asparagus; chrysanthemums, carnations, anthuriums, and orchids; and fresh-cut roses." Id. The ITC found the program to have had "a small but positive effect on the economies of the ATPA beneficiaries" and "a slight but positive effect on drug-crop eradication." Id.

Based upon United States Department of Commerce statistics, the United States imported $11.1 billion in goods from ATPA beneficiary countries in 2000, which represented a 13.1 percent increase over 1999 import levels. These imports represented 0.9 percent of total imports into the United States in 2000. Imports from ATPA beneficiary countries represented about 0.97 percent of total imports into the United States in 1999.

In 2000, imports from ATPA beneficiary countries entering duty-free exclusively under the ATPA program totaled $1.312 billion. This represented 11.8 percent of total imports from ATPA beneficiary countries, and 0.1 percent of total imports into the United States from all sources. Total imports entered under ATPA in 2000 (including imports that entered at reduced rates of duty and imports that could have entered duty-free under other programs) amounted to $1.981 billion, representing 17.8 percent of imports from ATPA beneficiary countries. Walker Pollard, "Renewal and

[1] The ITC found that $1.75 billion in goods entered the United States under ATPA in 1999. Of these imports, about $0.9 billion could not have received tariff preferences under any program other than ATPA.

Expansion of ATPA Could Enhance Effectiveness of the Program," International Economic Review, USITC Pub. 3442 at 20 (July/August 2001) (estimate of ITC staff from official statistics of the U.S. Department of Commerce).

In 1999, imports from ATPA beneficiary countries entering duty-free exclusively under the ATPA program totaled $939 million, representing 9.6 percent of total imports from ATPA beneficiary countries, and 0.09 percent of total imports into the United States from all sources. Total imports entered under ATPA in 1999 (including imports that entered at reduced rates of duty and imports that could have entered duty-free under other programs) amounted to $1.75 billion, representing 17.8 percent of imports from the ATPA beneficiary countries. *ITC Report* at 34.

Primary imports from ATPA beneficiary countries have tended to be: petroleum products (not eligible for ATPA benefits); precious metals, stones, and jewelry; coffee; fresh or dried bananas; and shrimp. In 1999, almost 60 percent of imports from ATPA beneficiary countries came from Colombia. Imports from Peru and Ecuador represented 19 percent each of total imports from ATPA beneficiary countries. Imports from Bolivia represented 2.3 percent of total imports from ATPA beneficiary countries.

Primary imports receiving duty-free treatment exclusively under ATPA have tended to include fresh cut flowers (mostly from Colombia); copper cathodes (mostly from Peru); precious metals, gemstones, and jewelry; pigments (mostly from Colombia); processed tuna other than tuna in airtight containers (mostly from Ecuador); zinc products (from Peru); and asparagus (from Peru).

The ITC Report identified certain sectors that have benefitted from new investment in the Andean region and that might lead to increased exports under the ATPA program. These sectors are pigments, sugar cane, candy, gold jewelry, and fruit. ITC Report at viii.

The U.S. trade deficit with the ATPA beneficiary countries in 2000 was $4.8 billion, up from $3.6 billion in 1999. The 2000 deficit represented $11.1 billion in imports and $6.3 billion in exports, compared with $9.8 billion in imports and $6.3 billion in exports in 1999. 1999 was the first year since 1996 in which the United States had a trade deficit with the ATPA beneficiary countries. The trade deficit in 2000 was the largest trade deficit the United States has had with these countries collectively since the program began. According to the ITC, the size of the deficit is attributable, in part, to a strong dollar and economic difficulties in the Andean region. Notably, U.S. exports of aircraft, motor vehicles and electrical machinery to the Andean region dropped by about 40 percent in 1999. Id. at 7.

On the subject of drug eradication, the ITC Report found that

> [i]ndustries that produce ATPA-related goods provide alternative development opportunities, and although ATPA-related investment has flourished in regions where there is no presence of illicit crops, the program indirectly provides new sources of employment for workers that may otherwise turn to illicit crop-producing activities.

Id. at 73–74.

The report concluded that "[a]lthough it is difficult to illustrate the positive impact of ATPA other than anecdotally, the success of eradication and alternative development efforts in the Andean region appears to be spreading." Id. at 74.

The ATPA also required the Secretary of Labor to report annually to Congress on the impact of ATPA on U.S. labor. The most recent such report (based on year 2000 data) reached the following conclusion:

> Preferential tariff treatment under the ATPA does not appear to have had an adverse impact on, or have constituted a significant threat to, U.S. employment. While declines in production and possibly employment in some sectors of the cut flower industry (standard carnations, standard and pompon chrysanthemums, and roses) may have been affected to some extent by the tariff preferences granted under the ATPA program, other factors may also have contributed to these production and employment declines.

U.S. Dept. of Labor, Trade and Employment Effects of the Andean Trade Preference Act at i (Nov. 2001).

C. Action in Committee

On March 13, 2001, Senator Graham introduced a bill (S. 525) to extend and expand ATPA. That bill was co-sponsored by Senators Biden, Breaux, DeWine, Dodd, Hagel, Kyl, Landrieu, Lieberman, Lugar, McCain, Murkowski, Nelson of Florida, Nelson of Nebraska, Specter and Thompson. The bill as introduced would extend ATPA through September 30, 2005. Its approach to expansion of ATPA was largely modeled on the expansion of the Caribbean Basin Initiative, enacted in 2000 as Title II of the Trade and Development Act of 2000 (Pub. L. No. 106–200).

S. 525 would extend tariff preferences to most of the products excluded from such treatment under current law. For most currently excluded products other than apparel, the preference consists of a reduction of rate of duty to the rate currently imposed on like products from Mexico, with continued reductions on the schedule that applies to like products from Mexico. For apparel, the preference consists of duty-free treatment, subject to certain limitations. With limited exceptions, apparel eligible for duty-free treatment under the bill must be made from yarns wholly formed in the United States. The yarns, in turn, may be knit or woven into fabric in either the United States or the beneficiary countries. However, the bill places a limit on the quantity of apparel made from fabric knit in the beneficiary countries that can be imported into the United States duty-free. (Apparel made from fabric woven in the beneficiary countries is not eligible for duty-free treatment under the bill as introduced.)

1. HEARING

On August 3, 2001, the Subcommittee on International Trade of the Committee on Finance held a hearing on expansion of the Andean Trade Preference Act. The Subcommittee heard testimony from Congressman Phil Crane; Deputy U.S. Trade Representative Peter Allgeier; Under Secretary of State for Economic, Business

and Agricultural Affairs, Alan P. Larson; President of ARC International, Paul Arcia; President of Dole Fresh Fruit International, Richard Harrah; Executive Vice President of the American Textile Manufacturers Institute, Carlos Moore; General Manager (Retired) of Heinz International, K. Ward Rodgers; and Vice President for Law of Defenders of Wildlife, William Snape III. Additionally, the Subcommittee received written submissions from ATPA beneficiary country governments, trade associations, and other interested parties.

The witnesses generally expressed support for extension and expansion of ATPA, although there were some differences over which products should be included in the expanded program. Ambassador Allgeier observed that, over the past decade, ATPA has successfully promoted economic diversification, but that about 40 percent of exports from ATPA beneficiary countries still face duty upon importation into the United States. He urged developing the broadest possible product coverage for a renewed ATPA, taking the unique features of the ATPA beneficiary country economies into account. Ambassador Allgeier further emphasized that a renewed and expanded ATPA should be a bridge to integrating the Andean countries into a Free Trade Area of the Americas.

Under Secretary Larson emphasized that the leaders currently in place in the Andean countries are committed to reforming their economic and political institutions. He observed that a renewed and expanded ATPA would bolster their efforts.

Private sector witnesses (as well as statements submitted by beneficiary country governments and industry groups) underscored the successes of the current ATPA and the likely benefits that would flow from its renewal and enhancement. For example, Mr. Harrah described the case of fresh cut flowers, which have received duty-free treatment under the current ATPA. He testified that Dole, through its subsidiary, owns and operates 23 flower farms in Colombia and Ecuador, employing 11,133 workers in Colombia and 1,028 workers in Ecuador. He observed that intense competition would make these operations difficult to sustain, absent continued duty-free treatment for fresh cut flowers.

Mr. Arcia, whose company ARC International has apparel-making operations in Colombia, testified that he began losing customer orders after enactment last year of the Caribbean Basin Trade Preferences Act, which provided duty-free treatment to certain apparel products from the Caribbean and Central America. Mr. Arcia urged that ATPA be enhanced in order to reduce this disparity. He added that, given the structure of the apparel industry in the Andean countries, it would not be economically meaningful to extend duty preferences to apparel made from U.S. fabric only. Due to factors such as higher labor, transportation, and security costs, he testified that ATPA enhancement should include duty-free treatment for apparel made from fabric produced in the ATPA beneficiary countries themselves.

This view was opposed by Mr. Moore of the American Textile Manufacturers Institute. Mr. Moore testified that the question of whether to include textile and apparel in an enhanced ATPA should be viewed in the context of increasing competitive pressure on the U.S. textile industry, due to currency devaluations in Asia since 1997. He stated that the U.S. industry is in crisis, with tex-

tile mills closing and jobs being cut at an accelerating pace. Mr. Moore stated that a duty-free benefit to the Andean countries that includes apparel made from regional fabrics and yarns would exacerbate the crisis in the U.S. industry.

Other interested parties drew the International Trade Subcommittee's attention to other U.S. industries that are concerned about the impact of continued or enhanced duty-free treatment to products from the ATPA beneficiary countries. For example, the American Farm Bureau Federation submitted a statement describing the displacement of U.S. asparagus production by increasing imports of asparagus from Peru (which enters the United States duty-free under the current ATPA).

Finally, the Subcommittee heard testimony and received statements on the subject of whether to extend trade preferences to tuna in airtight containers, a product excluded from duty-free treatment under current law. As Mr. Rodgers, former General Manager of Heinz North America (owner of the Starkist brand of tuna) testified, this question is of particular importance to Ecuador. Mr. Rodgers testified that Starkist hopes to expand production of its pouched tuna product in Ecuador, while continuing to operate tuna processing facilities in the U.S. Territory of American Samoa at full capacity. He observed that, without duty-free treatment, it would be difficult for tuna from Ecuador to compete with tuna from Thailand.

However, other statements submitted for the record differed with Mr. Rogers' testimony concerning the likely impact on U.S. tuna production of granting duty-free treatment to processed tuna from Ecuador. In particular, a statement by Mr. Christopher Lischewski, President of Bumble Bee Seafoods, argued that "[g]ranting special duty privileges to Ecuador and other Andean nations will divert tuna canning operations away from these U.S. plants [in Puerto Rico, California, and American Samoa] and result in the loss of thousands of American jobs."

2. MARKUP

On November 16, 2001, the Senate received from the House of Representatives a bill to expand the ATPA (H.R. 3009). That bill was referred to the Committee on Finance, which held a markup on November 29, 2001. The Committee's mark consisted of an amendment in the nature of a substitute to H.R. 3009, offered by the Chairman. The amendment in the nature of a substitute contained the substance of S. 525, with some modifications. In particular, the different categories of apparel articles eligible for duty-free treatment were re-organized to more closely reflect the organization in the bill as adopted by the House, and sugars, syrups, and sugar-containing products subject to over-quota duty rates under tariff-rate quotas were excluded from preferential treatment.

Additionally, the Chairman's amendment in the nature of a substitute included a non-ATPA provision related to refunds of certain duties charged on imports of wool products in calendar year 1999. The refunds at issue originally were provided for in section 505 of the Trade and Development Act of 2000 (Pub. L. No. 106–200). However, certain documents filed by interested parties in connection with that provision were lost in the September 11, 2001 attack on the World Trade Center in New York, New York. The provision

in the Chairman's amendment in the nature of a substitute was designed to ensure that parties seeking the refunds at issue would not be prejudiced by the loss of documents in the September 11 attacks.

