DIVISION A – TRADE ADJUSTMENT ASSISTANCE

SEC. 101 – SHORT TITLE

Present Law

No provision.

House Amendment

Section 101 of H.R. 3009 provides that Division A of the Act may be cited as the "Trade Adjustment Assistance Reform Act of 2002."

Senate Amendment

Section 101 of H.R. 3009 provides that Division A of the Act may be cited as the "Trade Adjustment Assistance Reform Act of 2002."

Conference Agreement

The conference agreement follows the House amendment and the Senate amendment.

TITLE I – TRADE ADJUSTMENT ASSISTANCE PROGRAM

SUBTITLE A – TRADE ADJUSTMENT ASSISTANCE FOR WORKERS

SEC. 111 – REAUTHORIZATION OF THE TRADE ADJUSTMENT ASSISTANCE PROGRAM

Present Law

Current section 245 authorizes to be appropriated to the Department of Labor such sums as may be necessary to carry out the purposes of the TAA and NAFTA-TAA for workers programs for the period October 1, 1998 through September 30, 2001. Current section 285 provides for termination of all Trade Adjustment Assistance programs on September 30, 2001, but provides that workers, and firms eligible to receive benefits on or before that date shall continue to be eligible to receive such benefits as though the programs were in effect.

House Amendment

The House Amendment reauthorized the Trade Adjustment Assistance programs through September 30, 2004.

Senate Amendment

Section 111 of the Senate bill creates a new section 248 of the Trade Act of 1974 which authorizes to be appropriated to the Department of Labor such sums as may be necessary to carry out the purposes of the Trade Adjustment Assistance for workers program for the period October 1, 2001, through September 30, 2007. Section 701 of the Senate bill amends current section 285 to provide for termination of all Trade Adjustment Assistance programs on September 30, 2007, but provides that workers, and firms, communities, farmers, and fishermen eligible to receive benefits on or before that date shall continue to be eligible to receive such benefits as though the programs were in effect.

Conference Agreement

Conferees agree to extend the authorization of the Trade Adjustment Assistance programs through September 30, 2007, and to consolidate the NAFTA-TAA program with the regular TAA program.

SEC. 112 – FILING OF PETITIONS AND PROVISION OF RAPID RESPONSE ASSISTANCE; EXPEDITED REVIEW OF PETITIONS BY SECRETARY OF LABOR

Present Law

Current sections 221 and 250 set forth requirements concerning who may file a petition for certification of eligibility to apply for TAA and NAFTA-TAA assistance, respectively. Under both programs, petitions may be filed by a group of workers or by their certified or recognized union or other duly authorized representative. TAA petitions are filed with the Secretary of Labor. NAFTA-TAA petitions are filed with the Governor of the relevant State and forwarded by him to the Secretary of Labor. Under section 223, the Secretary of Labor must rule on eligibility within 60 days after a TAA petition is filed. Under section 250, the Governor must make a preliminary eligibility determination within 10 days after a NAFTA-TAA petition is filed, and the Secretary of Labor must make a final eligibility determination within the next 30 days. Section 221 also sets forth notice and hearing obligations of the Secretary of Labor upon receipt of a TAA petition. Section 250 provides that, in the event of preliminary certification of eligibility to apply

for NAFTA-TAA benefits, the Governor immediately provide the affected workers with certain rapid response services.

House Amendment

The House Amendment provided for a shortened period for the Secretary of Labor to consider petitions from 60 days to 40 days and for other rapid response assistance to workers.

Senate Amendment

Section 111 of the Senate bill creates a new section 231 of the Trade Act of 1974, which consolidates the TAA and NAFTA-TAA programs by establishing a single program with a single set of group eligibility criteria and a single set of procedures and standards for filing and reviewing petitions, certifying eligibility, and terminating certifications of eligibility.

Section 231 expands the list of entities that may file a petition for group certification of eligibility to include employers, one-stop operators or one-stop partners, State employment agencies, and any entity to which notice of a plant closing or mass layoff must be given under section 3 of the Worker Adjustment and Retraining Notification Act. Section 231 also provides that the President, or the Committee on Finance of the Senate or the Committee on Ways and Means of the House of Representatives (by resolution), may direct the Secretary of Labor to initiate a certification process under this chapter to determine the eligibility for Trade Adjustment Assistance of a group of workers.

Section 231 creates a single process for filing and reviewing petitions for Trade Adjustment Assistance for workers, under which all petitions are filed with both the Secretary of Labor and the Governor of the State. Upon filing of the petition, the Governor is required to fulfill the requirements of any agreement entered into with the Department of Labor under section 222, to provide certain rapid response services, and to notify workers on whose behalf a petition has been filed of their potential eligibility for certain existing federal health care, child care, transportation, and other assistance programs. Upon filing the petition, the Secretary of Labor must make his certification determination within 40 days and provide the notice required.

Conference Agreement

The Senate recedes to the House with a change providing for simultaneous filing of petitions with the Secretary of Labor and State Governor.

SEC. 113 – GROUP ELIGIBILITY REQUIREMENTS

Present Law

Current law sections 222 and 250 of Title II of the Trade Act of 1974 set forth group eligibility criteria. Under TAA, the Secretary must certify a group of workers as eligible to apply for Trade Adjustment Assistance if he determines (1) that a significant number or proportion of the workers in such workers' firm have become or are threatened to become totally or partially separated; (2) sales or production of such firm have decreased absolutely; and (3) imports of articles like or directly competitive with articles produced by such workers' firm contributed importantly to the total or partial separation or threat thereof, and to the decline in sales or production. Under NAFTA-TAA, group eligibility may be based on the same criteria set forth in section 222, but section 250 also provides for NAFTA-TAA eligibility where there has been a shift in production by the workers' firm to Mexico or Canada of articles like or directly competitive with articles which are produced by the firm. Section 222 also includes special eligibility provisions with respect to oil and natural gas producers.

House Amendment

The House Amendment at Section 113 expanded the Trade Adjustment Assistance programs to secondary workers that are suppliers to firms that were certified and which satisfied certain conditions.

Senate Amendment

Section 111 of the Senate Amendment creates a new section 231 under which the eligibility criteria are revised. First, workers are eligible for TAA if the value or volume of imports of articles like or directly competitive with articles produced by that firm have increased and the increase in the value or volume of imports contributed importantly to the workers' separation or threat of separation. Second, eligibility is extended to workers who are separated due to shifts in production to any country, rather than only when the shift in production is to Mexico or Canada. Third, eligibility is extended to adversely affected secondary workers. Eligible secondary workers include workers in supplier firms and, with respect to trade with NAFTA countries, downstream firms. Fourth, a new special eligibility provision is added with respect to taconite pellets.

Conference Agreement

The Conferees agree to extend coverage of Trade Adjustment Assistance to new categories of workers: 1) secondary workers that supply directly to another firm component parts for articles that were the basis for a certification of eligibility, 2)

downstream workers that were affected by trade with Mexico or Canada, and 3) certain workers that have been laid off because their firm has shifted its production to another country that has a free trade agreement with the United States, that has a unilaterally preferential trading arrangement with the United States, or when there has been or is likely to be an increase in imports of the relevant articles.

SEC. 114 – QUALIFYING REQUIREMENTS FOR TRADE READJUSTMENT ALLOWANCES

Present Law

Current section 231 establishes qualifying requirements that must be met in order for an individual worker within a certified group to receive Trade Adjustment Assistance. In order to receive trade readjustment allowances, a certified worker must have been separated on or after the eligibility date established in the certification but within 2 years of the date of the certification determination; been employed for at least 26 of the 52 weeks preceding the separation at wages of $30 or more a week; be eligible for and have exhausted unemployment insurance benefits; not be disqualified for extended compensation payable under the Federal-State Extended Unemployment Compensation Act of 1970 by reason of the work acceptance and job search requirements in section 202(a)(3) of that Act; and be enrolled in a training program approved by the Secretary of Labor or have received a training waiver.

House Amendment

The House Amendment at Section 114 provided for requirements and deadlines for workers to enroll in training.

Senate Amendment

Section 111 of the Senate Amendment adds a new section 235 which maintains the individual eligibility requirements in current law, with the exception of revisions to provisions governing bases for granting training waivers.

Conference Agreement

The Senate recedes to the House, with a change to adopt a training enrollment deadline of 16 weeks after separation.

SEC. 115 – WAIVERS OF TRAINING REQUIREMENTS

Present Law

Section 231 sets forth permissible bases for granting a training waiver. Pursuant to section 250(d), training waivers are not available in the NAFTA-TAA program.

House Amendment

The House Amendment provides that all workers who are eligible to apply for Trade Adjustment Assistance may be considered for training waivers and codifies several bases on which the Secretary may grant a waiver.

Senate Amendment

Section 111 of the Senate Amendment adds a new section 235 which provides that all workers who are eligible to apply for Trade Adjustment Assistance may be considered for training waivers and codifies several bases on which the Secretary may grant a waiver.

Conference Agreement

The House receded to the Senate with a change to delete the Senate provision giving the Secretary discretion to grant waivers for "other" reasons.

SEC. 116 – AMENDMENTS TO LIMITATIONS ON TRADE READJUSTMENT ALLOWANCES

Present Law

Current section 233 provides that each certified worker may receive trade readjustment allowances for a maximum of 52 weeks. Current law also provides that, in most circumstances, a worker is treated as participating in training during any week which is part of a break in training that does not exceed 14 days.

House Amendment

Section 116 of the House Amendment would add 26 weeks of trade adjustment allowances for those workers who were in training and required the extension of benefits for the purpose of completing training.

Senate Amendment

Section 111 of the Senate Amendment adds a new section 237 which increases the maximum time period during which a worker may receive trade adjustment allowances to 78 weeks, extends the permissible duration of a break in training to 30 days, and provides for an additional 26 weeks of income support for workers requiring remedial education. Section 237 also clarifies that the requirement that a worker exhaust unemployment insurance benefits prior to receiving trade adjustment allowances does not apply to any extension of unemployment insurance by a State using its own funds that extends beyond either the 26 week period mandated by Federal law or any additional period provided for under the Federal-State Extended Unemployment Compensation Act of 1970 (26 U.S.C. 3304 note).

Conference Agreement

The Senate recedes to the House.

SEC. 117 – ANNUAL TOTAL AMOUNT OF PAYMENTS FOR TRAINING

Present Law

Current section 236 establishes the terms and conditions under which training is available to eligible workers; permits the Secretary of Labor to approve certain specified types of training programs and to pay the costs of approved training and certain supplemental costs, including subsistence and transportation costs, for eligible workers; and caps total annual funding for training under the TAA for workers program at $80 million. Section 250 separately caps training expenditures under the NAFTA-TAA program at $30 million annually.