During the markup, three other amendments were adopted by the Committee. The first amendment would restrict the quantity of tuna in airtight containers eligible for duty-free treatment under the expanded ATPA. Further, this amendment would condition the trade preference for tuna in airtight containers on the tuna's having been harvested by either United States vessels or beneficiary country vessels. The amendment defines the nationality of a vessel in terms of criteria including ownership and crew membership.

The second amendment adopted by the Committee would waive, through July 30, 2002, certain quantitative restrictions on duty-free imports of ceiling fans from Thailand. The third amendment adopted by the Committee would suspend duties imposed on certain steam or other vapor generating boilers used in nuclear facilities, for a period from January 1, 2002 through December 31, 2006.

The Chairman's amendment in the nature of a substitute, as amended, was adopted by the Committee by voice vote.

III. THE COMMITTEE BILL

Section 1. Short title

PRESENT LAW

No provision.

EXPLANATION OF PROVISION

Section 1 provides that the Act may be cited as the "Andean Trade Preference Expansion Act."

REASONS FOR CHANGE

The provision assigns a short-hand title to the bill for ease of reference.

TITLE I—ANDEAN TRADE PREFERENCE

Section 101. Findings

PRESENT LAW

No provision.

EXPLANATION OF PROVISION

Section 101 contains eight findings of the Congress that form the basis for expanding the Andean Trade Preference Act. These findings may be summarized as follows:

(1) Since its enactment in 1991, the ATPA has had a mutually beneficial trade impact on the United States and the beneficiary countries, leading to increased jobs and export opportunities in both the United States and the beneficiary countries.

(2) By promoting legitimate economic development in the beneficiary countries, ATPA has contributed significantly to counter-narcotics efforts by the United States.

(3) Notwithstanding the success of ATPA, the beneficiary countries remain vulnerable to political and economic instability, dangers of the war on drugs, and more intense economic competition from other countries.

(4) Instability in the Andean region threatens the security of the United States. This threat is only partially alleviated by foreign aid.

(5) The ATPA represents a tangible commitment by the United States to the promotion of prosperity, stability and democracy in the beneficiary countries.

(6) Renewal and expansion of ATPA will support private enterprises' decisions to invest in the Andean region, which will help to solidify economic and political stability in the region.

(7) Each of the ATPA beneficiary countries is committed to establishing a Free Trade Area of the Americas ("FTAA") by 2005, as a means of enhancing economic security in the region.

(8) A temporary enhancement of trade benefits to the ATPA countries will stimulate economic activity and thereby support the security interests of the United States, the region, and the world.

REASONS FOR CHANGE

The Andean Trade Preference Act (19 U.S.C. §§3201–06) ("ATPA") was enacted in 1991 as Title II of Public Law Number 102–182, and expired on December 4, 2001. The findings of Congress in section 101 of the present bill lay a foundation for extending and enhancing trade benefits under ATPA. They make the case that ATPA has been largely successful at promoting development in the Andean region and encouraging the beneficiary countries to shift from drug production and trafficking to legitimate economic activities. The program has been important not only to the countries themselves, but also to the United States, which has benefitted from the economic activity generated by ATPA, as well as from the improvement in regional stability that ATPA has helped to bring about.

The success of the program over the past decade is precisely the reason not to let it lapse now. Indeed, a number of factors that have arisen since 1991 support an expansion of ATPA. These factors include intensified economic competition from the rest of the world, due to a steady lowering of tariffs and other trade barriers and a proliferation of other trade preference programs.

Factors supporting enhancement also include continued political and economic instability within the beneficiary countries. For example, in a statement submitted to the Subcommittee on International Trade at its August 3, 2001 hearing, representatives of the Government of Colombia explained that unemployment in that country has reached an unprecedented 20 percent, and coffee, an important staple of the national economy, has reached its lowest price in decades. Similarly, representatives of the Government of Bolivia explained, "In a country where there is chronic under-employment and 70% of its population live with less than US$2 a day, increased unemployment has resulted in massive social unrest, which if unchecked is likely to threaten democracy and the rule of law."

Because ATPA enhancement should give a boost to growth in the beneficiary countries and help to stabilize the economies of those

countries, it is as much a matter of promoting the security interests of the United States as it is a matter of preserving and building upon the success of the first ten years in helping the region to develop.

Section 102. Temporary provisions

General rule

PRESENT LAW

The ATPA authorizes the President to proclaim duty-free treatment for all eligible articles from any beneficiary country in accordance with the provisions of that Act. Under the ATPA, Bolivia, Ecuador, Colombia and Peru may be designated as beneficiary countries, provided that they meet certain eligibility criteria. Under the law as expired on December 4, 2001, they had been so designated, pursuant to presidential proclamations issued in 1992 and 1993.

Section 204 of the ATPA (19 U.S.C. §3203) defines an eligible article as an article that, subject to certain exceptions, (1) is the growth, product, or manufacture of a beneficiary country, (2) is imported directly from a beneficiary country, and (3) meets certain quantitative criteria with respect to materials from and processing performed in the beneficiary country.

Section 204(b) of the ATPA expressly excludes from the class of eligible articles eight categories of products, as follows:

(1) textile and apparel articles which are subject to textile agreements;

(2) certain footwear;

(3) tuna, prepared or preserved in any manner, in airtight containers;

(4) petroleum and petroleum products;

(5) certain watches and watch parts;

(6) certain handbags, luggage, flat goods, work gloves, and leather apparel;

(7) certain sugars, syrups and molasses; and

(8) rum and tafia.

Further, section 204(c) of the ATPA provides for reductions (but not elimination) of duty rates on imports of certain handbags, luggage, flat goods, work gloves, and leather apparel imported from the ATPA beneficiary countries.

EXPLANATION OF PROVISION

Section 102 of the bill replaces the list of excluded products under section 204(b) of the current ATPA with a new provision that extends duty preferences to most of those products. The new preferences take the form of exceptions to the general rule that the excluded products are not eligible for duty-free treatment.

The enhanced preferences are made available to "ATPEA beneficiary countries." As discussed below, paragraph (5) of section 204(b) of the ATPA as amended by the present bill defines ATPEA beneficiary countries as those countries previously designated by the President as "beneficiary countries" (i.e., Bolivia, Colombia, Ecuador, and Peru) which subsequently are designated by the President as "ATPEA beneficiary countries," based on the President's consideration of additional eligibility criteria.

In the event that the President did not designate a current "beneficiary country" as an "ATPEA beneficiary country," that country would remain eligible for ATPA benefits under the law as expired on December 4, 2001, but would not be eligible for the enhanced benefits provided under the present bill.

REASONS FOR CHANGE

As explained above, the view of the Committee is that renewing and enhancing the ATPA to provide duty preferences to products excluded under current law will serve several important policy purposes. It is expected that enhancement of the program will spur further development and diversification in the Andean region, cultivate an environment hospitable to increased investment by private enterprises, encourage the elimination of illegitimate economic activity, and promote regional stability.

Transition period treatment of certain textile and apparel articles

PRESENT LAW

Under the ATPA, textile and apparel articles generally are excluded from duty-free treatment.

EXPLANATION OF PROVISION

Paragraph (2) of section 204(b) of the ATPA as amended by section 102 of the present bill extends duty-free treatment to certain textile and apparel articles from ATPEA beneficiary countries. The provision divides articles eligible for this treatment into several different categories and limits duty-free treatment to a period defined as the "transition period." The transition period is defined in paragraph (5) of section 204(b) of the ATPA as amended to be the period from enactment of the present bill through the earlier of February 28, 2006 or establishment of a FTAA.

In general, the different categories of textile and apparel articles eligible for duty-free treatment are defined according to the origin of the yarn and fabric from which the articles are made. Under the first category, apparel sewn or otherwise assembled in one or more ATPEA beneficiary countries is eligible for duty-free treatment if it is made exclusively from one or a combination of several sub-categories of components, as follows:

(1) United States fabric, fabric components, or knit-to-shape components, made from yarns wholly formed in the United States;

(2) A combination of both United States and ATPEA beneficiary country components knit-to-shape from yarns wholly formed in the United States;

(3) ATPEA beneficiary country fabric, fabric components, or knit-to-shape components, made from yarns wholly formed in one or more ATPEA beneficiary countries, if the constituent fibers are primarily llama, alpaca, or vicuna hair; and

(4) Fabrics or yarns, regardless of origin, if such fabrics or yarns have been deemed, under the North American Free Trade Agreement, not to be widely available in commercial quantities in the United States. A separate provision of section 204(b) of the ATPA as amended by the present bill sets forth

a process for interested parties to petition the President for inclusion of additional yarns and fabrics in the "short supply" list. This process includes obtaining advice from the United States International Trade Commission and industry advisory groups, and consultation with the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives.

An example of an article eligible for duty-free treatment under this first category would be a shirt sewn in an ATPEA beneficiary country from fabric formed in the United States from yarns wholly formed in the United States. Another example would be a shirt sewn in an ATPEA beneficiary country from a combination of U.S. fabric made from U.S. yarns and fabrics from a foreign country, other than an ATPEA beneficiary, determined to be in short supply in the United States.

A second category of apparel articles eligible for duty-free treatment is apparel articles knit-to-shape (except socks) in one or more ATPEA beneficiary countries from yarns wholly formed in the United States. To qualify under this category, the entire article must be knit-to-shape—as opposed to being assembled from components that are themselves knit-to-shape.

A third category of apparel articles eligible for duty-free treatment is apparel articles wholly assembled in one or more ATPEA beneficiary countries from fabric or fabric components knit, or components knit-to-shape in one or more ATPEA beneficiary countries from yarns wholly formed in the United States. The quantity of apparel eligible for this benefit is subject to an annual cap. The cap is set at 70 million square meter equivalents for the one-year period beginning March 1, 2002. The cap will increase by 16 percent, compounded annually, in each succeeding one-year period, through February 28, 2006.

Thus, the cap applied to this category in each year following enactment will be as follows:

70 million square meter equivalents ("SME") in the year beginning March 1, 2002;

81.2 million SME in the year beginning March 1, 2003;

94.19 million SME in the year beginning March 1, 2004; and

109.26 million SME in the year beginning March 1, 2005.

By way of comparison, in the 12-month period ending in September 2001, the United States imported approximately 151.2 million SME worth of apparel products from the Andean region. That number includes apparel entered under the so-called "807 program," meaning that the apparel is made from fabric cut (and possibly, though not necessarily, formed) in the United States. Total non-807 imports from the Andean region during the same period were 107.4 million SME. Thus, under the present bill, the initial cap on the third category of apparel articles represents slightly less than half of total apparel imports from the Andean region over the past year, and slightly more than half of total non-807 apparel imports from the Andean region during that period.

A separate provision makes clear that goods otherwise qualifying under the latter category will not be disqualified if they happen to contain United States fabric made from United States yarn.

A fourth category of apparel eligible for duty-free treatment under the present bill is brassieres that are cut or sewn, or other-

wise assembled, in one or more ATPEA beneficiary countries, or in such countries and the United States. This separate category requires that, in the aggregate, brassieres manufactured by a given producer claiming duty-free treatment for such products contain certain quantities of United States fabric. The provision contains special rules for determining whether producers meet this aggregate requirement.

A fifth category of textile and apparel eligible for duty-free treatment is handloomed, handmade, and folklore articles. To qualify under this category, the government of an ATPEA beneficiary country must certify particular products as handloomed, handmade, or folklore in nature, following consultations with the President.