House Amendment

The House provided $30 million additional funds for the Trade Adjustment Assistance program. Combined with NAFTA Trade Adjustment Assistance, the total training funds available were $140 million.

Senate Amendment

Section 111 of the Senate Amendment adds a new section 240 which sets the total funds available for training expenditures under the unified TAA for workers program to $300 million annually.

Conference Agreement

Conferees agreed to a combined training cap of $220 million for Trade Adjustment Assistance training.

SEC. 118 – PROVISION OF EMPLOYER-BASED TRAINING

Present Law

No applicable section.

House Amendment

The House Amendment included provisions related to employer based training including on-the-job training and customized training with partial reimbursements provided to the employer.

Senate Amendment

Section 111 of the Senate Amendment adds a new section 240 which revises the list of training programs which the Secretary may approve to include customized training. It also adds a new section 237, which clarifies that the prohibition on payment of trade adjustment allowances to a worker receiving on-the-job training does not apply to a worker enrolled in a non-paid customized training program.

Conference Agreement

The Senate recedes to the House.

SEC. 119 – COORDINATION WITH TITLE I OF THE WORKFORCE INVESTMENT ACT OF 1998

Present Law

No provision.

House Amendment

The House Amendment provided multiple provisions related to coordinating efforts under the Trade Adjustment Assistance programs to provide information and benefits to workers under the Workforce Investment Act.

Senate Amendment

No provision.

Conference Agreement

Conferees agreed to drop House language with the exception of a provision related to coordinating the delivery of Trade Adjustment Assistance benefits and information at one-stop delivery systems under the Workforce Investment Act.

SEC. 120 – EXPENDITURE PERIOD

Present Law

No provision.

House Amendment

The House amendment provided that certain funds obligated for any fiscal year to carry out activities may be expended by each State in the succeeding two fiscal years.

Senate Amendment

No provision.

Conference Agreement

The Senate recedes to the House.

SEC. 121 – JOB SEARCH ALLOWANCES

Present Law

Under current section 237, when the Secretary of Labor determines that local employment is not available, an adversely affected worker certified eligible for TAA benefits may receive reimbursement of 90 percent of the cost of necessary job search expenses up to $800.

House Amendment

No provision.

Senate Amendment

Section 111 of the Senate Amendment adds a new section 241 which raises the maximum reimbursement for job search expenses to $1250 per worker.

Conference Agreement

The House recedes to the Senate.

SEC. 122 – RELOCATION ALLOWANCES

Present Law

Under current section 238, when the Secretary of Labor determines that local employment is not available, an adversely affected worker certified eligible for TAA benefits may receive a relocation allowance consisting of (1) 90 percent of the reasonable and necessary expenses incurred in transporting a worker and his family, if any, and household effects, and (2) a lump sum equivalent to three times the worker's average weekly wage, up to a maximum payment of $800.

House Amendment

No provision.

Senate Amendment

Section 111 of the Senate Amendment adds a new section 242 which raises the maximum lump sum portion of the relocation allowance to $1,250.

Conference Agreement

The House recedes to the Senate.

SEC. 123 – REPEAL OF NAFTA TRANSITIONAL ADJUSTMENT ASSISTANCE PROGRAM

Present Law

Current law authorizes a Trade Adjustment Assistance Program for workers affected by NAFTA trade.

House Amendment

No provision.

Senate Amendment

Section 111 of the Senate Amendment adds a new section 231 which combines the TAA and NAFTA-TAA programs, establishing a single program with a single set of group eligibility criteria and a single set of procedures and standards for filing and reviewing petitions, certifying eligibility, and terminating certification of eligibility.

Conference Agreement

The House recedes to the Senate to the extent of repealing the NAFTA Trade Adjustment Assistance program and creating a single, unified TAA program for workers.

SEC. 124 – DEMONSTRATION PROJECT FOR ALTERNATIVE TRADE ADJUSTMENT ASSISTANCE FOR OLDER WORKERS

Present Law

No provision.

House Amendment

No provision.

Senate Amendment

Section 111 of the Senate Amendment adds a new section 243 which directs the Secretary of Labor, within one year of enactment, to establish a two-year wage insurance pilot program under which a State uses the funds provided to the State for Trade Adjustment allowances to pay to an adversely affected worker certified under section

231, for a period not to exceed two years, a wage subsidy of up to 50 percent of the difference between the wages received by the adversely affected worker from reemployment and the wages received by the adversely affected worker at the time of separation. An adversely affected worker may be eligible to receive a wage subsidy if the worker obtains reemployment not more than 26 weeks after the date of separation from the adversely affected employment, is at least 50 years of age, earns not more than $50,000 a year in wages from reemployment, is employed at least 30 hours a week in the reemployment, and does not return to the employment from which the worker was separated. The wage subsidy available to workers in the wage insurance program is 50 percent of the difference between the amount of the wages received by the worker from reemployment and the amount of the wages received by the worker at the time of separation, if the wages the worker receives from reemployment are less than $40,000 a year. The wage subsidy is 25 percent if the wages received by the worker from reemployment are greater than $40,000 a year but not more than $50,000 a year. Total payments made to an adversely affected worker under the wage insurance program may not exceed $5,000 in each year of the 2-year period. A worker participating in the wage insurance program is not eligible to receive any other Trade Adjustment Assistance benefits, unless the Secretary of Labor determines that the worker has shown circumstances that warrant eligibility for training benefits under section 240.

Conference Agreement

The Conferees agree to create a new alternative Trade Adjustment Assistance program for older workers.

SEC. 125 – DECLARATIONS OF POLICY; SENSE OF CONGRESS

Present Law

No provision.

House Amendment

The House passed amendment included a declaration of policy and Sense of the Congress related to the responsibility of the Secretary of Labor to provide information to workers related to benefits available to them under the TAA and other federal programs.

Senate Amendment

Although certain supportive services are available to dislocated workers under WIA, current law makes no express linkage between these services and Trade Adjustment Assistance and TAA certified workers may not be able to access them. Section 111 of the

Senate Amendment adds a new section 243 which provides that States may apply for and the Secretary of Labor may make available to adversely affected workers certified under the Trade Adjustment Assistance program supportive services available under WIA, including transportation, child care, and dependent care, that are necessary to enable a worker to participate in or complete training. Section 243 requires the Comptroller General to conduct a study of all assistance provided by the Federal Government for workers facing job loss and economic distress; to submit a report to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives on the study within one year of enactment of this Act; and to distribute the report to all WIA one-stop partners. Section 243 further provides that each State may conduct a study of its assistance programs for workers facing job loss and economic distress. Each State is eligible for a grant from the Secretary of Labor, not to exceed $50,000, to enable it to conduct the study. In the event that a grant is awarded, the State must, within one year of receiving the grant, provide its report to the Committee on Finance and the Committee on Ways and Means and distribute its report to one-stop partners in the State.

Conference Agreement

The Senate recedes to the House.

SUBTITLE B – TRADE ADJUSTMENT ASSISTANCE FOR FIRMS

SEC. 131 – REAUTHORIZATION OF TRADE ADJUSTMENT FOR FIRMS PROGRAM

Present Law

The Trade Adjustment Assistance for Firms program provides technical assistance to qualifying firms. Current Title II, Chapter 3, section 251 of the Trade Act of 1974 provides that a firm is eligible to receive Trade Adjustment Assistance under this program if (1) a significant number or proportion of its workers have become or are threatened to become totally or partially separated; (2) sales or production, or both, have decreased absolutely; and (3) increases of imports of articles like or directly competitive with articles which are produced by such firms contributed importantly to the total or partial separations or threat thereof.

The authorization for the Trade Adjustment Assistance for Firms program expired on September 30, 2001. The TAA for Firms program is currently subject to annual appropriations and is funded as part of the budget of the Economic Development Administration in the Department of Commerce.

House Amendment

The House passed amendment included a 2 year reauthorization for Trade Adjustment Assistance for Firms.

Senate Amendment

Section 201 of the Senate Amendment reauthorizes the Trade Adjustment Assistance for Firms program for fiscal years 2002 through 2007; expands the definition of qualifying firms to cover shifts in production; and authorizes appropriations to the Department of Commerce in the amount of $16 million annually for fiscal years 2002 through 2007 to carry out the purposes of the Trade Adjustment Assistance for Firms program.

Conference Agreement

The House recedes to the Senate on the issue of providing a $16 million authorization for Trade Adjustment Assistance for Firms and reauthorizing the program through September 30, 2007.

SUBTITLE C – TRADE ADJUSTMENT ASSISTANCE FOR FARMERS AND RANCHERS

SEC. 141 – TRADE ADJUSTMENT ASSISTANCE FOR FARMERS

Present Law

No provision.

House Amendment

No provision.

Senate Amendment

Section 401 of the Senate Amendment adds new sections 292-298 of the Trade Act of 1974 which create a Trade Adjustment Assistance program for farmers and ranchers in the Department of Agriculture. Under this section, a group of agricultural commodity producers may petition the Secretary of Agriculture for Trade Adjustment Assistance. The Secretary must certify the group as eligible for Trade Adjustment Assistance for farmers if it is determined that the national average price in the most recent marketing year for the commodity produced by the group is less than 80 percent of the national

average price in the preceding 5 marketing years and that increases in imports of that commodity contributed importantly to the decline in price.

Conference Agreement

The House recedes to the Senate with changes. The Conferees agree to include limitations on eligibility based upon adjusted gross income and counter-cyclical payment limitations set forth in the Food Security Act of 1985.

SEC. 142 – CONFORMING AMENDMENTS

Present Law

No applicable section.

House Amendment

No provision.

Senate Amendment

The Senate Amendment makes conforming amendments to the Trade Act of 1974 concerning the TAA for Farmers program.

Conference Agreement

Conferees agree to make conforming amendments to the Trade Act of 1974.

SEC. 143 – TRADE ADJUSTMENT ASSISTANCE FOR FISHERMEN

Present Law

No provision.

House Amendment

No provision.

Senate Amendment

Section 502 of the Senate Amendment adds new sections 299-299(G) which create a Trade Adjustment Assistance program for fishermen in the Department of Commerce. Under this program, a group of fishermen may petition the Secretary of Commerce for Trade Adjustment Assistance. The Secretary must certify the group as eligible for Trade Adjustment Assistance for fishermen if it is determined that the national average price in the most recent marketing year for the fish produced by the group is less than 80 percent of the national average price in the proceeding five marketing years and that increases in imports of that fish contributed importantly to the decline in price.

Conference Agreement

Conferees agree to drop Senate Amendment and authorize a study by the Department of Labor to investigate applying TAA to fisherman.

SUBTITLE D – EFFECTIVE DATE

SEC. 151 – EFFECTIVE DATE

Present Law

No applicable provision.

House Amendment

No provision.

Senate Amendment

Section 801 of the Senate Amendment provides that except as otherwise specified, the amendments to the TAA program shall be effective 90 days after enactment of the Trace Act of 2002. The Senate Amendment includes transitional provisions governing the period between expiration of the prior authorizations of TAA for workers and firms and the effective date of the amendments/

Conference Agreement

The House recedes to the Senate.

TITLE II: CREDIT FOR HEALTH INSURANCE COSTS OF ELIGIBLE INDIVIUDALS

SEC. 201(a) AND 202. CREDIT FOR HEALTH INSURANCE COSTS OF INDIVIDUALS RECEIVING A TRADE READJUSTMENT ALLOWANCE OR A BENEFIT FROM THE PENSION BENEFIT GUARANTY CORPORATION; ADVANCE PAYMENT OF CREDIT FOR HEALTH INSRUANCE COSTS OF ELIGIBLE INDIVIUDALS

Present Law

Under present law, the tax treatment of health insurance expenses depends on the individual's circumstances. In general, employer contributions to an accident or health plan are excludable from an employee's gross income (sec. 106).

Self-employed individuals are entitled to deduct a portion of the amount paid for health insurance expenses for the individual and his or her spouse and dependents. The percentage of deductible expenses is 70 percent in 2002 and 100 percent in 2003 and thereafter.

Individuals other than self-employed individuals who purchase their own health insurance and itemize deductions may deduct their expenses to the extent that their total medical expenses exceed 7.5 percent of adjusted gross income.

Present law does not provide a tax credit for the purchase of health insurance.

The health care continuation rules (commonly referred to as "COBRA" rules, after the Consolidated Omnibus Budget Reconciliation Act of 1985 in which they were enacted) require that employer-sponsored group health plans of employers with 20 or more employees must offer certain covered employees and their dependents ("qualified beneficiaries") the option of purchasing continued health coverage in the event of loss of coverage resulting from certain qualifying events. These qualifying events include: termination or reduction in hours of employment, death, divorce or legal separation, enrollment in Medicare, the bankruptcy of the employer, or the end of a child's dependency under a parent's health plan. In general, the maximum period of COBRA coverage is 18 months. An employer is permitted to charge qualified beneficiaries 102 percent of the applicable premium for COBRA coverage.

Under present law, individuals without access to COBRA are able to purchase individual policies on a guaranteed issue basis without exclusion of coverage for pre-existing conditions if they had 18 months of creditable coverage under an employer sponsored group health plan, governmental plan, or a church plan. Those with access to COBRA are required to exhaust their 18 months of COBRA prior to obtaining a policy on a guaranteed issue basis without exclusion of coverage for pre-existing conditions.

House Amendment

The House bill provides a refundable tax credit for up to 60 percent of the expenses of an eligible individual for qualified health insurance coverage of the eligible individual and his or her spouse or dependents. Eligible individuals are certain TAA eligible workers and PBGC pension beneficiaries. In the case of TAA eligible workers, no more than 12 months of coverage would be eligible for the credit. The amount of the credit would be phased out for taxpayers with modified adjusted gross income between $20,000 and $40,000 for single taxpayers ($40,000 and $80,000 for married taxpayers filing a joint return). The credit would be available on an advance basis pursuant to a program to be established by the Secretary of the Treasury. Insurance that qualifies for the credit includes certain COBRA coverage and certain individual market options.

Senate Amendment

The Senate amendment provides a refundable credit for 70 percent of qualified health insurance expenses. The credit is available with respect to certain TAA eligible workers. The credit is payable on an advance basis pursuant to a program to be established by the Secretary of the Treasury. Insurance that qualifies for the credit includes certain COBRA coverage, certain State-based options, and individual health insurance if certain requirements are satisfied.

Conference Agreement

Refundable health insurance credit: in general

In the case of taxpayers who are eligible individuals, the conference agreement provides a refundable tax credit for 65 percent of the taxpayer's expenses for qualified health insurance of the taxpayer and qualifying family members for each eligible coverage month beginning in the taxable year. The credit is available only with respect to amounts paid by the taxpayer.

Qualifying family members are the taxpayer's spouse and any dependent of the taxpayer with respect to whom the taxpayer is entitled to claim a dependency exemption.[1] Any individual who has other specified coverage is not a qualifying family member.

Persons eligible for the credit

Eligibility for the credit is determined on a monthly basis. In general, an eligible coverage month is any month if, as of the first day of the month, the taxpayer (1) is an eligible individual, (2) is covered by qualified health insurance, (3) does not have other specified coverage, and (4) is not imprisoned under Federal, State, or local authority. In the case of a joint return, the eligibility requirements are met if at least one spouse satisfies the requirements. An eligible month must begin more than 90 days after the date of enactment.

An eligible individual is (1) an eligible TAA recipient, (2) an eligible alternative TAA recipient, and (3) an eligible PBGC pension recipient.

An individual is an eligible TAA recipient during any month if the individual (1) is receiving for any day of such month a trade adjustment allowance[2] or who would be eligible to receive such an allowance but for the requirement that the individual exhaust unemployment benefits before being eligible to receive an allowance and (2) with respect to such allowance, is covered under a certification issued under subchapter A or D of chapter 2 of title II of the Trade Act of 1974. An individual is treated as an eligible TAA recipient during the first month that such individual would otherwise cease to be an eligible TAA recipient.

An individual is an eligible alternative TAA recipient during any month if the individual (1) is a worker described in section 246(a)(3)(B) of the Trade Act of 1974 who is participating in the program established under section 246(a)(1) of such Act, and (2) is receiving a benefit for such month under section 246(a)(2) of such Act. An individual is

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[1] Present law allows the custodial parent to release the right to claim the dependency exemption for a child to the noncustodial parent. In addition, if certain requirements are met, the parents may decide by agreement that the noncustodial parent is entitled to the dependency exemption with respect to a child. In such cases, the provision would treat the child as the dependent of the custodial parent for purposes of the credit.

[2] Part I of subchapter B, or subchapter D, of chapter 2 of title II of the Trade Act of 1974.

treated as an eligible alternative TAA recipient during the first month that such individual would otherwise cease to be an eligible TAA recipient.

An individual is a PBGC pension recipient for any month if he or she (1) is age 55 or over as of the first day of the month, and (2) is receiving a benefit any portion of which is paid by the Pension Benefit Guaranty Corporation ("PBGC).

An otherwise eligible taxpayer is not eligible for the credit for a month if, as of the first day of the month the individual has other specified coverage. Specified coverage would be (1) coverage under any insurance which constitutes medical care (expect for insurance substantially all of the coverage of which is for excepted benefits)[3] if at least 50 percent of the cost of the coverage is paid by an employer[4] (or former employer) of the individual or his or her spouse or (2) coverage under certain governmental health programs.[5] A rule aggregating plans of the same employer applies in determining whether the employer pays at least 50 percent of the cost of coverage. A person is not an eligible individual if he or she may be claimed as a dependent on another person's tax return. A special rule applies with respect to alternative TAA recipients.

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[3] Excepted benefits are: (1) coverage only for accident or disability income or any combination thereof; (2) coverage issued as a supplement to liability insurance; (3) liability insurance, including general liability insurance and automobile liability insurance; (4) worker's compensation or similar insurance; (5) automobile medical payment insurance; (6) credit-only insurance; (7) coverage for on-site medical clinics; (8) other insurance coverage similar to the coverages in (1)-(7) specified in regulations under which benefits for medical care are secondary or incidental to other insurance benefits; (9) limited scope dental or vision benefits; (10) benefits for long-term care, nursing home care, home health care, community-based care, or any combination thereof; and (11) other benefits similar to those in (9) and (10) as specified in regulations; (12) coverage only for a specified disease or illness; (13) hospital indemnity or other fixed indemnity insurance; and (14) Medicare supplemental insurance.

[4] An amount would be considered paid by the employer if it is excludable from income. Thus, for example, amounts paid for health coverage on a salary reduction basis under an employer plan are considered paid by the employer.

[5] Specifically, an individual would not be eligible for the credit if, as of the first day of the month, the individual is (1) entitled to benefits under Medicare Part A, enrolled in Medicare Part B, or enrolled in Medicaid or SCHIP, (2) enrolled in a health benefits plan under the Federal Employees Health Benefit Plan, or (3) entitled to receive benefits under chapter 55 of title 10 of the United States Code (relating to military personnel). An individual is not considered to be enrolled in Medicaid solely by reason of receiving immunizations.

Qualified health insurance

Qualified health insurance eligible for the credit is: (1) COBRA continuation coverage; (2) State based continuation coverage provided by the State under a State law that requires such coverage; (3) coverage offered through a qualified State high risk pool; (4) coverage under a health insurance program offered to State employees or a comparable program; (5) coverage through an arrangement entered into by the State and a group health plan, an issuer of health insurance coverage, an administrator, or an employer; (6) coverage offered through a State arrangement with a private sector health care coverage purchasing pool; (7) coverage under a State-operated health plan that does not receive any Federal financial participation; (8) coverage under a group health plan that is available through the employment of the eligible individual's spouse; and (9) coverage under individual health insurance if the eligible individual was covered under individual health insurance during the entire 30-day period that ends on the date the individual became separated from the employment which qualified the individual for the TAA allowance, the benefit for an eligible alternative TAA recipient, or a pension benefit from the PBGC, whichever applies.[6]

Qualified health insurance does not include any State-based coverage (i.e., coverage described in (2)-(8) in the preceding paragraph), unless the State has elected to have such coverage treated as qualified health insurance and such coverage meets certain requirements. Such State coverage must provide that each qualifying individual is guaranteed enrollment if the individual pays the premium for enrollment or provides a qualified health insurance costs eligibility certificate and pays the remainder of the premium. In addition, the State-based coverage cannot impose any pre-existing condition limitation with respect to qualifying individuals. State-based coverage cannot require a qualifying individual to pay a premium or contribution that is greater than the premium or contribution for a similarly situated individual who is not a qualified individual. Finally, benefits under the State-based coverage must the same as (or substantially similar to) benefits provided to similarly situated individuals who are not qualifying individuals. A qualifying individual is an eligible individual who seeks to enroll in the State-based coverage and who has aggregate periods of creditable coverage[7] of three months or longer, does not have other specified coverage, and who is not imprisoned. A

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[6] For this purpose, "individual health insurance" means any insurance which constitutes medical care offered to individuals other than in connection with a group health plan. Such term does not include Federal- or State-based health insurance coverage.

[7] Creditable coverage is determined under the Health Care Portability and Accountability Act (Code sec. 9801(c)).

"qualifying individual" also includes qualified family members of such an eligible individual.

Qualified health insurance does not include coverage under a flexible spending or similar arrangement or any insurance if substantially all of the coverage is of excepted benefits.