A final category of textile and apparel goods eligible for duty-free treatment is textile luggage assembled in an ATPEA beneficiary country from fabric and yarns formed in the United States.

In addition to the foregoing categories, the bill sets forth special rules for determining whether particular textile and apparel articles qualify for duty-free treatment. For example, the bill provides that an apparel article otherwise eligible for duty-free treatment will not be disqualified simply because it contains zippers, snaps, lace or other "findings and trimmings" of non-U.S., non-ATPEA beneficiary country origin, as long as such findings and trimmings do not make up more than 25 percent of the cost of the components of the assembled product. A similar rule exists for certain garment interlinings. Other special rules make clear that an otherwise qualifying garment will not be disqualified from duty-free treatment simply because it contains *de minimis* quantities of non-U.S., non-ATPEA country yarns, or because it contains certain yarns from countries with which the United States has free trade agreements.

REASONS FOR CHANGE

It is the view of the Committee that one of the most important enhancements of the current ATPA program is to extend duty-free treatment to textile and apparel products from the beneficiary countries. This is a sector of commercial significance to each of the countries, which is excluded from benefits under current law. Further, the beneficiary countries presently face and will continue to face increasing competitive pressures in this sector. This pressure comes in part from the extension last year of duty-free treatment to certain apparel imports from the Caribbean and Central America, under the Caribbean Basin Initiative ("CBI"). An additional source of pressure is the impending elimination, in 2005, of the United States' and other countries' quotas on imports of textile and apparel products under World Trade Organization ("WTO") rules.

At the same time, the Committee recognizes that other factors counsel the establishment of limits on the quantity of apparel made from regional fabric that is eligible for duty-free treatment. Similar limits were placed on apparel eligible for duty-free treatment under the CBI. The Committee does not wish to inadvertently undercut the recently conferred benefits to the CBI countries by giving a more expansive benefit to the ATPEA beneficiary countries. Further, the Committee is aware of the import-sensitive nature of apparel made from non-U.S. fabric. Concern for the state of the import-competing industry in the United States is another reason for

limiting the quantity of apparel made from regional fabric that is eligible for duty-free treatment under the present bill.

Penalties for transshipment

PRESENT LAW

Under present law, a person who provides materially false information to the United States Government, or who fails to provide material information required by the United States Government, in connection with the importation of goods into the United States may be liable for civil and criminal penalties. Section 1592 of the Tariff Act of 1930 (19 U.S.C. §1592) sets forth penalties for fraud, gross negligence and negligence in connection with importation. More generally, section 1001 of the United States Criminal Code (18 U.S.C. §1001) sets forth penalties for knowingly and willfully making materially false, fictitious or fraudulent statements or representations in any matter within the jurisdiction of the United States Government.

EXPLANATION OF PROVISION

In amending section 204(b) of the ATPA, section 102 of the present bill provides special penalties for transshipment of textile and apparel articles from an ATPEA beneficiary country. Transshipment is defined as claiming duty-free treatment for textile and apparel imports on the basis of materially false information. An exporter found to have engaged in such transshipment (or a successor of such exporter) shall be denied all benefits under the ATPA for a period of two years.

The bill further provides penalties for an ATPEA beneficiary country that fails to cooperate with the United States in efforts to prevent transshipment. Where textile and apparel articles from such country are subject to quotas on importation into the United States consistent with WTO rules, the President must reduce the quantity of such articles that may be imported into the United States by three times the quantity of transshipped articles, to the extent consistent with WTO rules.

Similar anti-transshipment provisions are contained in the Carribean Basin Trade Partnership Act (19 U.S.C. §2703(b)(2)(D)).

REASONS FOR CHANGE

The special anti-transshipment provision for textile and apparel articles is designed to serve as an additional deterrent, beyond what current law provides, to transshipment of these products. An additional deterrent is required in part because of the import-sensitivity of the articles at issue.

Bilateral emergency actions

PRESENT LAW

Under present law, the safeguards provisions contained in sections 201 to 204 of the Trade Act of 1974 authorize the President to provide relief to domestic industries seriously injured or threatened with serious injury by increased imports of products like or directly competitive with products produced by those industries. Relief may take the form of increased tariffs, imposition of quotas,

or imposition of tariff-rate quotas. Further, the North American Free Trade Agreement ("NAFTA") contains a special safeguard for textile and apparel products. Under that provision, relief is available to an industry seriously injured or threatened with serious injury by increased textile and apparel imports from a NAFTA Party as the result of reduction or elimination of a duty pursuant to NAFTA. Relief may take the form of suspension of tariff reductions or reversion of tariff rates to the lesser of (1) most-favored-nation tariff rates on the date relief is provided, and (2) most-favored-nation tariff rates on the date before NAFTA went into effect. Generally, such relief may remain in place for not more than three years.

EXPLANATION OF PROVISION

The bill establishes a textile and apparel safeguard provision based on the NAFTA textile and apparel safeguard provision. A similar provision is contained in the Caribbean Basin Trade Partnership Act (19 U.S.C. §2703(b)(2)(E)).

REASONS FOR CHANGE

The special safeguard for textile and apparel products is intended to help ensure against serious injury (or threat thereof) to the U.S. textile and apparel industry as a result of the elimination of tariffs on like products imported from ATPEA beneficiary countries.

Articles other than textile and apparel articles

PRESENT LAW

As discussed above, seven categories of goods, in addition to textile and apparel articles, are excluded from ATPA benefits under current law.

EXPLANATION OF PROVISION

With two exceptions, paragraph (3) of section 204(b) of the ATPA as amended by the present bill reduces tariff rates on currently excluded products to the rates that apply to like products imported into the United States from Mexico. These rates will continue to be reduced according to the schedule of reductions under NAFTA that apply to like products from Mexico. (However, if a lower rate or zero duty would otherwise apply under other provisions of U.S. law, then such other rate or zero duty will apply.)

The first exception to the latter provision concerns sugars, syrups, and sugar-containing products. Such products subject to over-quota duty rates under tariff-rate quotas will not receive duty-free treatment.

The second exception concerns tuna prepared or preserved in airtight containers. The bill authorizes the President to extend duty-free treatment to imports of such goods up to a quantitative cap equal in each calendar year to 20 percent of the domestic United States tuna pack in the preceding calendar year. The bill further requires that tuna eligible for duty-free treatment under this provision have been harvested by a United States vessel or an ATPEA beneficiary country vessel. Designation as a United States or

ATPEA vessel is determined by factors including country of registry, ownership, and nationality of the crew, master, and officers.

REASONS FOR CHANGE

The bill provides benefits with respect to currently excluded products from ATPEA beneficiary countries in order to expand the development opportunities available to these countries. Sugars, syrups and sugar-containing products subject to tariff-rate quotas remain on the excluded list, due to the import-sensitivity of these products in the United States. For similar reasons, the Committee adopted an amendment limiting the quantity of tuna in airtight containers eligible for duty-free treatment. Also of concern to the Committee in the latter case was the impact of duty-free tuna imports on the tuna canning industry in Puerto Rico and American Samoa.

Customs procedures

PRESENT LAW

No provision.

EXPLANATION OF PROVISION

Paragraph (4) of section 204(b) of the ATPA as amended by section 102 of the present bill contains a requirement that ATPEA beneficiary countries maintain customs procedures similar to those required under NAFTA, to ensure against transshipment. The requirement includes establishment of an ATPEA certificate of origin to ensure that products for which duty-free treatment is claimed are, in fact, entitled to that treatment. The U.S. Commissioner of Customs is required to study, and USTR is required to report to Congress, on ATPEA countries' cooperation in anti-transshipment efforts. Similar provisions are contained in the Caribbean Basin Trade Partnership Act (19 U.S.C. §2703(b)(4)).

REASONS FOR CHANGE

The enhancement of benefits provided for under this bill increases the importance of guarding against transshipment. As benefits increase, so does the risk of parties claiming those benefits for goods that are not, in fact, qualifying goods. The customs procedures established under this bill will increase the barriers to such circumvention.

Definitions and special rules

PRESENT LAW

Under present law, a country must be designated by the President as a "beneficiary country" in order to receive trade preferences under ATPA. Only Bolivia, Ecuador, Colombia, and Peru can be designated as beneficiary countries.

To attain that designation, each of the countries must meet certain mandatory criteria, as follows: (1) the country cannot be a communist country; (2) the country cannot have taken measures the effect of which is to nationalize, expropriate or otherwise seize ownership or control of property owned by U.S. citizens or companies, absent the provision of prompt, adequate and effective com-

pensation; (3) the country must act in good faith to recognize as binding and to enforce arbitral awards in favor or U.S. citizens and companies; (4) the country cannot give trade preferences to developed countries that have a significant adverse effect on U.S. commerce; (5) the country must provide adequate and effective protection of intellectual property rights; (6) the country must be signatory to a treaty, convention, protocol or other agreement regarding the extradition of U.S. citizens; and (7) the country must be taking steps to afford internationally recognized worker rights to workers in the country.

Of the foregoing criteria, items (1), (2), (3), (5), and (7) can be waived for a given country, if the President determines and reports to Congress that doing so is in the national economic or security interest of the United States.

Additionally, the ATPA sets forth certain discretionary criteria for the President to take into account in deciding whether to designate any of the four listed countries as beneficiary countries. These criteria are: (1) the country's expressed desire to be so designated; (2) economic conditions in the country; (3) the country's assurances to the United States of equitable and reasonable access to its markets and to basic commodity resources; (4) the country's compliance with rules of the World Trade Organization; (5) the degree to which the country uses export subsidies or imposes local content requirements which distort trade; (6) the degree to which the country's trade policies are contributing to regional revitalization; (7) the degree to which the country is helping its own economic development; (8) whether the country is taking steps to protect internationally recognized worker rights; (9) the extent to which the country's laws give foreign nationals adequate and effective means to secure, exercise, and enforce intellectual property rights; (10) the extent to which the country prohibits broadcast of copyrighted material without the copyright owner's express consent; (11) whether the country is certified as cooperating in antinarcotics trafficking efforts; and (12) the extent to which the country is prepared to cooperate with the United States in administering the ATPA.

By presidential proclamations, Colombia and Bolivia have been designated as ATPA beneficiary countries since July 22, 1992. Ecuador has been designated an ATPA beneficiary country since April 30, 1993. And, Peru has been designated an ATPA beneficiary country since August 31, 1993.

EXPLANATION OF PROVISION

The provision defines terms used in section 204(b) of the ATPA as amended by section 102 of the present bill. Among other terms, the provision defines "ATPEA beneficiary country." Enhanced benefits under the bill are available only to countries that have been designated by the President as ATPEA beneficiary countries.

The President may designate only those countries previously designated as "beneficiary countries" under the ATPA as expired on December 4, 2001. In determining whether an ATPA beneficiary country should receive the enhanced ATPEA beneficiary country designation, the President must take into account the mandatory and discretionary factors relevant to the basic designation under current law, as well as certain additional factors, as follows:

(1) whether the country has demonstrated a commitment to undertake its obligations in the WTO and to participate in negotiations toward a FTAA;

(2) the extent to which the country provides protection of intellectual property rights consistent with or greater than that required under the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights;

(3) the extent to which the country provides internationally recognized worker rights;

(4) whether the country has implemented its commitment to eliminate the worst forms of child labor;

(5) the extent to which the country cooperates with the United States in counter-narcotics efforts;

(6) the extent to which the country has taken steps to become a party to and implement the Inter-American Convention Against Corruption; and

(7) the extent to which the country applies transparent, nondiscriminatory, and competitive procedures in government procurement and contributes to international efforts to enhance transparency in government procurement.