Other rules

Amounts taken into account in determining the credit could not be taken into account in determining the amount allowable under the itemized deduction for medical expenses or the deduction for health insurance expenses of self-employed individuals. Amounts distributed from a medical savings account would not be eligible for the credit. The amount of the credit is reduced by any credit received on an advance basis. Married taxpayers filing separate returns are eligible for the credit; however, if both spouses are eligible individuals and the spouses file a separate return, then the spouse of the taxpayer is not a qualifying family member.

The Secretary of the Treasury is authorized to prescribe such regulations and other guidance as may be necessary or appropriate to carry out the provision.

Advance payment of refundable health insurance credit; reporting requirements

The conference agreement provides for payment of the credit on an advance basis (i.e., prior to the filing of the taxpayer's return) pursuant to a program to be established by the Secretary of the Treasury no later than August 1, 2003. Such program is to provide for making payments on behalf of certified individuals to providers of qualified health insurance. In order to receive the credit on an advance basis, a qualified health insurance costs credit eligibility certificate would have to be in effect for the taxpayer. A qualified health insurance costs credit eligibility certificate is a written statement that an individual is an eligible individual for purposes of the credit, provides such information as the Secretary of the Treasury may require, and is provided by the Secretary of Labor or the PBGC (as appropriate) or such other person or entity designated by the Secretary.

The conference report permits the disclosure of return information of certified individuals to providers of health insurance information to the extent necessary to carry out the advance payment mechanism.

The conference report provides that any person who receives payments during a calendar year for qualified health insurance and claims a reimbursement for an advance credit amount is to file an information return with respect to each individual from whom such payments were received or for whom such a reimbursement is claimed. The return is to be in such form as the Secretary may prescribe and is to contain the name, address, and taxpayer identification number of the individual and any other individual on the same health insurance policy, the aggregate of the advance credit amounts provided, the number of months for which advance credit amounts are provided, and such other information as the Secretary may prescribe. The conference report requires that similar information be provided to the individual no later than January 31 of the year following the year for which the information return is made.

Effective Date

The provision is generally be effective with respect to taxable years beginning after December 31, 2001. The provision relating to the advance payment mechanism to be developed by the Secretary would be effective on the date of enactment.

TITLE III: CUSTOMS REAUTHORIZATION

SUBTITLE A--UNITED STATES CUSTOMS SERVICE
CHAPTER 1– DRUG ENFORCEMENT AND OTHER NONCOMMERCIAL AND COMMERCIAL OPERATIONS

SECTION 301: SHORT TITLE

Present Law

No applicable section

House Amendment

H.R. 3009 as amended and passed by the House provides that the Act may be cited as the "Customs Border Security Act of 2002."

Senate Amendment

The Senate amendment is identical.

Conference Agreement

The conference agreement follows the House amendment and the Senate amendment

SECTION 311: AUTHORIZATION OF APPROPRIATIONS FOR NONCOMMERCIAL OPERATIONS, COMMERCIAL OPERATIONS, AND AIR AND MARINE INTERDICTION

Present Law

The statutory basis for authorization of appropriations for Customs is section 301(b)(1) of the Customs Procedural and Simplification Act of 1978 (19 U.S.C. 2075(b)). That law, as amended by section 8102 of the Omnibus Budget Reconciliation Act of 1986 [P.L. 99-509], first outlined separate amounts for non-commercial and commercial operations for the salaries and expenses portion of the Customs authorization. Under 19 U.S.C. 2075, Congress has adopted a two-year authorization process to provide Customs with guidance as it plans its budget, as well as guidance from the Committee for the appropriation process.

The most recent authorization of appropriations for Customs (under section 101 of the Customs and Trade Act of 1990 [P.L. 101 382]) provided $118,238,000 for salaries

and expenses and $143,047,000 for air and marine interdiction program for FY 1991, and $1,247,884,000 for salaries and expenses and $150,199,000 for air and marine interdiction program in FY 1992.

House Amendment

This provision authorizes $1,365,456,000 for FY 2003 and $1,399,592,400 for FY 2004 for noncommercial operations of the Customs Service. It also authorizes $1,642,602,000 for FY 2003 and $1,683,667,050 for FY 2004 for commercial operations of the Customs Service. Of the amounts authorized for commercial operations, $308,000,000 is authorized for the automated commercial environment computer system for each fiscal year. The provisions require that the Customs Service provide the Committee on Ways and Means and the Committee on Finance of the Senate with a report demonstrating that the computer system is being built in a cost-effective manner. In addition, the provisions authorizes $170,829,000 for FY 2003 and $175,099,725 for FY 2004 for air and marine interdiction operations of the Customs Service. The provision requires submission of out-of-year budget projections to the Ways and Means and Finance Committees.

Senate Amendment

This provision authorizes $886,513,000 for FY 2003 and $909,471,000 for FY 2004 for noncommercial operations of the Customs Service. It also authorizes $1,603,482,000 for FY 2003 and $1,645,009,000 for FY 2004 for commercial operations of the Customs Service. Of the amounts authorized for commercial operations, $308,000,000 is authorized for the automated commercial environment computer system for each fiscal year. The provisions require that the Customs Service provide the Committee on Ways and Means and the Committee on Finance of the Senate with a report demonstrating that the computer system is being built in a cost-effective manner. In addition, the provisions authorizes $181,860,000 for FY 2003 and $186,570,000 for FY 2004 for air and marine interdiction operations of the Customs Service. The provision requires submission of out-of-year budget projections to the Ways and Means and Finance Committees.

Conference Agreement

The Senate recedes to House.

SECTION 312: ANTITERRORIST AND ILLICIT NARCOTICS DETECTION EQUIPMENT FOR THE UNITED STATES-MEXICO BORDER, UNITED STATES-CANADA BORDER, AND FLORIDA AND THE GULF COAST SEAPORTS

Present Law

No applicable section.

House Amendment

H.R. 3009 as amended and passed by the House would require that $90,244,000 of the FY 2003 appropriations be available until expended for acquisition and other expenses associated with implementation and deployment of terrorist and narcotics detection equipment along the United States-Mexico border, the United States-Canada border, and Florida and the Gulf seaports. The equipment would include vehicle and inspection systems**.** The provision would require that $9,000,000 of the FY 2004 appropriations be used for maintenance of equipment described above. This section would also provide the Commissioner of Customs with flexibility in using these funds and would allow for the acquisition of new updated technology not anticipated when this bill was drafted**.** Nothing in the language of the bill is intended to prevent the Commissioner of Customs from dedicating resources to specific ports not identified in the bill.

The equipment would include vehicle and container inspection systems, mobile truck x-rays, upgrades to fixed-site truck x-rays, pallet x-rays, busters, contraband detection kits, ultrasonic container inspection units, automated targeting systems, rapid tire deflator systems, portable Treasury Enforcement Communications Systems terminals, remote surveillance camera systems, weigh-in-motion sensors, vehicle counters, spotter camera systems, inbound commercial truck transponders, narcotics vapor and particle detectors, and license plate reader automatic targeting software.

Senate Amendment

The Senate amendment is the same as the House amendment.

Conference Agreement

The conference agreement follows the House amendment and the Senate amendment.

SECTION 313: COMPLIANCE WITH PERFORMANCE PLAN REQUIREMENTS

Present Law

No applicable section.

House Amendment

H.R. 3009 as amended and passed by the House would require Customs to measure specifically the effectiveness of the resources dedicated in sections 312 as part of its annual performance plan.

Senate Amendment

The Senate amendment is the same as the House amendment.

Conference Agreement

The conference agreement follows the House amendment and the Senate amendment.

SUBTITLE B – CHILD CYBER-SMUGGLING CENTER OF THE CUSTOMS SERVICE

SECTION 321: AUTHORIZATION OF APPROPRIATIONS FOR PROGRAM TO PREVENT CHILD PORNOGRAPHY/CHILD SEXUAL EXPLOITATION

Present Law

Customs enforcement responsibilities include enforcement of U.S. laws to prevent border trafficking relating to child pornography, intellectual property rights violations, money laundering, and illegal arms. Funding for these activities has been included in the Customs general account.

House Amendment

H.R. 3009 as amended and passed by the House would authorize $10 million for Customs to carry out its program to combat on-line child sex predators. Of that amount, $375,000 would be dedicated to the National Center for Missing Children for the operation of its child pornography cyber tipline.

Senate Amendment

The Senate amendment is the same as the House amendment.

Conference Agreement

The conference agreement follows the House amendment and the Senate amendment.

Chapter 2 – Miscellaneous Provisions

SECTION 331: ADDITIONAL CUSTOMS SERVICE OFFICERS FOR U.S.-CANADA BORDER

Present Law

No applicable section.

House Amendment

H.R. 3009 as amended and passed by the House earmarks $25 million and 285 new staff hires for Customs to use at the U.S.-Canada border.

Senate Amendment

The Senate amendment is the same as the House Amendment.

Conference Agreement

The conference agreement follows the House amendment and the Senate amendment.

SECTION 332: STUDY AND REPORT RELATING TO PERSONNEL PRACTICES OF THE CUSTOMS SERVICE

Present Law

No applicable section.

House Amendment

H.R. 3009 as amended and passed by the House requires Customs to conduct a study of current personnel practices including: performance standards; the effect and impact of the collective bargaining process on Customs drug interdiction efforts; and a comparison of duty rotations policies of Customs and other federal agencies employing similarly situated personnel.

Senate Amendment

The Senate amendment is the same as the House amendment.

Conference Agreement

The conference agreement follows the House amendment and the Senate amendment.

SECTION 333: STUDY AND REPORT RELATING TO ACCOUNTING AND AUDITING PROCEDURES OF THE CUSTOMS SERVICE

Present Law

No applicable section.

House Amendment

H.R. 3009 as amended and passed by the House would require Customs to conduct a study to ensure that appropriate training is being provided to personnel who are responsible for financial auditing of importers. Customs would specifically report on how its audit personnel protect the privacy and trade secrets of importers.

Senate Amendment

The Senate amendment is the same as the House amendment.

Conference Agreement

The conference agreement follows the House amendment and the Senate amendment.

SECTION 334: ESTABLISHMENT AND IMPLEMENTATION OF COST ACCOUNTING SYSTEM; REPORTS

Present Law

No applicable section.

House Amendment

H.R. 3009 as amended and passed by the House would mandate the imposition of a cost accounting system in order for Customs to effectively explain its expenditures. Such a system would provide compliance with the core financial system requirements of the Joint Financial Management Improvement Program (JFMIP), which is a joint and cooperative undertaking of the U.S. Department of the Treasury, the General Accounting Office, the Office of Management and Budget, and the Office of Personnel Management working in cooperation with each other and other agencies to improve financial management practices in government. That Program has statutory authorization in the Budget and Accounting Procedures Act of 1950 (31 U.S.C. 65).