REASONS FOR CHANGE

The Committee is of the view that in enhancing the benefits available to beneficiary countries, it is reasonable to enhance the eligibility criteria that must be met in order to receive the new benefits. Further, it is appropriate at this juncture for the President to reexamine the criteria that the countries had to meet in order to be designated as beneficiary countries in the first place.

The Committee is particularly concerned about credible reports that certain countries have fallen short of the standards set forth in key eligibility criteria under current law. As discussed above, current law requires a beneficiary country to act in good faith in recognizing as binding and in enforcing arbitral awards in favor of United States citizens and companies. 19 U.S.C. § 3202(c)(3). In at least two recent cases that have come to the Committee's attention—one involving Nortel Networks and another involving Sithe Energies—United States companies (or their foreign affiliates or subsidiaries) have prevailed in arbitrations against the Government of Colombia. However, rather than pay the arbitral awards in these cases, the Government has instituted collateral proceedings and undertaken other delaying measures.

During the November 29, 2001 meeting of the Committee to consider the present bill, the Chairman asked Deputy United States Trade Representative Peter Allgeier how the Office of the United States Trade Representative ("USTR") intended to address this issue in its evaluation of Colombia's eligibility for ATPEA beneficiary country status. Ambassador Allgeier responded, "We have raised this with the Colombians. Specifically, Ambassador Zoellick and Secretary Evans recently wrote to President Pastrana to raise these two cases to his attention, and our understanding is that he has instructed his officials to look into that and to respond to us how they are dealing with that. We certainly seek prompt and proper settlement of those arbitral awards."

The Committee emphasizes the importance of beneficiary countries' honoring arbitral awards in favor of United States citizens

and companies. The Committee strongly urges the Government of Colombia to promptly honor its obligations in the Nortel and Sithe Energies matters. The Committee further urges USTR to take the handling of these cases into account in determining Colombia's eligibility for ATPEA beneficiary country status.

The Committee has similar concerns with respect to treatment of U.S. businesses by the Government of Peru. In one case brought to the Committee's attention, a U.S. company, STM Wireless, was the lowest bidder in an international public tender by OSIPTEL, a telecommunications agency of the Government of Peru. Although STM Wireless was led to believe that it had won the contract, a necessary license subsequently was issued to another company, despite a court order prohibiting the government agency from withdrawing the contract to STM Wireless.

The Committee is aware of other allegations concerning the telecommunications sector in Peru, including a complaint by Telinfor, S.A. that a local telephone service provider in Peru engaged in misconduct in connection with the establishment of a pay-per-call service. Of particular concern in this case are allegations of conflicts of interest among the members of the panel arbitrating the dispute.

Another case that has come to the Committee's attention concerns the Engelhard company of New Jersey. The Committee understands that certain assets of this company were confiscated by Peru's tax authority under the government of Alberto Fujimori, and that these assets have not been returned by the current government. The Committee urges the Government of Peru to resolve this matter quickly and fairly.

The Committee urges USTR to closely examine these matters in determining whether Peru should be designated as an ATPEA beneficiary country.

Finally, the Committee notes that, under the present bill, among the criteria for ATPEA beneficiary country designation is whether the country has demonstrated a commitment to undertake its obligations under the WTO. Among countries' obligations under the WTO are those set forth in the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994 ("the Customs Valuation Agreement"). The Customs Valuation Agreement sets forth rules for establishing the value of goods on importation, for purposes of assessing duties. The ordinary rule is that the customs value of a good is the transaction value—i.e., the price actually paid or payable when the good is sold for export—with certain adjustments provided for in the Agreement. These rules help to ensure that countries do not use customs valuation as a disguised trade barrier.

The Andean Community, including Colombia, sets duties on imports of 14 basic agricultural products—such as wheat, corn, and soybean oil—according to a variable import duty system, known as a "price band" system. An additional 147 commodities, considered substitutes or related products, also are subject to the price band system. Under this system, maximum, minimum, and reference prices for imports are determined administratively as the basis for assessing duties.

The Committee's view is that the price-band system is non-transparent and easily manipulated as a measure to reduce market access for U.S. and other producers. Ordinarily, it would not comport

with a country's obligations under the Customs Valuation Agreement. As developing countries, the participants in the Andean Community price band system were given until the year 2000 to phase in their obligations under the Customs Valuation Agreement.

In early 2000, Colombia sought an extension of this transition period. In agreeing to an extension, the United States obtained from Colombia a commitment to seek to de-link wet pet food, the only finished product in the price band system, from this system. It is the Committee's expectation that, in reviewing the eligibility criteria relating to market access and WTO commitments, USTR will insist that Colombia implement its WTO commitment to pursue the removal of wet pet food from the price band tariff system, and to apply the 20 percent common external tariff to imported pet food.

In general, the Committee believes it is important for Andean governments to provide transparent and non-discriminatory regulatory procedures in fulfilling their WTO obligations. Unfortunately, the Committee knows of instances where regulatory policies in Andean countries are opaque, unpredictable, and arbitrarily applied. It is the Committee's view that Andean countries that seek trade benefits should adopt, implement, and apply transparent and non-discriminatory regulatory procedures. The development of such procedures would help create regulatory stability in the Andean region, and thus provide more certainty to U.S. companies that would like to invest in these countries.

Determination regarding retention of designation

PRESENT LAW

Under section 203(e) of the ATPA, the President may withdraw or suspend a country's "beneficiary country" designation, or withdraw, suspend or limit the application of duty-free treatment to particular articles of a beneficiary country, due to changed circumstances.

EXPLANATION OF PROVISION

Section 102(b) of the present bill amends section 203(e) of the ATPA to provide that the President may withdraw or suspend a country's "ATPEA beneficiary country" designation, or withdraw, suspend, or limit the application of enhanced duty-free treatment as provided under this bill, due to changed circumstances. Specifically, unsatisfactory performance under the enhanced eligibility criteria constitutes changed circumstances that may lead to withdrawal, suspension, or limitation of benefits.

REASONS FOR CHANGE

Section 102(b) establishes a provision for withdrawal, suspension or limitation of enhanced benefits that parallels the provision for withdrawal, suspension or limitation of basic benefits under current law.

Reporting requirements

PRESENT LAW

Section 203(f) of the ATPA required the President to report to Congress every three years on operation of the ATPA.

EXPLANATION OF PROVISION

Section 102(c) of the present bill requires USTR to report to Congress by December 31, 2002 and every two years thereafter on operation of the enhanced ATPA. The report shall include the results of a review of countries' performance under the basic eligibility criteria set forth in sections 203(c) and (d) of the ATPA and under the enhanced eligibility criteria under section 204(b)(5)(B) of the ATPA as added by the present bill. Before submitting its report, USTR shall request public comments on countries' performance under the enhanced eligibility criteria.

REASONS FOR CHANGE

The new reporting requirement provided for in the bill is designed to facilitate congressional oversight of the enhanced ATPA.

Conforming amendments

PRESENT LAW

No provision.

EXPLANATION OF PROVISION

Section 102(d) of the bill makes certain technical changes to the ATPA to conform to the changes described above.

Section 103. Termination

PRESENT LAW

Under present law, duty-free treatment under the ATPA terminated 10 years after the date of enactment—that is, on December 4, 2001.

EXPLANATION OF PROVISION

Section 103 of the bill amends section 208(b) of the ATPA to provide for a termination date of February 28, 2006.

REASONS FOR CHANGE

The termination date in section 103 of the bill is shortly after the December 2005 expected date for establishment of a FTAA. Terminating the enhanced ATPA on February 28, 2006 will facilitate the beneficiary countries' transition to participation in the broader FTAA.

TITLE II—MISCELLANEOUS TRADE PROVISIONS

Section 201. Wool provisions

PRESENT LAW

Title V of the Trade and Development Act of 2000 (Pub. L. No. 106–200) included certain tariff relief for the domestic tailored

clothing and textile industries. The relief was largely aimed at reducing the harmful affects of a "tariff inversion"—*i.e.,* a tariff structure that levies higher duties on the raw material (such as wool fabric) than on the finished goods (such as men's suits). The relief was intended to begin redressing an anomaly in NAFTA that has resulted in a greater than intended advantage to Canadian exporters of tailored clothing. A component of the relief to the U.S. tailored clothing and textile industry was a refund of duties paid in calendar year 1999, spread out over calendar years 2000, 2001 and 2002. Pub. L. No. 106–200, §505.

EXPLANATION OF PROVISION

During its consideration of the present bill, the Committee accepted a modification to the Chairman's amendment in the nature of a substitute. The modification, entitled the "Wool Manufacturer Payment Clarification and Technical Corrections Act," amends section 505 of the Trade and Development Act of 2000. This provision simplifies the process for refunding to eligible parties duties paid in 1999. Specifically, it creates three special refund pools for each of the affected wool articles (fabric, yarn, and fiber and top). Refunds will be distributed in three installments—the first by December 31, 2001, the second by April 15, 2002, and the third by April 15, 2003. The provision also streamlines the paperwork process, in light of the destruction of previously filed claims and supporting information in the September 11, 2001 attacks on the World Trade Center in New York, New York. Finally, the provision identifies all persons eligible for the refunds.

REASONS FOR CHANGE

The tariff refunds authorized by section 505 of the Trade and Development Act had not been fully processed when the September 11, 2001 attack in New York resulted in the physical loss of the initial refund filings made with the Customs Service. As of November 29, 2001, the Customs Service was able to send refund checks for calendar year 2000 to only one textile mill and one apparel company. Other parties eligible for refunds likely would experience substantial delays in obtaining those refunds, absent legislative relief.

Section 202. Ceiling fans

PRESENT LAW

Under the Generalized System of Preferences (19 U.S.C. §§2461–67) ("GSP") eligible articles from countries designated as beneficiary developing countries may be imported into the United States duty-free, up to certain quantitative thresholds (known as "competitive need limitations"). Generally, the competitive need limitation for a given article is either (1) a quantity, the appraised value of which exceeds a statutory threshold (which was $100 million in calendar year 2001), or (2) a quantity equal to or exceeding 50 percent of the appraised value of the total imports of that article into the United States during any calendar year. (19 U.S.C. §2463(c)(2)(A)) The President may waive the competitive need limitation with respect to a given article based on advice from the ITC concerning any adverse effect on a U.S. industry and a determina-

tion that such a waiver would be in the national economic interest. (19 U.S.C. §2463(d)(1))

The President has determined that ceiling fans imported into the United States from Thailand have passed the applicable competitive need limitation. Accordingly, such importations are no longer duty-free. It is the Committee's understanding that a waiver of the competitive need limitation with respect to ceiling fans from Thailand is likely, but that the earliest this would happen is the middle of 2002.

EXPLANATION OF PROVISION

Section 202 of the present bill waives the competitive need limitation with respect to ceiling fans from Thailand entered, or withdrawn from warehouse for consumption, during the period beginning 15 days after enactment and ending before July 30, 2002.

REASONS FOR CHANGE

It is the understanding of the Committee that the President is likely to waive the competitive need limitation with respect to ceiling fans from Thailand, but that this is unlikely to happen until the middle of 2002. Further, it is the Committee's understanding that no U.S. industry would be harmed by a waiver of the competitive need limitation, and that the waiver would benefit certain retailers and consumers in the United States.

Section 203. Certain steam or other vapor generating boilers used in nuclear facilities

PRESENT LAW

Under present law, certain steam or other vapor generating boilers used in nuclear facilities imported into the United States prior to December 31, 2003 are charged a duty rate of 4.9 percent ad valorem. This rate took effect pursuant to section 1268 of Public Law Number 106–476 ("Tariff Suspension and Trade Act of 2000"). Previously, the rate had been 5.2 percent ad valorem.