Senate Amendment

The Senate amendment is the same as the House amendment.

Conference Agreement

The conference agreement follows the House amendment and the Senate amendment.

SECTION 335: STUDY AND REPORT RELATING TO TIMELINESS OF PROSPECTIVE RULINGS

Present Law

No applicable section.

House Amendment

H.R. 3009 as amended and passed by the House would require the Comptroller General to prepare an report to determine whether Customs has improved its timeliness in providing prospective rulings.

Senate Amendment

The Senate amendment is the same as the House amendment.

Conference Agreement

The conference agreement follows the House amendment and the Senate amendment.

SECTION 336: STUDY AND REPORT RELATING TO CUSTOMS USER FEES

Present Law

No applicable section.

House Amendment

H.R. 3009 as amended and passed by the House would require the Comptroller General to prepare a confidential report to determine whether current user fees are appropriately set at a level commensurate with the service provided for the fee. The Comptroller General is authorized to recommend the appropriate level for customs user fees.

Senate Amendment

The Senate amendment is the same as the House amendment.

Conference Agreement

The conference agreement follows the House amendment and the Senate amendment.

SECTION 337: FEES FOR CUSTOMS INSPECTIONS AT EXPRESS COURIER FACILITIES

Present Law

Current law provides for direct reimbursement by courier facilities of expenses incurred by Customs conducting inspections at those facilities.

House Amendment

H.R. 3009 as amended and passed by the House would establish a per item fee of sixty-six cents to cover Customs expenses. This amount could be lowered to more than thirty-five cents or raised to no more than $1.00 by the Secretary of the Treasury after a rulemaking process to reevaluate the expenses incurred by Customs in providing inspectional services.

Senate Amendment

No provision.

Conference Agreement

The Senate recedes to the House.

SECTION 338: NATIONAL CUSTOMS AUTOMATION PROGRAM

Present Law

No applicable section.

House Amendment

H.R. 3009 as amended and passed by the House would empower the Secretary to require the electronic submission of any information required to be submitted to the Customs Service.

Senate Amendment

No provision.

Conference Agreement

The Senate recedes to the House.

SECTION 339: AUTHORIZATION OF APPROPRIATIONS FOR CUSTOMS STAFFING

Present Law

No applicable section.

House Amendment

No provision.

Senate Amendment

The Senate Amendment authorizes the appropriation to the Department of Treasury such sums as may be necessary to increase the annual pay of journeyman Customs inspectors and Canine Enforcement Officers who have completed at least one year of service and are being paid at a GS-9 level, from GS-9 to GS-11. The Senate provision also authorizes an increase in pay of support staff.

Conference Agreement

The House recedes to the Senate.

CHAPTER 4 – ANTITERRORISM PROVISIONS

SECTION 341: IMMUNITY FOR CUSTOMS OFFICERS THAT ACT IN GOOD FAITH

Present Law

Currently, Customs officers are entitled to qualified immunity in civil suits brought by persons, who were searched upon arrival in the United States. Qualified immunity protects officers from liability if they can establish that their actions did not violate any clearly established constitutional or statutory rights.

House Amendment

H.R. 3009 as amended and passed by the House would protect Customs officers by providing them immunity from lawsuits stemming from personal searches of people entering the country so long as the officers conduct the searches in good faith.

Senate Amendment

No provision.

Conference Agreement

Senate recedes to the House, but conferees qualify the provision by adding that the means used to effectuate such searches must be reasonable. To be covered by this immunity provision, inspectors must follow Customs Service inspection rules including the rule against profiling against race, religions, or ethnic background.

SECTION 342: EMERGENCY ADJUSTMENTS TO OFFICES, PORTS OF ENTRY, OR STAFFING OF THE CUSTOMS SERVICE

Present Law

Present law places numerous restrictions on and, in some instances, precludes the Secretary of the Treasury or Customs from making any adjustments to ports and staff. 19 U.S.C. 1318 requires a Presidential proclamation of an emergency and authorization to the Secretary of the Treasury only to extend the time for performance of legally required acts during an emergency. No other emergency powers statute for Customs exists.

House Amendment

H.R. 3009 as amended and passed by the House would permit the Secretary of the Treasury, if the President declares a national emergency or if necessary to address specific threats to human life or national interests, to eliminate, consolidate, or relocate Customs ports and offices and to alter staffing levels, services rendered and hours of operations at those locations. In addition, the amendment would permit the Commissioner of Customs, when necessary to address threats to human life or national interests, to close temporarily any Customs office or port or take any other lesser action necessary to respond to the specific threat. The Secretary or the Commissioner would be required to notify Congress of any action taken under this proposal within 72 hours.

Senate Amendment

The Senate amendment is the same as the House Amendment.

Conference Agreement

The conference agreement follows the House amendment and the Senate amendment.

SECTION 343 & 343A: MANDATORY ADVANCED ELECTRONIC INFORMATION FOR CARGO AND PASSENGERS; SECURE SYSTEMS OF TRANSPORTATION.

Present Law

Currently, commercial carriers bringing passengers or cargo into or out of the country have no obligation to provide Customs with such information in advance.

House Amendment

H.R. 3009 as amended and passed by the House would require every air, land, or water-based commercial carrier to file an electronic manifest describing all passengers with Customs before entering or leaving the country. There is a similar requirement for cargo entering the country. Specific information required in the advanced manifest system would be developed by Treasury in regulations.

Senate Amendment

The Senate Amendment is similar to the House Amendment. However, with respect to cargo, the Senate Amendment applies to out-bound as well as in-bound shipments.

Conference Agreement

The conferees agree to direct the Secretary of the Treasury to promulgate regulations pertaining to the electronic transmission to the Customs Service of information relevant to aviation, maritime, and surface transportation safety and security prior to a cargo carrier's arrival in or departure from the United States. The agreement sets forth parameters for the Secretary to follow in developing these regulations. For example, the parameters require that the regulations be flexible with respect to the commercial and operational aspects of different modes of transportation. They also require that, in general, the Customs Service seek information from parties most likely to have direct knowledge of the information at issue. The conferees also agree to amendment of the Tariff Act of 1930 to establish requirements concerning proper documentation of ocean-bound cargo prior to a vessel's departure. Finally, the conferees agree to direct the Secretary of the Treasury to establish a task force to evaluate, prototype and certify secure systems of transportation.

SECTION 344: BORDER SEARCH AUTHORITY FOR CERTAIN CONTRABAND IN OUTBOUND MAIL.

Present Law

Although Customs currently searches all inbound mail, and although it searches outbound mail sent via private carriers, outbound mail carried by the Postal Service is not subject to search.

House Amendment

H.R. 3009 as amended and passed by the House would enable Customs officers to search outbound U.S. mail for unreported monetary instruments, weapons of mass destruction, firearms, and other contraband used by terrorists. However, reading of mail would not be authorized absent Customs officers obtaining a search warrant or consent.

Senate Amendment

The Senate Amendment is the same as the House Amendment with respect to mail weighing in excess of 16 ounces. However, under the Senate Amendment, the Customs Service would be required to obtain a warrant in order to search mail weighing 16 ounces or less. The Senate Amendment also requires the Secretary of State to determine whether it is consistent with international law and U.S. treaty obligations for the Customs Service to search mail transiting the United States between two foreign countries. The Customs Service would be authorized to search such mail only after the Secretary of State determined that such measures are consistent with international law and U.S. treaty obligations.

Conference Agreement

The House recedes to the Senate.

SECTION 345: Authorization of appropriations for reestablishment of Customs operations in New York City

Present Law

No applicable section.

House Amendment

H.R. 3009 as amended and passed by the House authorizes funds to reestablish those operations.

Senate Amendment

The Senate amendment is the same as the House amendment.

Conference Agreement

The conference agreement follows the House amendment and the Senate amendment.

CHAPTER 5 – TEXTILE TRANSSHIPMENT PROVISIONS.

SECTION 351: GAO AUDIT OF TEXTILE TRANSSHIPMENT MONITORING BY CUSTOMS SERVICE

Present Law

No applicable section.

House Amendment

H.R. 3009 as amended and passed by the House would direct the Comptroller General to conduct an audit of the systems at the Customs Service to monitor and enforce textile transshipment. The Comptroller General would report on recommendations for improvements.

Senate Amendment

The Senate amendment is the same as the House amendment.

Conference Agreement

The conference agreement follows the House amendment and the Senate amendment.

SECTION 352: AUTHORIZATION OF APPROPRIATIONS FOR TEXTILE TRANSSHIPMENT ENFORCEMENT OPERATIONS

Present Law

No applicable section.

House Amendment

H.R. 3009 as amended and passed by the House would authorize $9,500,000 for FY 2002 to the Customs Service for the purpose of enhancing its textile transshipment enforcement operations. This amount would be in addition to Customs Service's base authorization and the authorization to reestablish the destroyed textile monitoring and enforcement operations at the World Trade Center.

Senate Amendment

The Senate amendment is the same as the House amendment.

Conference Agreement

The Senate recedes to the House, but the text is clarified to provide that personnel will also conduct education and outreach in addition to enforcement.

SECTION 353: IMPLEMENTATION OF THE AFRICAN GROWTH AND OPPORTUNITY ACT

Present Law

No applicable section.

House Amendment

H.R. 3009 as amended and passed by the House would earmark approximately $1.3 million within Customs' budget for selected activities related to providing technical assistance to help sub-Saharan African countries develop and implement effective visa and anti-transshipment systems as required by the African Growth and Opportunity Act (title I of Public Law 106-200).

Senate Amendment

The Senate amendment is the same as the House amendment.

Conference Agreement

The conference agreement follows the House amendment and the Senate amendment.

SUBTITLE B – OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

SECTION 361: AUTHORIZATION OF APPROPRIATIONS

Present Law

The statutory authority for budget authorization for the Office of the United States Trade Representative is section 141(g)(1) of the Trade Act of 1974 (19 U.S.C. 2171(g)(1)). The most recent authorization of appropriations for USTR was under section 101 of the Customs and Trade Act of 1990 [P.L. 101-382]. Under 19 U.S.C. 2171, Congress has adopted a two- year authorization process to provide USTR with guidance as it plans its budget as well as guidance from the Committee for the appropriation process.

House Amendment

H.R. 3009 as amended and passed by the House authorizes $32,300,000 for FY 2003 and $31,108,000 for FY 2004. The provision requires submission of out-of-year budget projections to the Ways and Means and Finance Committees. In light of the substantial increase in trade negotiation work to be conducted by USTR and the associated need for consultations with Congress, this provision would authorize the addition of two individuals to assist the office of Congressional Affairs.

Senate Amendment

The Senate amendment authorizes $30,000,000 for FY 2003 and $31,000,000 for FY 2004.

Conference Agreement

The Senate recedes to the House.