EXPLANATION OF PROVISION

Section 203 of the present bill changes the duty rate on certain steam or other vapor generating boilers used in nuclear facilities to zero for such goods entered, or withdrawn from warehouse for consumption, on or after January 1, 2002 and on or before December 31, 2006.

REASONS FOR CHANGE

The provision is intended to lower the cost of inputs into the operation of nuclear facilities, and thereby lower the cost of energy to consumers.

IV. CONGRESSIONAL ACTION

On March 13, 2001, Senator Graham (for himself and others) introduced S. 525, a bill to expand trade benefits to certain Andean countries, and for other purposes. The bill was read twice and referred to the Committee on Finance.

On August 3, 2001, the Subcommittee on International Trade of the Senate Finance Committee held a hearing on expansion of the Andean Trade Preference Act.

On October 3, 2001, Congressman Crane (for himself and Congressman Thomas) introduced H.R. 3009, a bill to extend the Andean Trade Preference Act, to grant additional trade benefits under that Act, and for other purposes. The bill was referred to the Committee on Ways and Means. On October 5, 2001, the Committee on Ways and Means held a markup and, upon a voice vote, ordered reported to the full House an amendment in the nature of a substitute to H.R. 3009.

On November 16, 2001, the House of Representatives agreed to H.R. 3009 as amended by a voice vote. The bill was received in the Senate that same day and referred to the Committee on Finance.

On November 29, 2001, the Committee on Finance held a markup session to consider H.R. 3009. The Chairman offered an amendment in the nature of a substitute to H.R. 3009. The substance of the amendment in the nature of a substitute was the text of S. 525 with certain modifications. Several amendments to the amendment in the nature of a substitute were accepted by the Committee. The bill as amended was ordered favorably reported on the basis of a voice vote, with a quorum present, on November 29, 2001.

V. VOTES OF THE COMMITTEE IN REPORTING THE BILL

In compliance with paragraph 7(c) of Rule XXVI of the Standing Rules of the Senate, the following statements are made concerning the roll call votes in the Committee's consideration of H.R. 3009.

A. MOTION TO REPORT THE BILL

H.R. 3009 as amended by the Chairman's amendment in the nature of a substitute and as further amended was ordered favorably reported by voice vote with a quorum present on November 29, 2001.

B. VOTES ON AMENDMENTS

(1) An amendment to provide for the distribution of refunds of duties paid in calendar year 1999 on importation of certain wool products was included in the Chairman's amendment in the nature of a substitute as a modification.

(2) An amendment by Senator Breaux to limit the quantity of tuna in airtight containers from ATPEA beneficiary countries eligible for duty-free treatment on entry into the United States, and to establish certain other requirements for such goods to be eligible for duty-free treatment, passed by a vote of 11 ayes and 9 nays.

Ayes: Baucus, Rockefeller, Daschle (proxy), Breaux, Conrad (proxy), Torricelli, Lincoln, Hatch (proxy), Murkowski, Snowe, Thomas.

Nays: Graham, Jeffords, Bingaman, Grassley, Nickles (proxy), Gramm, Lott (proxy), Thompson, Kyl.

(3) An amendment by Senators Kyl and Thompson to extend duty-free treatment to certain steam or other vapor generating boilers used in nuclear facilities entered into the United States, or withdrawn from warehouse for consumption, from January 1, 2002 through December 31, 2006 passed by a vote of 15 ayes and 6 nays.

Ayes: Conrad (proxy), Graham, Jeffords, Bingaman, Torricelli, Lincoln, Grassley, Hatch (proxy), Murkowski, Nickles (proxy), Gramm, Lott (proxy), Thompson, Kyl, Thomas.

Nays: Baucus, Rockefeller, Daschle (proxy), Breaux, Kerry (proxy), Snowe.

(4) An amendment by Senator Thompson to waive, through July 30, 2002, competitive need limitations on duty-free treatment for ceiling fans imported from Thailand was adopted by voice vote.

VI. BUDGETARY IMPACT OF THE BILL

A. BUDGET AUTHORITY AND TAX EXPENDITURES

1. BUDGET AUTHORITY

In accordance with section 308(a)(1) of the Budget Act, the Committee states that the Andean Trade Preference Expansion Act involves no new or increased budget authority.

2. TAX EXPENDITURES

In accordance with section 308(a)(2) of the Budget Act, the Committee states that the Andean Trade Preference Expansion Act will result in no change in tax expenditures over the period fiscal years 2002–2012.

B. COST ESTIMATE

Due to time constraints, the Congressional Budget Office estimate was not included in the report. When received by the Committee, it will appear in the Congressional Record at a later time.

VII. REGULATORY IMPACT AND OTHER MATTERS

In compliance with paragraph 11(b) of Rule XXVI of the Standing Rules of the Senate, the Committee states that the bill will not significantly regulate any individuals or businesses, will not affect the personal privacy of individuals, and will result in no significant additional paperwork.

The following information is provided in accordance with section 423 of the Unfunded Mandates Reform Act of 1995 (Pub. L. No. 104–4). The Committee has reviewed the provisions of H.R. 3009 as approved by the Committee on November 29, 2001. In accordance with the requirements of Pub. L. No. 104–04, the Committee has determined that the bill contains no intergovernmental mandates, as defined in the UMRA, and would not affect the budgets of state, local or tribal governments.

VIII. CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with paragraph 12 of Rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

ANDEAN TRADE PREFERENCE ACT

* * * * * * *

TITLE II—TRADE PREFERENCE FOR THE ANDEAN REGION

SEC. 201. SHORT TITLE.

This title may be cited as the "Andean Trade Preference Act".

SEC. 202. AUTHORITY TO GRANT DUTY-FREE TREATMENT.

The President may proclaim duty-free treatment *(or other preferential treatment)* for all eligible articles from any beneficiary country in accordance with the provisions of this title.

SEC. 203. BENEFICIARY COUNTRY.

(a) DEFINITIONS.—For purposes of this title—

(1) The term "beneficiary country" means any country listed in subsection (b)(1) with respect to which there is in effect a proclamation by the President designating such country as a beneficiary country for purposes of this title.

(2) The term "entered" means entered, or withdrawn from warehouse for consumption, in the customs territory of the United States.

(3) The term "HTS" means Harmonized Tariff Schedule of the United States.

(4) The term "NAFTA" means the North American Free Trade Agreement entered into between the United States, Mexico, and Canada on December 17, 1992.

(5) The terms "WTO" and "WTO member" have the meanings given those terms in section 2 of the Uruguay Round Agreements Act (19 U.S.C. 3501).

* * * * * * *

(e) WITHDRAWAL OR SUSPENSION OF DESIGNATION.—(1)(*A*) The President may—

[A**]**(*i*) withdraw or suspend the designation of any country as a beneficiary country, or

[B**]**(*ii*) withdraw, suspend, or limit the application of duty-free if, after such designation, the President determines that as a result of changed circumstances such a country should be barred from designation as a beneficiary country.

(B) The President may, after the requirements of paragraph (2) have been met—

(i) withdraw or suspend the designation of any country as an ATPEA beneficiary country; or

(ii) withdraw, suspend, or limit the application of preferential treatment under section 204(b) (2) and (3) to any article of any country,

if, after such designation, the President determines that, as a result of changed circumstances, the performance of such country is not satisfactory under the criteria set forth in section 204(b)(5)(B).

(2)(A) The President shall publish in the Federal Register notice of the action the President proposes to take under paragraph (1) at least 30 days before taking such action.

(B) The United States Trade Representative shall, within the 30-day period beginning on the date on which the President publishes under subparagraph (A) notice of proposed action—

(i) accept written comments from the public regarding such proposed action.

(ii) hold a public hearing on such proposed action, and

(iii) publish in the Federal Register—

(I) notice of the time and place of such hearing prior to the hearing, and

(II) the time and place at which such written comments will be accepted.

(3) If preferential treatment under section 204(b) (2) and (3) is withdrawn, suspended, or limited with respect to an ATPEA beneficiary country, such country shall not be deemed to be a "party" for the purposes of applying section 204(b)(5)(C) to imports of articles for which preferential treatment has been withdrawn, suspended, or limited with respect to such country.

[(f) REPORT.—On or before the 3rd, 6th, and 9th anniversaries of the date of the enactment of this title, the President shall submit to the Congress a complete report regarding the operation of this title, including the results of a general review of beneficiary countries based on the considerations described in subsection (c) and (d). In reporting on the considerations described in subsection (d)(11), the President shall report any evidence that the crop eradication and crop substitution efforts of the beneficiary are directly related to the effects of this title.**]**

(f) REPORTING REQUIREMENTS.—

(1) IN GENERAL.—Not later than December 31, 2002, and every 2 years thereafter during the period this title is in effect, the United States Trade Representative shall submit to Congress a report regarding the operation of this title, including—

(A) with respect to subsections (c) and (d), the results of a general review of beneficiary countries based on the considerations described in such subsections; and

(B) the performance of each beneficiary country or ATPEA beneficiary country, as the case may be, under the criteria set forth in section 204(b)(5)(B).

(2) PUBLIC COMMENT.—Before submitting the report described in paragraph (1), the United States Trade Representative shall publish a notice in the Federal Register requesting public comments on whether beneficiary countries are meeting the criteria listed in section 204(b)(5)(B).

SEC. 204. ELIGIBLE ARTICLES.

(a) IN GENERAL.—(1) Unless otherwise excluded from eligibility *(or otherwise provided for)* by this title, the duty-free treatment *(or preferential treatment)* provided under this title shall apply to any article which is the growth, product, or manufacture of a beneficiary country if—

* * * * * * *

[(b) EXCEPTIONS TO DUTY-FREE TREATMENT.—The duty free treatment provided under this title shall not apply to—

[(1) textile and apparel articles which are subject to textile agreements;

[(2) footwear not designated at the time of the effective date of this Act as eligible for the purpose of the generalized system of preferences under title V of the Trade Act of 1974;

[(3) tuna, prepared or preserved in any manner, in airtight containers;

[(4) petroleum, or any product derived from petroleum, provided for in headings 2709 and 2710 of the HTS;

[(5) watches and watch parts (including, but not limited to, mechanical, quartz digital or quartz analog, if such watches or watch parts contain any material which is the product of any country with respect to which HTS column 2 rates of duty apply;

[(6) articles to which reduced rates of duty apply under subsection (c).

[(7) sugars, syrups, and molasses classified in subheadings 1701.11.03, 1701.12.02, 1701.99.02, 1702.90.32, 1806.10.42, and 2106.90.12 of the HTS; or

[(8) rum and tafia classified in subheading 2208.40.00 of the HTS.]

(b) IMPORT-SENSITIVE ARTICLES.—

(1) IN GENERAL.—Subject to paragraphs (2) through (5), the duty-free treatment provided under this title does not apply to—

"(A) textile and apparel articles which were not eligible articles for purposes of this title on January 1, 1994, as this title was in effect on that date;

(B) footwear not designated at the time of the effective date of this title as eligible articles for the purpose of the generalized system of preferences under title V of the Trade Act of 1974;

(C) tuna, prepared or preserved in any manner, in airtight containers;

(D) petroleum, or any product derived from petroleum, provided for in headings 2709 and 2710 of the HTS;

(E) watches and watch parts (including cases, bracelets, and straps), of whatever type including, but not limited to, mechanical, quartz digital, or quartz analog, if such watches or watch parts contain any material which is the product of any country with respect to which HTS column 2 rates of duty apply;

(F) articles to which reduced rates of duty apply under subsection (c);

(G) sugars, syrups, and sugar containing products subject to tariff-rate quotas; or

(H) rum and tafia classified in subheading 2208.40 of the HTS.

(2) TRANSITION PERIOD TREATMENT OF CERTAIN TEXTILE AND APPAREL ARTICLES.—

(A) ARTICLES COVERED.—During the transition period, the preferential treatment described in subparagraph (B) shall apply to the following articles:

(i) APPAREL ARTICLES ASSEMBLED FROM PRODUCTS OF THE UNITED STATES AND ATPEA BENEFICIARY COUNTRIES OR PRODUCTS NOT AVAILABLE IN COMMERCIAL QUANTITIES.—Apparel articles sewn or otherwise assembled in 1 or more ATPEA beneficiary countries, or

the United States, or both, exclusively from any one or any combination of the following:

(I) Fabrics or fabric components formed, or components knit-to-shape, in the United States, from yarns wholly formed in the United States (including fabrics not formed from yarns, if such fabrics are classifiable under heading 5602 or 5603 of the HTS and are formed in the United States), provided that apparel articles sewn or otherwise assembled from materials described in this subclause are assembled with thread formed in the United States.

(II) Fabric components knit-to-shape in the United States from yarns wholly formed in the United States and fabric components knit-to-shape in 1 or more ATPEA beneficiary countries from yarns wholly formed in the United States.

(III) Fabrics or fabric components formed or components knit-to-shape, in 1 or more ATPEA beneficiary countries, from yarns wholly formed in 1 or more ATPEA beneficiary countries, if such fabrics (including fabrics not formed from yarns, if such fabrics are classifiable under heading 5602 or 5603 of the HTS and are formed in 1 or more ATPEA beneficiary countries) or components are in chief weight of llama, alpaca, or vicuna.

(IV) Fabrics or yarns that are not formed in the United States or in 1 or more ATPEA beneficiary countries, to the extent that apparel articles of such fabrics or yarns would be eligible for preferential treatment, without regard to the source of the fabrics or yarns, under Annex 401 of the NAFTA.

(ii) KNIT-TO-SHAPE APPAREL ARTICLES.—Apparel articles knit-to-shape (other than socks provided for in heading 6115 of the HTS) in 1 or more ATPEA beneficiary countries from yarns wholly formed in the United States.

(iii) REGIONAL FABRIC.—

(I) GENERAL RULE.—Knit apparel articles wholly assembled in 1 or more ATPEA beneficiary countries exclusively from fabric formed, or fabric components formed, or components knit-to-shape, or any combination thereof, in 1 or more ATPEA beneficiary countries from yarns wholly formed in the United States, in an amount not exceeding the amount set forth in subclause (II).

(II) LIMITATION.—The amount referred to in subclause (I) is 70,000,000 square meter equivalents during the 1-year period beginning on March 1, 2002, increased by 16 percent, compounded annually, in each succeeding 1-year period through February 28, 2006.

(iv) CERTAIN OTHER APPAREL ARTICLES.—

(I) GENERAL RULE.—Subject to subclause (II), any apparel article classifiable under subheading

6212.10 of the HTS, if the article is both cut and sewn or otherwise assembled in the United States, or one or more of the ATPEA beneficiary countries, or both.

(II) LIMITATION.—During the 1-year period beginning on March 1, 2003, and during each of the 2 succeeding 1-year periods, apparel articles described in subclause (I) of a producer or an entity controlling production shall be eligible for preferential treatment under subparagraph (B) only if the aggregate cost of fabric components formed in the United States that are used in the production of all such articles of that producer or entity that are entered during the preceding 1-year period is at least 75 percent of the aggregate declared customs value of the fabric contained in all such articles of that producer or entity that are entered during the preceding 1-year period.

(III) DEVELOPMENT OF PROCEDURE TO ENSURE COMPLIANCE.—The United States Customs Service shall develop and implement methods and procedures to ensure ongoing compliance with the requirement set forth in subclause (II). If the Customs Service finds that a producer or an entity controlling production has not satisfied such requirement in a 1-year period, then apparel articles described in subclause (I) of that producer or entity shall be ineligible for preferential treatment under subparagraph (B) during any succeeding 1-year period until the aggregate cost of fabric components formed in the United States used in the production of such articles of that producer or entity that are entered during the preceding 1-year period is at least 85 percent of the aggregate declared customs value of the fabric contained in all such articles of that producer or entity that are entered during the preceding 1-year period.

(v) APPAREL ARTICLES ASSEMBLED FROM FABRICS OR YARN NOT WIDELY AVAILABLE IN COMMERCIAL QUANTITIES.—At the request of any interested party, the President is authorized to proclaim additional fabrics and yarn as eligible for preferential treatment under clause (i)(IV) if—

(I) the President determines that such fabrics or yarn cannot be supplied by the domestic industry in commercial quantities in a timely manner;

(II) the President has obtained advice regarding the proposed action from the appropriate advisory committee established under section 135 of the Trade Act of 1974 (19 U.S.C. 2155) and the United States International Trade Commission;

(III) within 60 days after the request, the President has submitted a report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate that

sets forth the action proposed to be proclaimed and the reasons for such actions, and the advice obtained under subclause (II);

(IV) a period of 60 calendar days, beginning with the first day on which the President has met the requirements of subclause (III), has expired; and

(V) the President has consulted with such committees regarding the proposed action during the period referred to in subclause (III).

(vi) HANDLOOMED, HANDMADE, AND FOLKLORE ARTICLES.—A handloomed, handmade, or folklore article of an ATPEA beneficiary country identified under subparagraph (C) that is certified as such by the competent authority of such beneficiary country.

(vii) SPECIAL RULES.—

(I) EXCEPTION FOR FINDINGS AND TRIMMINGS.—(aa) An article otherwise eligible for preferential treatment under this paragraph shall not be ineligible for such treatment because the article contains findings or trimmings of foreign origin, if such findings and trimmings do not exceed 25 percent of the cost of the components of the assembled product. Examples of findings and trimmings are sewing thread, hooks and eyes, snaps, buttons, 'bow buds', decorative lace, trim, elastic strips, zippers, including zipper tapes and labels, and other similar products. Elastic strips are considered findings or trimmings only if they are each less than 1 inch in width and are used in the production of brassieres.

(bb) In the case of an article described in clause (i)(I) of this subparagraph, sewing thread shall not be treated as findings or trimmings under this subclause.

(II) CERTAIN INTERLININGS.—(aa) An article otherwise eligible for preferential treatment under this paragraph shall not be ineligible for such treatment because the article contains certain interlinings of foreign origin, if the value of such interlinings (and any findings and trimmings) does not exceed 25 percent of the cost of the components of the assembled article.

(bb) Interlinings eligible for the treatment described in division (aa) include only a chest type plate, "hymo" piece, or "sleeve header", of woven or weft-inserted warp knit construction and of coarse animal hair or man-made filaments.

(cc) The treatment described in this subclause shall terminate if the President makes a determination that United States manufacturers are producing such interlinings in the United States in commercial quantities.

(III) DE MINIMIS RULE.—An article that would otherwise be ineligible for preferential treatment

under this paragraph because the article contains yarns not wholly formed in the United States or in 1 or more ATPEA beneficiary countries shall not be ineligible for such treatment if the total weight of all such yarns is not more than 7 percent of the total weight of the good. Notwithstanding the preceding sentence, an apparel article containing elastomeric yarns shall be eligible for preferential treatment under this paragraph only if such yarns are wholly formed in the United States.

(IV) SPECIAL ORIGIN RULE.—An article otherwise eligible for preferential treatment under clause (i) of this subparagraph shall not be ineligible for such treatment because the article contains nylon filament yarn (other than elastomeric yarn) that is classifiable under subheading 5402.10.30, 5402.10.60, 5402.31.30, 5402.31.60, 5402.32.30, 5402.32.60, 5402.41.10, 5402.41.90, 5402.51.00, or 5402.61.00 of the HTS duty-free from a country that is a party to an agreement with the United States establishing a free trade area, which entered into force before January 1, 1995.

(V) CLARIFICATION OF CERTAIN KNIT APPAREL ARTICLES.—Notwithstanding any other provision of law, an article otherwise eligible for preferential treatment under clause (iii)(I) of this subparagraph, shall not be ineligible for such treatment because the article, or a component thereof, contains fabric formed in the United States from yarns wholly formed in the United States.

(viii) TEXTILE LUGGAGE.—Textile luggage—

(I) assembled in an ATPEA beneficiary country from fabric wholly formed and cut in the United States, from yarns wholly formed in the United States, that is entered under subheading 9802.00.80 of the HTS; or

(II) assembled from fabric cut in an ATPEA beneficiary country from fabric wholly formed in the United States from yarns wholly formed in the United States.

(B) PREFERENTIAL TREATMENT.—Except as provided in subparagraph (E), during the transition period, the articles to which subparagraph (A) applies shall enter the United States free of duty and free of any quantitative restrictions, limitations, or consultation levels.

(C) HANDLOOMED, HANDMADE, AND FOLKLORE ARTICLES.—For purposes of subparagraph (A)(vi), the President shall consult with representatives of the ATPEA beneficiary countries concerned for the purpose of identifying particular textile and apparel goods that are mutually agreed upon as being handloomed, handmade, or folklore goods of a kind described in section 2.3(a), (b), or (c) of the Annex or Appendix 3.1.B.11 of the Annex.

(D) PENALTIES FOR TRANSSHIPMENTS.—

(i) PENALTIES FOR EXPORTERS.—If the President determines, based on sufficient evidence, that an exporter has engaged in transshipment with respect to textile or apparel articles from an ATPEA beneficiary country, then the President shall deny all benefits under this title to such exporter, and any successor of such exporter, for a period of 2 years.

(ii) PENALTIES FOR COUNTRIES.—Whenever the President finds, based on sufficient evidence, that transshipment has occurred, the President shall request that the ATPEA beneficiary country or countries through whose territory the transshipment has occurred take all necessary and appropriate actions to prevent such transshipment. If the President determines that a country is not taking such actions, the President shall reduce the quantities of textile and apparel articles that may be imported into the United States from such country by the quantity of the transshipped articles multiplied by 3, to the extent consistent with the obligations of the United States under the WTO.

(iii) TRANSSHIPMENT DESCRIBED.—Transshipment within the meaning of this subparagraph has occurred when preferential treatment under subparagraph (B) has been claimed for a textile or apparel article on the basis of material false information concerning the country of origin, manufacture, processing, or assembly of the article or any of its components. For purposes of this clause, false information is material if disclosure of the true information would mean or would have meant that the article is or was ineligible for preferential treatment under subparagraph (B).

(E) BILATERAL EMERGENCY ACTIONS.—

(i) IN GENERAL.—The President may take bilateral emergency tariff actions of a kind described in section 4 of the Annex with respect to any apparel article imported from an ATPEA beneficiary country if the application of tariff treatment under subparagraph (B) to such article results in conditions that would be cause for the taking of such actions under such section 4 with respect to a like article described in the same 8-digit subheading of the HTS that is imported from Mexico.

(ii) RULES RELATING TO BILATERAL EMERGENCY ACTION.—For purposes of applying bilateral emergency action under this subparagraph—

(I) the requirements of paragraph (5) of section 4 of the Annex (relating to providing compensation) shall not apply;

(II) the term "transition period" in section 4 of the Annex shall have the meaning given that term in paragraph (5)(D) of this subsection; and

(III) the requirements to consult specified in section 4 of the Annex shall be treated as satisfied if the President requests consultations with the ATPEA beneficiary country in question and the

country does not agree to consult within the time period specified under section 4.