SUBTITLE C – UNITED STATES INTERNATIONAL TRADE COMMISSION

SECTION 371: AUTHORIZATION OF APPROPRIATIONS

Present Law

The statutory authority for budget authorization for the International Trade Commission is section 330(e)(2)(A) of the Tariff Act of 1930 (19 U.S.C. 1330(e)(2)(A)). The most recent authorization of appropriations for the ITC was under section 101 of the Customs and Trade Act of 1990 [P.L. 101-382]. Under 19 U.S.C. 1330, Congress has adopted a two-year authorization process to provide the ITC with guidance as it plans its budget as well as guidance from the Committees for the appropriation process.

House Amendment

H.R. 3009 as amended and passed by the House authorizes $54,000,000 for FY 2003 and $57,240,000 for FY 2004. The provision requires submission of out-of-year budget projections to the Ways and Means and Finance Committees.

Senate Amendment

The Senate amendment authorizes $51,400,000 for FY 2003 and $53,400,000 for FY 2004.

Conference Agreement

The Senate recedes to the House.

SUBTITLE D – OTHER TRADE PROVISIONS

SECTION 381. INCREASE IN AGGREGATE VALUE OF ARTICLES EXEMPT FROM DUTY ACQUIRED ABROAD BY UNITED STATES RESIDENTS

Present Law

The Harmonized Tariff Schedule at subheading 9804.00.65 currently provides a $400 duty exemption for travelers returning from abroad.

House Amendment

H.R. 3009 as amended and passed by the House would increased the current $400

duty exemption to $800.

Senate Amendment

The Senate amendment is the same as the House amendment.

Conference Agreement

The conference agreement follows the House amendment and the Senate amendment.

SECTION 382: REGULATORY AUDIT PROCEDURES

Present Law

Section 509 of the Tariff Act of 1930 (19 U.S.C. 1509) provides the authority for Customs to audit persons making entry of merchandise into the U.S. In the course of such audit, Customs auditors may identify discrepancies, including underpayments of duties. However, if there also are overpayments, there is no requirement that such overpayments be offset against the underpayments if the underlying entry has been liquidated.

House Amendment

H.R. 3009 as amended and passed by the House would require that when conducting an audit, Customs must recognize and offset overpayments and overdeclarations of duties, quantities and values against underpayments and underdeclarations. As an example, if during an audit Customs finds that an importer has underpaid duties associated with one entry of merchandise by $100 but has also overpaid duties from another entry of merchandise by $25, then any assessment by Customs must be the difference of $75.

Senate Amendment

The Senate amendment is the same as the House amendment.

Conference Agreement

The conference agreement follows the House amendment and the Senate amendment.

SECTION 383: PAYMENT OF DUTIES AND FEES

Present Law

Current law at 19 U.S.C. 1505 provides for the collection of duties by the Secretary through regulatory process.

House Amendment

H.R. 3009 as amended and passed by the House would require duties to be paid within 10 working days without extension. The bill also provides for the Customs Service to create a monthly billing system upon the building of the Automated Commercial Environment.

Senate Amendment

No provision.

Conference Agreement

Senate recedes to the House.

DIVISION B – BIPARTISAN TRADE PROMOTION AUTHORITY

TITLE XXI – TRADE PROMOTION AUTHORITY

SECTION 2101: SHORT TITLE AND FINDINGS

Present Law

No provision.

House Amendment

The short title of the bill is the "Bipartisan Trade Promotion Authority Act of 2001." Section 2101 of the House amendment to H.R. 3009 states that Congress finds the expansion of international trade is vital to U.S. national security and economic growth, as well as U.S. leadership. Section 2101 also states that the recent pattern of decisions by dispute settlement panels and the Appellate Body of the World Trade Organization to impose obligations and restrictions on the use of antidumping and countervailing measures by WTO members has raised concerns, and Congress is concerned that such bodies appropriately apply the standard of review contained in Article 17.6 of the Antidumping Agreement, to provide deference to a permissible interpretation by a WTO member and to the evaluation by a member of the facts where that evaluation is unbiased and objective and the establishment of the facts is proper.

Senate Amendment

The short title of the bill is the "Bipartisan Trade Promotion Authority Act of 2002." Section 2101 of the Senate amendment to H.R. 3009 states that Congress finds the expansion of international trade is vital to U.S. national security and economic growth, as well as U.S. leadership. Section 2101 also states that support for continued trade expansion requires that dispute settlement procedures under international trade agreements not add to or diminish the rights and obligations provided in such agreements. It goes on to note a troubling pattern of cases before WTO dispute settlement panels and the WTO Appellate Body that do precisely that.

Conference Agreement

The Senate recedes to the House with modifications. With respect to the findings, the Conferees believe that, as stated in section 2101(b) of the Conference agreement, support for continued trade expansion requires that dispute settlement procedures under international trade agreements not add to or diminish the rights and obligations provided in such agreements. Therefore, the recent pattern of decisions by dispute settlement

panels and the WTO Appellate Body to impose obligations and restrictions on the use of antidumping, countervailing and safeguard measures by WTO members has raised concerns, and Congress is concerned that such bodies appropriately apply the standard of review contained in Article 17.6 of the Antidumping Agreement, to provide deference to a permissible interpretation by a WTO member and to the evaluation by a member of the facts where that evaluation is unbiased and objective and the establishment of the facts is proper.

SECTION 2102 : TRADE NEGOTIATING OBJECTIVES

Present/expired law

Section 1101(a) of the Omnibus Trade and Competitiveness Act of 1988 (the 1988 Act) set forth overall negotiating objectives for concluding trade agreements. These objectives were to obtain more open, equitable, and reciprocal market access, the reduction or elimination of barriers and other trade-distorting policies and practices, and a more effective system of international trading disciplines and procedures. Section 1102(b) set forth the following principal trade negotiating objectives: dispute settlement, transparency, developing countries, current account surpluses, trade and monetary coordination, agriculture, unfair trade practices, trade in services, intellectual property, foreign direct investment, safeguards, specific barriers, worker rights, access to high technology, and border taxes.

House Amendment

Section 2102 of the House amendment to H.R. 3009 would establish the following overall negotiating objectives: obtaining more open, equitable, and reciprocal market access; obtaining the reduction or elimination of barriers and other trade-distorting policies and practices; further strengthening the system of international trading disciplines and procedures, including dispute settlement; fostering economic growth and full employment in the U.S. and the global economy; ensuring that trade and environmental policies are mutually supportive and seeking to protect and preserve the environment and enhance the international means of doing so, while optimizing the use of the world's resources; promoting respect for worker rights and the rights of children consistent with International Labor Organization core labor standards, as defined in the bill; and seeking provisions in trade agreements under which parties strive to ensure that they do not weaken or reduce the protections afforded in domestic environmental and labor laws as an encouragement to trade.

In addition, section 2102 would establish the principal trade negotiating objectives for concluding trade agreements, as follows:

Trade barriers and distortions:

- expanding competitive market opportunities for U.S. exports and obtaining fairer and more open conditions of trade by reducing or eliminating tariff and nontariff barriers and policies and practices of foreign governments directly related to trade that decrease market opportunities for U.S. exports and distort U.S. trade; and
- obtaining reciprocal tariff and nontariff barrier elimination agreements, with particular attention to products covered in section 111(b) of the Uruguay Round Agreements Act.

Services: to reduce or eliminate barriers to international trade in services, including regulatory and other barriers, that deny national treatment or unreasonably restrict the establishment or operations of services suppliers.

Foreign investment: to reduce or eliminate artificial or trade-distorting barriers to trade-related foreign investment and, recognizing that U.S. law on the whole provides a high level of protection for investment, consistent with or greater than the level required by international law, to secure for investors important rights comparable to those that would be available under U.S. legal principles and practice, by:

- reducing or eliminating exceptions to the principle of national treatment;
- freeing the transfer of funds relating to investments;
- reducing or eliminating performance requirements, forced technology transfers, and other unreasonable barriers to the establishment and operation of investments;
- seeking to establish standards for expropriation and compensation for expropriation, consistent with United States legal principles and practice;
- providing meaningful procedures for resolving investment disputes including between an investor and a government;
- seeking to improve mechanisms used to resolve disputes between an investor and a government through mechanisms to eliminate frivolous claims and procedures to ensure the efficient selection of arbitrators and the expeditious disposition of claims;
- providing an appellate or similar review mechanism to correct manifestly erroneous interpretations of law; and
- ensuring the fullest measure of transparency in investment disputes by
  - ensuring that all requests for dispute settlement and all proceedings, submissions, findings, and decisions are promptly made public;
  - all hearings are open to the public; and
  - establishing a mechanism for acceptance of amicus curiae submissions.

Intellectual property: including:

- promoting adequate and effective protection of intellectual property rights through ensuring accelerated and full implementation of the Agreement on Trade-Related Aspects of Intellectual Property Rights, including strong enforcement;

- providing strong protection for new and emerging technologies and new methods of transmitting and distributing products embodying intellectual property; and

- ensuring that standards of protection and enforcement keep pace with technological developments, and in particular ensuring that right holders have the legal and technological means to control the use of their works through the internet and other global communication media.

Transparency: to increase public access to information regarding trade issues as well as the activities of international trade institutions; to increase openness in international trade fora, including the WTO, by increasing public access to appropriate meetings, proceedings, and submissions, including with regard to dispute settlement and investment; and to increase timely public access to notifications made by WTO member states and the supporting documents.

Anti-corruption: to obtain high standards and appropriate enforcement mechanisms applicable to persons from all countries participating in a trade agreement that prohibit attempts to influence acts, decisions, or omissions of foreign government; and to ensure that such standards do not place U.S. persons at a competitive disadvantage in international trade.

Improvement of the WTO and multilateral trade agreements: to achieve full implementation and extend the coverage of the WTO and such agreements to products, sectors, and conditions of trade not adequately covered; and to expand country participation in and enhancement of the Information Technology Agreement (ITA) and other trade agreements.

Regulatory practices: to achieve increased transparency and opportunity for the participation of affected parties in the development of regulations; to require that proposed regulations be based on sound science, cost-benefit analysis, risk assessment, or other objective evidence; to establish consultative mechanisms among parties to trade agreements to promote increased transparency in developing guidelines, rules, regulations, and laws for government procurement and other regulatory regimes; and to

achieve the elimination of government measures such as price controls and reference pricing which deny full market access for United States products.

Electronic commerce: to ensure that current obligations, rules, disciplines, and commitments under the WTO apply to electronic commerce; to ensure that electronically delivered goods and services receive no less favorable treatment under trade rules and commitments than like products delivered in physical form; and the classification of such goods and services ensures the most liberal trade treatment possible; to ensure that governments refrain from implementing trade-related measures that impede electronic commerce; where legitimate policy objectives require domestic regulations that affect electronic commerce, to obtain commitments that any such regulations are the least restrictive on trade, nondiscriminatory, and transparent, and promote an open market environment; and to extend the moratorium of the WTO on duties on electronic transmissions.