(3) TRANSITION PERIOD TREATMENT OF CERTAIN OTHER ARTICLES ORIGINATING IN BENEFICIARY COUNTRIES.—

(A) EQUIVALENT TARIFF TREATMENT.—

(i) IN GENERAL.—Subject to clause (ii), the tariff treatment accorded at any time during the transition period to any article referred to in any of subparagraphs (B), (D) through (F), or (H) of paragraph (1) that is an ATPEA originating good shall be identical to the tariff treatment that is accorded at such time under Annex 302.2 of the NAFTA to an article described in the same 8-digit subheading of the HTS that is a good of Mexico and is imported into the United States.

(ii) EXCEPTION.—Clause (i) does not apply to any article accorded duty-free treatment under U.S. Note 2(b) to subchapter II of chapter 98 of the HTS.

(B) RELATIONSHIP TO SUBSECTION (C) DUTY REDUCTIONS.—If at any time during the transition period the rate of duty that would (but for action taken under subparagraph (A)(i) in regard to such period) apply with respect to any article under subsection (c) is a rate of duty that is lower than the rate of duty resulting from such action, then such lower rate of duty shall be applied for the purposes of implementing such action.

(C) SPECIAL RULE FOR SUGARS, SYRUPS, AND SUGAR CONTAINING PRODUCTS.—Duty-free treatment under this Act shall not be extended to sugars, syrups, and sugar-containing products subject to over-quota duty rates under applicable tariff-rate quotas.

(D) SPECIAL RULE FOR CERTAIN TUNA PRODUCTS.—

(i) IN GENERAL.—The President may proclaim duty-free treatment under this Act for tuna that is harvested by United States vessels or ATPEA beneficiary country vessels, and is prepared or preserved in any manner, in airtight containers in an ATPEA beneficiary country. Such duty-free treatment may be proclaimed in any calendar year for a quantity of such tuna that does not exceed 20 percent of the domestic United States tuna pack in the preceding calendar year. As used in the preceding sentence, the term "tuna pack" means tuna pack as defined by the National Marine Fisheries Service of the United States Department of Commerce in the purposes of subheading 1604.14.20 of the HTS as in effect on the date of enactment of the Andean Trade Preference Expansion Act.

(ii) UNITED STATES VESSEL.—For purposes of this subparagraph, a "United States vessel" is a vessel having a certificate of documentation with a fishery endorsement under chapter 121 of title 46, United States Code.

(iii) ATPEA VESSEL.—For purposes of this subparagraph, an "ATPEA vessel" is a vessel—

(I) which is registered or recorded in an ATPEA beneficiary country;

(II) which sails under the flag of an ATPEA beneficiary country;

(III) which is at least 75 percent owned by nationals of an ATPEA beneficiary country or by a company having its principal place of business in an ATPEA beneficiary country, of which the manager or managers, chairman of the board of directors or of the supervisory board, and the majority of the members of such boards are nationals of an ATPEA beneficiary country and of which, in the case of a company, at least 50 percent of the capital is owned by an ATPEA beneficiary country or by public bodies or nationals of an ATPEA beneficiary country;

(IV) of which the master and officers are nationals of an ATPEA beneficiary country; and

(V) of which at least 75 percent of the crew are nationals of an ATPEA beneficiary country.

(4) CUSTOMS PROCEDURES.—

(A) IN GENERAL.—

(i) REGULATIONS.—Any importer that claims preferential treatment under paragraph (2) or (3) shall comply with customs procedures similar in all material respects to the requirements of Article 502(1) of the NAFTA as implemented pursuant to United States law, in accordance with regulations promulgated by the Secretary of the Treasury.

(ii) DETERMINATION.—

(I) IN GENERAL.—In order to qualify for the preferential treatment under paragraph (2) or (3) and for a Certificate of Origin to be valid with respect to any article for which such treatment is claimed, there shall be in effect a determination by the President that each country described in subclause (II)—

(aa) has implemented and follows; or

(bb) is making substantial progress toward implementing and following, procedures and requirements similar in all material respects to the relevant procedures and requirements under chapter 5 of the NAFTA.

(II) COUNTRY DESCRIBED.—A country is described in this subclause if it is an ATPEA beneficiary country—

(aa) from which the article is exported; or

(bb) in which materials used in the production of the article originate or in which the article or such materials undergo production that contributes to a claim that the article is eligible for preferential treatment under paragraph (2) or (3).

(B) CERTIFICATE OF ORIGIN.—The Certificate of Origin that otherwise would be required pursuant to the provisions

of subparagraph (A) shall not be required in the case of an article imported under paragraph (2) or (3) if such Certificate of Origin would not be required under Article 503 of the NAFTA (as implemented pursuant to United States law), if the article were imported from Mexico.

(C) REPORT BY USTR ON COOPERATION OF OTHER COUNTRIES CONCERNING CIRCUMVENTION.—The United States Commissioner of Customs shall conduct a study analyzing the extent to which each ATPEA beneficiary country—

(i) has cooperated fully with the United States, consistent with its domestic laws and procedures, in instances of circumvention or alleged circumvention of existing quotas on imports of textile and apparel goods, to establish necessary relevant facts in the places of import, export, and, where applicable, transshipment, including investigation of circumvention practices, exchanges of documents, correspondence, reports, and other relevant information, to the extent such information is available;

(ii) has taken appropriate measures, consistent with its domestic laws and procedures, against exporters and importers involved in instances of false declaration concerning fiber content, quantities, description, classification, or origin of textile and apparel goods; and

(iii) has penalized the individuals and entities involved in any such circumvention, consistent with its domestic laws and procedures, and has worked closely to seek the cooperation of any third country to prevent such circumvention from taking place in that third country.

The Trade Representative shall submit to Congress, not later than October 1, 2002, a report on the study conducted under this subparagraph.

(5) DEFINITIONS AND SPECIAL RULES.—For purposes of this subsection—

(A) ANNEX.—The term "the Annex" means Annex 300–B of the NAFTA.

(B) ATPEA BENEFICIARY COUNTRY.—The term "ATPEA beneficiary country" means any "beneficiary country", as defined in section 203(a)(1) of this title, which the President designates as an ATPEA beneficiary country, taking into account the criteria contained in subsections (c) and (d) of section 203 and other appropriate criteria, including the following:

(i) Whether the beneficiary country has demonstrated a commitment to—

(I) undertake its obligations under the WTO, including those agreements listed in section 101(d) of the Uruguay Round Agreements Act, on or ahead of schedule; and

(II) participate in negotiations toward the completion of the FTAA or another free trade agreement.

(ii) The extent to which the country provides protection of intellectual property rights consistent with or

greater than the protection afforded under the Agreement on Trade-Related Aspects of Intellectual Property Rights described in section 101(d)(15) of the Uruguay Round Agreements Act.

(iii) The extent to which the country provides internationally recognized worker rights, including—

(I) the right of association;

(II) the right to organize and bargain collectively;

(III) a prohibition on the use of any form of forced or compulsory labor;

(IV) a minimum age for the employment of children; and

(V) acceptable conditions of work with respect to minimum wages, hours of work, and occupational safety and health;

(iv) Whether the country has implemented its commitments to eliminate the worst forms of child labor, as defined in section 507(6) of the Trade Act of 1974.

(v) The extent to which the country has met the counter-narcotics certification criteria set forth in section 490 of the Foreign Assistance Act of 1961 (22 U.S.C. 2291j) for eligibility for United States assistance.

(vi) The extent to which the country has taken steps to become a party to and implements the Inter-American Convention Against Corruption.

(vii) The extent to which the country—

(I) applies transparent, nondiscriminatory, and competitive procedures in government procurement equivalent to those contained in the Agreement on Government Procurement described in section 101(d)(17) of the Uruguay Round Agreements Act; and

(II) contributes to efforts in international fora to develop and implement international rules in transparency in government procurement.

(C) ATPEA ORIGINATING GOOD.—

(i) IN GENERAL.—The term "ATPEA originating good" means a good that meets the rules of origin for a good set forth in chapter 4 of the NAFTA as implemented pursuant to United States law.

(ii) APPLICATION OF CHAPTER 4.—In applying chapter 4 of the NAFTA with respect to an ATPEA beneficiary country for purposes of this subsection—

(I) no country other than the United States and an ATPEA beneficiary country may be treated as being a party to the NAFTA;

(II) any reference to trade between the United States and Mexico shall be deemed to refer to trade between the United States and an ATPEA beneficiary country;

(III) any reference to a party shall be deemed to refer to an ATPEA beneficiary country or the United States; and

(IV) any reference to parties shall be deemed to refer to any combination of ATPEA beneficiary countries or to the United States and one or more ATPEA beneficiary countries (or any combination thereof).

(D) TRANSITION PERIOD.—The term "transition period" means, with respect to an ATPEA beneficiary country, the period that begins on the date of enactment, and ends on the earlier of—

(i) February 28, 2006; or

(ii) the date on which the FTAA or another free trade agreement that makes substantial progress in achieving the negotiating objectives set forth in section 108(b)(5) of Public Law 103–182 (19 U.S.C. 3317(b)(5)) enters into force with respect to the United States and the ATPEA beneficiary country.

(E) ATPEA.—The term "ATPEA" means the Andean Trade Preference Expansion Act.

(F) FTAA.—The term "FTAA" means the Free Trade Area of the Americas.

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SEC. 208. EFFECTIVE DATE AND TERMINATION OF DUTY-FREE TREATMENT.

(a) EFFECTIVE DATE.—This title shall take effect on the date of enactment.

[(b) TERMINATION OF DUTY.—No duty-free treatment extended to beneficiary countries under this title shall remain in effect 10 years after the date of the enactment of this title.**]**

(b) TERMINATION OF PREFERENTIAL TREATMENT.—No preferential duty treatment extended to beneficiary countries under this Act shall remain in effect after February 28, 2006.

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HARMONIZED TARIFF SCHEDULE OF THE UNITED STATES

CHAPTER 99—TEMPORARY LEGISLATION; TEMPORARY MODIFICATIONS ESTABLISHED PURSUANT TO TRADE LEGISLATION; ADDITIONAL IMPORT RESTRICTIONS ESTABLISHED PURSUANT TO SECTION 22 OF THE AGRICULTURAL ADJUSTMENT ACT, AS AMENDED

* * * * * * *

9902.51.13	1	Yarn, of combed wool, not put up for retail sale, containing 85 percent or more by weight of wool, formed with wool fibers having *average* diameters of 18.5 micron or less (provided for in subheading 5107.10.30) ..	1	Free	No change	No change	On or before 12/31/2003

* * * * * * *

9902.84.02	1	Watertube boilers with a steam production exceeding 45 t per hour, for use in nuclear facilities (provided for in subheading 8402.11.00)	1	**[**4.9%**]** *Free*	No change	No change	On or before **[**12/31/2003**]** *12/31/2006*

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TRADE AND DEVELOPMENT ACT OF 2000

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TITLE V—IMPORTS OF CERTAIN WOOL ARTICLES

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SEC. 505. REFUND OF DUTIES PAID ON IMPORTS OF CERTAIN WOOL ARTICLES.

(a) WORSTED WOOL FABRICS.—**[**In each of the calendar years**]** *For each of the calendar years* 2000, 2001, and 2002, a manufacturer of men's or boys' suits, suit-type jackets, or trousers (not a broker or other individual acting on behalf of the manufacturer to

process the import) of imported worsted wool fabrics of the kind described in heading 9902.51.11 or 9902.51.12 of the Harmonized Tariff Schedule of the United States shall be eligible [for a refund of duties paid on entries of such fabrics in each such calendar year in an amount equal to one-third of the amount of duties paid by the importer on such worsted wool fabrics (without regard to micron level) imported in calendar year 1999.] *for a payment equal to an amount determined pursuant to subsection (d)(1).*

[(b) WOOL YARN.—In each of the calendar years 2000, 2001, and 2002, a manufacturer of worsted wool fabrics who imports wool yarn of the kind described in heading 9902.51.13 of the Harmonized Tariff Schedule of the United States shall be eligible for a refund of duties paid on entries of such wool yarn in each such calendar year in an amount equal to one-third of the amount of duties paid by the manufacturer on such wool yarn (without regard to micron level) imported in calendar year 1999.]