Agriculture: to ensure that the U.S. trade negotiators duly recognize the importance of agricultural issues; to obtain competitive market opportunities for U.S. exports in foreign markets substantially equivalent to the competitive opportunities afforded foreign exports in U.S. markets and to achieve fairer and more open conditions of trade; to reduce or eliminate trade distorting subsidies; to impose disciplines on the operations of state-trading enterprises or similar administrative mechanisms; to eliminate unjustified restrictions on products derived from biotechnology; to eliminate sanitary or phytosanitary restrictions that contravene the Uruguay Round Agreement as they are not based on scientific principles and to improve import relief mechanisms to accommodate the unique aspects of perishable and cyclical agriculture.

Labor and the environment: to ensure that a party does not fail to effectively enforce its environmental or labor laws, through a sustained or recurring course of action or inaction, in a manner affecting trade between the United States and that party; to recognize that a party to a trade agreement is effectively enforcing its laws if a course of inaction or inaction reflects a reasonable exercise of discretion or results from a bona fide decision regarding allocation of resources and no retaliation may be authorized based on the exercise of these rights or the right to establish domestic labor standards and levels of environmental protection; to strengthen the capacity of U.S. trading partners to promote respect for core labor standards and to protect the environment through the promotion of sustainable development; to reduce or eliminate government practices or policies that unduly threaten sustainable development; to seek market access for U.S. environmental technologies, goods, and services; and to ensure that labor, environmental, health, or safety policies and practices of parties to trade agreements do not arbitrarily or unjustifiably discriminate against U.S. exports or serve as disguised barriers to trade.

Dispute settlement and enforcement: to seek provisions in trade agreements providing for resolution of disputes between governments in an effective, timely, transparent, equitable, and reasoned manner requiring determinations based on facts and the principles of the agreement, with the goal of increasing compliance; seek to strengthen the capacity of the WTO Trade Policy Review Mechanism to review compliance; seek provisions encouraging the early identification and settlement of disputes through consultations; seek provisions encouraging trade-expanding compensation; seek provisions to impose a penalty that encourages compliance, is appropriate to the parties, nature, subject matter, and scope of the violation, and has the aim of not adversely affecting parties or interests not party to the dispute while maintaining the effectiveness of the enforcement mechanism; and seek provisions that treat U.S. principal negotiating objectives equally with respect to ability to resort to dispute settlement and availability of equivalent procedures and remedies.

Extended WTO negotiations: concerning extended WTO negotiations on financial services, civil aircraft, and rules of origin.

Senate Amendment

The Senate Amendment is substantially similar to the House Amendment, with the exception of several key provisions:

Small Business: The Senate Amendment contains an overall negotiating objective "to ensure that trade agreements afford small businesses equal access to international markets, equitable trade benefits, expanded export market opportunities, and provide for the reduction or elimination of trade barriers that disproportionately impact small businesses."

Trade in Motor Vehicles and Parts: The Senate Amendment contains a principal negotiating objective on expanding competitive opportunities for exports of U.S. motor vehicles and parts.

Foreign Investment: The Senate Amendment states as an objective of the United States in the context of investor-state dispute settlement "ensuring that foreign investors in the United States are not accorded greater rights than United States investors in the United States." The Senate Amendment's objective with respect to investor-state dispute settlement also differs from the House Amendment in the following respects:

- It sets as an objective"seeking to establish standards for fair and equitable treatment consistent with United States legal principles and practice, including the principle of due process."

- ? It sets deterrence of the filing of frivolous claims as an objective, in addition to the prompt elimination of frivolous claims.

- ? The Senate Amendment seeks to establish "procedures to enhance opportunities for public input into the formulation of government positions."

- ? The Senate Amendment seeks to establish a single appellate body to review decisions by arbitration panels in investor-state dispute settlement cases. Also, unlike the House Amendment, the Senate Amendment does not prescribe a standard of review for an eventual appellate body.

Intellectual Property: The Senate Amendment contains an objective to respect the Declaration on the TRIPS Agreement and Public Health, adopted by the World Trade Organization at the Fourth Ministerial Conference at Doha, Qatar on November 14, 2001."

Trade in Agriculture: The Senate Amendment's negotiating objective on export subsidies differs from the House Amendment, stating that an objective of the United States is "seeking to eliminate all export subsidies on agricultural commodities while maintaining bona fide food aid and preserving U.S. agriculture development and export credit programs that allow the U.S. to compete with other foreign export promotion efforts." The Senate Amendment also provides that it is a negotiating objective of the United States to "strive to complete a general multilateral round in the WTO by January 1, 2005, and seek the broadest market access possible in multilateral, regional, and bilateral negotiations, recognizing the effect that simultaneous sets of negotiations may have on US import-sensitive commodities (including those subject to tariff-rate quotas)."

Human Rights and Democracy: The Senate Amendment contains a negotiating objective "to obtain provisions in trade agreements that require parties to those agreements to strive to protect internationally recognized civil, political, and human rights."

Dispute Settlement: The Senate Amendment contains a negotiating objective absent in the House Amendment "to seek improved adherence by panels convened under the WTO Understanding on Rules and Procedures Governing the Settlement of Disputes and by the WTO Appellate Body to the standard of review applicable under the WTO Agreement involved in the dispute, including greater deference, where appropriate, to the fact finding and technical expertise of national investigating authorities."

Border Taxes: The Senate Amendment contains an objective absent from the House Amendment on border taxes. The objective seeks "to obtain a revision of the WTO rules with respect to the treatment of border adjustments for internal taxes to redress the disadvantage to countries relying primarily on direct taxes for revenue rather than indirect taxes." The objective is addressed to a decision by the WTO Dispute Settlement Body holding the foreign sales corporation provisions of the Internal Revenue Code to be inconsistent with WTO rules.

Textiles: The Senate Amendment contains an extensive objective on opening foreign markets to U.S. textile exports. There is no similar provision in the House Amendment.

Worst Forms of Child Labor: The Senate Amendment contains a negotiating objective to prevent distortions in the conduct of international trade caused by the use of the worst forms of child labor and to redress unfair and illegitimate competition based upon the use of the worst forms of child labor.

Conference Agreement

The Senate recedes to the House with several modifications. With respect to the overall negotiating objectives, the Conferees agree to the overall negotiating objective regarding small business in section 2102(a)(8) of the Senate amendment. Second, the Conferees agree to an overall negotiating objective to promote universal compliance with ILO Declaration 182 concerning the worst forms of child labor.

With respect to the principal negotiating objectives, the Conferees agree to expand the negotiating objective on intellectual property to respect the Declaration on the TRIPS Agreement and Public Health, adopted by the WTO at Doha (section 2102(b)(4)(c) of the Senate amendment).

With respect to the principal negotiating objectives regarding foreign investment, the Conferees believe that it is a priority for negotiators to seek agreements protecting the rights of U.S. investors abroad and ensuring the existence of a neutral investor-state dispute settlement mechanism. At the same time, these protections must be balanced so that they do not come at the expense of making Federal, State and local laws and regulations more vulnerable to successful challenges by foreign investors than by similarly situated U.S. investors.

No Greater Rights: The House recedes to the Senate with a technical modification to clarify that foreign investors in the United States are not accorded greater substantive

rights with respect to investment protections than United States investors in the United States. That is, the reciprocal obligations regarding investment protections that the United States undertakes in pursuing its goals should not result in foreign investors being entitled to compensation for government actions where a similarly situated U.S. investor would not be entitled to any form of relief, while ensuring that U.S. investors abroad can challenge host government measures which violate the terms of the investment agreement. Thus, this language expresses Congress' direction that the substantive investment protections (e.g., expropriation, fair and equitable treatment, and full protection and security) should be consistent with United States legal principles and practice and not provide greater rights to foreign investors in the United States.

This language applies to substantive protections only and is not applicable to procedural issues, such as access to investor-state dispute settlement. The Conferees recognize that the procedures for resolving disputes between a foreign investor and a government may differ from the procedures for resolving disputes between a domestic investor and a government and may be available at different times during the dispute. Thus, the "no greater rights" direction does not, for instance, apply to such issues as the dismissal of frivolous claims, the exhaustion of remedies, access to appellate procedures, or other similar issues.

The Conferees also agree that negotiators should seek to provide for an appellate body or similar mechanism to provide coherence to the interpretations of investment provisions in trade agreements.

With respect to the principal negotiating objective on agriculture, the Conferees agree to section 2102(b)(10)(A)(iii) and (xv) of the House amendment, in lieu of section 2102(b)(10)(A)(iii) of the Senate amendment. The Conferees also accept section 2102(b)(10)(A)(xvi) of the Senate amendment on the timing and sequence of WTO agriculture negotiations relative to other negotiations.

The Conferees agree to section 2102(b)(13)(C) of the Senate amendment, relating to dispute settlement in dumping, subsidy, and safeguard cases, as modified, to seek adherence by WTO panels to the applicable standard of review.

The Conferees recognize the importance of preserving the ability of the United States to enforce rigorously its trade remedy laws, including the antidumping, countervailing duty and safeguard laws. Because this issue is significant to many Members of Congress in both the House and Senate, the Conferees have made this priority a principal negotiating objective. Negotiators must also avoid agreements that lessen the effectiveness of domestic and international disciplines on unfair trade, as well as domestic and international safeguard provisions. In addition, section 2102(b)(14)(B) directs the President to address and remedy market distortions that lead to dumping and subsidization, including overcapacity, cartelization, and market-access barriers.

The Conferees agree to section 2012(b)(14) of the Senate amendment stating that the United States should seek a revision of WTO rules on the treatment of border adjustments for internal taxes to redress the disadvantage to countries relying primarily on direct taxes for revenue rather than indirect taxes. The Conferees agree that such a revision of WTO rules is one among other options for the United States, including domestic legislation, to redress such a disadvantage.

The Conferees agree to include as a principal negotiating objective to obtain competitive market opportunities for U.S. exports of textiles substantially equivalent to those for foreign textiles in the United States.

The Conferees agree to a principal negotiating objective concerning the worst forms of child labor, to seek commitments by trade agreement parties to vigorously enforce their own laws prohibiting the worst forms of child labor.

SECTION 2102(c): PROMOTION OF CERTAIN PRIORITIES

Present/expired law

No provision.