(b) WOOL YARN.—

(1) IMPORTING MANUFACTURERS.—For each of the calendar years 2000, 2001, and 2002, a manufacturer of worsted wool fabrics who imports wool yarn of the kind described in heading 9902.51.13 of the Harmonized Tariff Schedule of the United States shall be eligible for a payment equal to an amount determined pursuant to subsection (d)(2).

(2) NONIMPORTING MANUFACTURERS.—For each of the calendar years 2001 and 2002, any other manufacturer of worsted wool fabrics of imported wool yarn of the kind described in heading 9902.51.13 of the Harmonized Tariff Schedule of the United States shall be eligible for a payment equal to an amount determined pursuant to subsection (d)(2).

[(c) WOOL FIBER AND WOOL TOP.—In each of the calendar years 2000, 1001, and 2002, a manufacturer of wool yarn or wool fabric who imports wool fiber or wool top of the kind described in heading 9902.51.14 of the Harmonized Tariff Schedule of the United States shall be eligible for a refund of duties paid on entries of such wool fiber in each such calendar year in an amount equal to one-third of the amount of duties paid by the manufacturer on such wool fiber (without regard to micron level) imported in calendar year 1999.]

(c) WOOL FIBER AND WOOL TOP.—

(1) IMPORTING MANUFACTURERS.—For each of the calendar years 2000, 2001, and 2002, a manufacturer of wool yarn or wool fabric who imports wool fiber or wool top of the kind described in heading 9902.51.14 of the Harmonized Tariff Schedule of the United States shall be eligible for a payment equal to an amount determined pursuant to subsection (d)(3).

(2) NONIMPORTING MANUFACTURERS.—For each of the calendar years 2001 and 2002, any other manufacturer of wool yarn or wool fabric of imported wool fiber or wool top of the kind described in heading 9902.51.14 of the Harmonized Tariff Schedule of the United States shall be eligible for a payment equal to an amount determined pursuant to subsection (d)(3).

[(d) PROPER IDENTIFICATION AND APPROPRIATE CLAIM.—Any person applying for a rebate under this section shall properly identify and make appropriate claim to the United States Customs Service for each entry involved.]

(d) AMOUNT OF ANNUAL PAYMENTS TO MANUFACTURERS.—

(1) MANUFACTURERS OF MEN'S SUITS, ETC. OF IMPORTED WORSTED WOOL FABRICS.—

(A) ELIGIBLE TO RECEIVE MORE THAN $5,000.—Each annual payment to manufacturers described in subsection (a) who, according to the records of the Customs Service as of September 11, 2001, are eligible to receive more than $5,000 for each of the calendar years 2000, 2001, and 2002, shall be in an amount equal to one-third of the amount determined by multiplying $30,124,000 by a fraction—

(i) the numerator of which is the amount attributable to the duties paid on eligible wool products imported in calendar year 1999 by the manufacturer making the claim, and

(ii) the denominator of which is the total amount attributable to the duties paid on eligible wool products imported in calendar year 1999 by all the manufacturers described in subsection (a) who, according to the records of the Customs Service as of September 11, 2001, are eligible to receive more than $5,000 for each such calendar year under this section as it was in effect on that date.

(B) ELIGIBLE WOOL PRODUCTS.—For purposes of subparagraph (A), the term "eligible wool products" refers to imported worsted wool fabrics described in subsection (a).

(C) OTHERS.—All manufacturers described in subsection (a), other than the manufacturer's to which subparagraph (A) applies, shall each receive an annual payment in an amount equal to one-third of the amount determined by dividing $1,665,000 by the number of all such other manufacturers.

(2) MANUFACTURERS OF WORSTED WOOL FABRICS OF IMPORTED WOOL YARN.—

(A) IMPORTING MANUFACTURERS.—Each annual payment to an importing manufacturer described in subsection (b)(1) shall be in an amount equal to one-third of the amount determined by multiplying $2,202,000 by a fraction—

(i) the numerator of which is the amount attributable to the duties paid on eligible wool products imported in calendar year 1999 by the importing manufacturer making the claim, and

(ii) the denominator of which is the total amount attributable to the duties paid on eligible wool products imported in calendar year 1999 by all the importing manufacturers described in subsection (b)(1).

(B) ELIGIBLE WOOL PRODUCTS.—For purposes of subparagraph (A), the term "eligible wool products" refers to imported wool yarn described in subsection (b)(1).

(C) NONIMPORTING MANUFACTURERS.—Each annual payment to a nonimporting manufacturer described in subsection (b)(2) shall be in an amount equal to one-half of the amount determined by multiplying $141,000 by a fraction—

(i) the numerator of which is the amount attributable to the purchases of imported eligible wool products in

calendar year 1999 by the nonimporting manufacturer making the claim, and

(ii) the denominator of which is the total amount attributable to the purchases of imported eligible wool products in calendar year 1999 by all the nonimporting manufacturers described in subsection (b)(2).

(3) MANUFACTURERS OF WOOL YARN OR WOOL FABRIC OF IMPORTED WOOL FIBER OR WOOL TOP.—

(A) IMPORTING MANUFACTURERS.—Each annual payment to an importing manufacturer described in subsection (c)(1) shall be in an amount equal to one-third of the amount determined by multiplying $1,522,000 by a fraction—

(i) the numerator of which is the amount attributable to the duties paid on eligible wool products imported in calendar year 1999 by the importing manufacturer making the claim, and

(ii) the denominator of which is the total amount attributable to the duties paid on eligible wool products imported in calendar year 1999 by all the importing manufacturers described in subsection (c)(1).

(B) ELIGIBLE WOOL PRODUCTS.—For purposes of subparagraph (A), the term "eligible wool products" refers to imported wool fiber or wool top described in subsection (c)(1).

(C) NONIMPORTING MANUFACTURERS.—Each annual payment to a nonimporting manufacturer described in subsection (c)(2) shall be in an amount equal to one-half of the amount determined by multiplying $597,000 by a fraction—

(i) the numerator of which is the amount attributable to the purchases of imported eligible wool products in calendar year 1999 by the nonimporting manufacturer making the claim, and

(ii) the denominator of which is the amount attributable to the purchases of imported eligible wool products in calendar year 1999 by all the nonimporting manufacturers described in subsection (c)(2).

(4) LETTERS OF INTENT.—Except for the nonimporting manufacturers described in subsections (b)(2) and (c)(2) who may make claims under this section by virtue of the enactment of the Wool Manufacturer Payment Clarification and Technical Corrections Act, only manufacturers who, according to the records of the Customs Service, filed with the Customs Service before September 11, 2001, letters of intent to establish eligibility to be claimants are eligible to make a claim for a payment under this section.

(5) AMOUNT ATTRIBUTABLE TO PURCHASES BY NONIMPORTING MANUFACTURERS.—

(A) AMOUNT ATTRIBUTABLE.—For purposes of paragraphs (2)(C) and (3)(C), the amount attributable to the purchases of imported eligible wool products in calendar year 1999 by a nonimporting manufacturer shall be the amount the nonimporting manufacturer paid for eligible wool products in calendar year 1999, as evidenced by invoices. The nonimporting manufacturer shall make such calculation and submit the resulting amount to the Customs Service, within

45 days after the date of enactment of the Wool Manufacturer Payment Clarification and Technical Corrections Act, in a signed affidavit that attests that the information contained therein is true and accurate to the best of the affiant's belief and knowledge. The nonimporting manufacturer shall retain the records upon which the calculation is based for a period of five years beginning on the date the affidavit is submitted to the Customs Service.

(B) ELIGIBLE WOOL PRODUCT.—For purposes of subparagraph (A)—

(i) the eligible wool product for nonimporting manufacturers of worsted wool fabrics is wool yarn of the kind described in heading 9902.51.13 of the Harmonized Tariff Schedule of the United States purchased in calendar year 1999; and

(ii) the eligible wool products for nonimporting manufacturers of wool yarn or wool fabric are wool fiber or wool top of the kind described in heading 9902.51.14 of such Schedule purchased in calendar year 1999.

(6) AMOUNT ATTRIBUTABLE TO DUTIES PAID.—For purposes of paragraphs (1), (2)(A), and (3)(A), the amount attributable to the duties paid by a manufacturer shall be the amount shown on the records of the Customs Service as of September 11, 2001, under this section as then in effect.

(7) SCHEDULE OF PAYMENTS; REALLOCATIONS.—

(A) SCHEDULE.—Of the payments described in paragraphs (1), (2)(A), and (3)(A), the Customs Service shall make the first installment on or before December 31, 2001, the second installment on or before April 15, 2002, and the third installment on or before April 15, 2003. Of the payments described in paragraphs (2)(C) and (3)(C), the Customs Service shall make the first installment on or before April 15, 2002, and the second installment on or before April 15, 2003.

(B) REALLOCATIONS.—In the event that a manufacturer that would have received payment under subparagraph (A) or (C) of paragraph (1), (2), or (3) ceases to be qualified for such payment as such a manufacturer, the amounts otherwise payable to the remaining manufacturers under such subparagraph shall be increased on a pro rata basis by the amount of the payment such manufacturer would have received.

(8) REFERENCE.—For purposes of paragraphs (1)(A) and (6), the "records of the Customs Service as of September 11, 2001" are the records of the Wool Duty Unit of the Customs Service on September 11, 2001, as adjusted by the Customs Service to the extent necessary to carry out this section. The amounts so adjusted are not subject to administrative or judicial review.

(e) AFFIDAVITS BY MANUFACTURERS.—

(1) AFFIDAVIT REQUIRED.—A manufacturer may not receive a payment under this section for calendar year 2000, 2001, or 2002, as the case may be, unless that manufacturer has submitted to the Customs Service for that calendar year a signed affidavit that attests that, during that calendar year, the affiant

was a manufacturer in the United States described in subsection (a), (b), or (c).

(2) TIMING.—An affidavit under paragraph (1) shall be valid—

(A) in the case of a manufacturer described in paragraph (1), (2)(A), or (3)(A) of subsection (d) filing a claim for a payment for calendar year 2000, only if the affidavit is postmarked no later than 15 days after the date of enactment of the Wool Manufacturer Payment Clarification and Technical Corrections Act; and

(B) in the case of a claim for a payment for calendar year 2001 or 2002, only if the affidavit is postmarked no later than March 1, 2002, or March 1, 2003, respectively.

(f) OFFSETS.—Notwithstanding any other provision of this section, any amount otherwise payable under subsection (d) to a manufacturer in calendar year 2001 and, where applicable, in calendar years 2002 and 2003, shall be reduced by the amount of any payment received by that manufacturer under this section before the enactment of the Wool Manufacturer Payment Clarification and Technical Corrections Act.

(g) DEFINITION.—For purposes of this section, the manufacturer is the party that owns—

(1) imported worsted wool fabric, of the kind described in heading 9902.51.11 or 9902.51.12 of the Harmonized Tariff Schedule of the United States, at the time the fabric is cut and sewn in the United States into men's or boys' suits, suit-type jackets, or trousers;

(2) imported wool yarn, of the kind described in heading 9902.51.13 of such Schedule, at the time the yarn is processed in the United States into worsted wool fabric; or

(3) imported wool fiber or wool top, of the kind described in heading 9902.51.14 of such Schedule, at the time the wool fiber or wool top is processed in the United States into wool yarn.

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