House Amendment

Section 2102(c) of the House amendment to H.R. 3009 sets forth certain priorities for the President to address. These provisions include seeking greater cooperation between WTO and the ILO; seeking to establish consultative mechanisms among parties to trade agreements to strengthen the capacity of U.S. trading partners to promote respect for core labor standards; seeking to seek to establish consultative mechanisms among parties to trade agreements to strengthen the capacity of U.S. trading partners to develop and implement standards for environment and human health based on sound science; conducting environmental reviews of future trade and investment agreements, consistent with Executive Order 13141 and its relevant guidelines; reviewing the impact of future trade agreements on U.S. employment, modeled after Executive Order 13141; taking into account, in negotiating trade agreements, protection of legitimate health or safety, essential security, and consumer interests; requiring the Secretary of Labor to consult with foreign parties to trade negotiations as to their labor laws and providing technical assistance where needed; reporting to Congress on the extent to which parties to an agreement have in effect laws governing exploitative child labor; preserving the ability of the United States to enforce rigorously its trade laws, including antidumping and countervailing duty laws, and avoiding agreements which lessen their effectiveness; ensuring that U.S. exports are not subject to the abusive use of trade laws, including antidumping and countervailing duty laws, by other countries; continuing to promote consideration of Multilateral Environmental Agreements (MEAs) and consulting with

parties to such agreements regarding the consistency of any MEA that includes trade measures with existing environmental exceptions under Article XX of the GATT.

In addition, USTR, twelve months after the imposition of a penalty or remedy by the United States permitted by an agreement to which this Act applies, is to report to the Committee on the effectiveness of remedies applied under U.S. law to enforce U.S. rights under trade agreements. USTR shall address whether the remedy was effective in changing the behavior of the targeted party and whether the remedy had any adverse impact on parties or interests not party to the dispute.

Finally, section 2102(c) would direct the President to seek to establish consultative mechanisms among parties to trade agreements to examine the trade consequences of significant and unanticipated currency movements and to scrutinize whether a foreign government engaged in a pattern of manipulating its currency to promote a competitive advantage in international trade.

Senate Amendment

With several notable exceptions, the priorities set forth in section 2102(c) of the Senate Amendment are identical to the priorities set forth in the House Amendment. The exceptions are:

- With respect to the study that the President must perform on the impact of future trade agreements on employment, the Senate Amendment requires the President to examine particular criteria, as follows: the impact on job security, the level of compensation of new jobs and existing jobs, the displacement of employment, and the regional distribution of employment, utilizing experience from previous trade agreements and alternative models of employment analysis. The Senate Amendment also requires that the report be made available to the public.

- The Senate Amendment requires that, in connection with new trade agreement negotiations, the President shall "submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate a meaningful labor rights report of the country, or countries, with respect to which the President is negotiating."

- The Senate Amendment adds to the House Amendment priority on preserving the ability of the United States to enforce vigorously its trade laws, by including U.S. "safeguards" law in the list of laws at issue. This is the U.S. law authorizing the President to provide relief to parties seriously injured or threatened with serious injury due to surges of imports. The priority in the Senate Amendment also directs the President to remedy certain market distorting measures that underlie unfair trade practices.

Conference Agreement

The Senate recedes to the House amendment with several modifications. With respect to the worst forms of child labor, the Conferees agree to expand section 2102(c)(2) of the House amendment to include the worst forms of child labor within requirement to seek to establish consultative mechanisms to strengthen the capacity of U.S. trading partners to promote respect for core labor standards.

The Conferees agree to modify section 2105(c)(5) of the House amendment to require the President to report on impact of future trade agreements on US employment, including on labor markets, modeled after E.O. 13141 to the extent appropriate in establishing procedures and criteria, and to make the report public.

With respect to the labor rights report in section 2102(c)(8) of both bills, the Conferees agree to the Senate provision. Furthermore, the Conferees agree to section 2107(b)(2)(E) of the Senate amendment to require that guidelines for the Congressional Oversight Group include the time frame for submitting this report.

SECTION 2102(d): CONSULTATIONS, ADHERENCE TO OBLIGATIONS UNDER URUGUAY ROUND AGREEMENTS

Present/expired law

No provision.

House Amendment

Section 2102(d) of the House amendment to H.R. 3009 requires that USTR consult closely and on a timely basis with the Congressional Oversight Group appointed under section 2107. In addition, USTR would be required to consult closely (including immediately before the initialing of an agreement) with the congressional advisers on trade policy and negotiations appointed under section 161 of the Trade Act of 1974, as well as the House Committee on Ways and Means, the Senate Committee on Finance, and the Congressional Oversight Group. With regard to negotiations concerning agriculture trade, USTR would also be required to consult with the House and Senate Committees on Agriculture.

In determining whether to enter into negotiations with a particular country, section 2102(e) would require the President to take into account whether that country has implemented its obligations under the Uruguay Round Agreements.

Senate Amendment

Section 2102(d) of the Senate amendment is identical to the House provision in the House amendment to H.R. 3009.

Conference Agreement

The Conference agreement follows the House amendment and the Senate amendment.

SECTION 2103: TRADE AGREEMENTS AUTHORITY

Present/expired law

Tariff proclamation authority. Section 1102(a) of the 1988 Act provided authority to the President to proclaim modifications in duties without the need for Congressional approval, subject to certain limitations. Specifically, for rates that exceed 5 percent ad valorem, the President could not reduce any rate of duty to a rate less than 50 percent of the rate of duty applying on the date of enactment. Rates at or below 5 percent could be reduced to zero. Any duty reduction that exceeded 50 percent of an existing duty higher than 5 percent or any tariff increase had to be approved by Congress.

Staging authority required that duty reductions on any article could not exceed 3 percent per year, or one-tenth of the total reduction, whichever is greater, except that staging was not required if the International Trade Commission determined there was no U.S. production of that article.

Negotiation of bilateral agreements. Section 1102(c) of the 1988 Act set forth three requirements for the negotiation of a bilateral agreement:

- The foreign country must request the negotiation of the bilateral agreement;
- The agreement must make progress in meeting applicable U.S. trade negotiating objectives; and
- The President must provide written notice of the negotiations to the Committee on Ways and Means and the Committee on Finance of the Senate and consult with these committees.

The negotiations could proceed unless either Committee disapproved the

negotiations within 60 days prior to the 90 calendar days advance notice required of entry into an agreement (described below).

Negotiation of multilateral non-tariff agreements. With respect to multilateral agreements, section 1102(b) of the 1988 Act provided that whenever the President determines that any barrier to, or other distortion of, international trade unduly burdens or restricts the foreign trade of the United States or adversely affects the U.S. economy, or the imposition of any such barrier or distortion is likely to result in such a burden, restriction, or effect, he may enter into a trade agreement with the foreign countries involved. The agreement must provide for the reduction or elimination of such barrier or other distortion or prohibit or limit the imposition of such a barrier or distortion.

Provisions qualifying for fast track procedures. Section 1103(b)(1)(A) of the 1988 Act provided that fast track apply to implementing bills submitted with respect to any trade agreements entered into under the statute. Section 151(b)(1) of the Trade Act of 1974 further defined "implementing bill" as a bill containing provisions "necessary or appropriate" to implement the trade agreement, as well as provisions approving the agreement and the statement of administrative action.

Time period. The authority applied with respect to agreements entered into before June 1, 1991, and until June 1, 1993 unless Congress passed an extension disapproval resolution. The authority was then extended to April 15, 1994, to cover the Uruguay Round of multilateral negotiations under the General Agreement on Tariffs and Trade.

House Amendment

Section 2103 of the House amendment provides:

Proclamation authority. Section 2103(a) would provide the President the authority to proclaim, without Congressional approval, certain duty modifications in a manner very similar to the expired provision. Specifically, for rates that exceed 5 percent ad valorem, the President would not be authorized to reduce any rate of duty to a rate less than 50 percent of the rate of duty applying on the date of enactment. Rates at or below 5 percent ad valorem could be reduced to zero. Any duty reduction that exceeded 50 percent of an existing duty higher than 5 percent or any tariff increase would have to be approved by Congress.

In addition, section 2103(a) would not allow the use of tariff proclamation authority on import sensitive agriculture.

Staging authority would require that duty reductions on any article could not exceed 3 percent per year, or one-tenth of the total reduction, whichever is greater, except that staging would not be required if the International Trade Commission determined there is no U.S. production of that article.

These limitations would not apply to reciprocal agreements to eliminate or harmonize duties negotiated under the auspices of the World Trade Organization, such as so-called "zero-for-zero" negotiations.

Agreements on tariff and non-tariff barriers. Section 2103(b)(1) would authorize the President to enter into a trade agreement with a foreign country whenever he determined that any duty or other import restriction or any other barrier to or distortion of international trade unduly burdens or restricts the foreign trade of the United States or adversely affects the U.S. economy, or the imposition of any such barrier or distortion is likely to result in such a burden, restriction, or effect. The agreement must provide for the reduction or elimination of such barrier or other distortion or prohibit or limit the imposition of such a barrier or distortion. No distinction would be made between bilateral and multilateral agreements.

Conditions. Section 2103(b)(2) would provide that the special implementing bills procedures may be used only if the agreement makes progress in meeting the applicable objectives set forth in section 2102(a) and (b) and the President satisfies the consultation requirements set forth in section 2104.

Bills qualifying for trade authorities procedures. Section 2103(b)(3)(A) would provide that bills implementing trade agreements may qualify for trade promotion authority TPA procedures only if those bills consist solely of the following provisions:

- Provisions approving the trade agreement and statement of administrative action; and

- Provisions necessary or appropriate to implement the trade agreement.

Time period. Sections 2103(a)(1)(A) and 2103(b)(1)(C) would extend trade promotion authority to agreements entered into before June 1, 2005. An extension until June 1, 2007, would be permitted unless Congress passed a disapproval resolution, as described under section 2103(c).

Senate Amendment

In most respects, section 2103 of the Senate Amendment is identical to section 2103 of the House Amendment. However, there are several key differences, as follows:

- The Senate Amendment limits the President's proclamation authority with respect to "import sensitive agricultural products," a term defined in section 2113(5) of the Senate Amendment. This limitation differs from the limitation in the House Amendment, inasmuch as it includes certain products subject to tariff rate quotas.

- The Senate Amendment contains a provision making a trade agreement implementing bill ineligible for "fast track" procedures if the bill modifies, amends, or requires modification or amendment to certain trade remedy laws. A bill that does modify, amend or require modification or amendment to those laws is subject to a point of order in the Senate, which may be waived by a majority vote.

- The Senate Amendment requires the U.S. International Trade Commission to submit a report to Congress on negotiations during the initial period for which the President is granted trade promotion authority. This report would be made in connection with a request by the President to have such authority extended.

Conference Agreement

The Senate recedes to the House amendment with several modifications. The Conferees agree to the new definition of import sensitive agriculture in section 2103(a)(2)(B), 2104(b)(2)(A)(i), and 2113(5) of the Senate amendment to encompass products subject to tariff rate quotas, as well as products subject to the lowest tariff reduction in the Uruguay Round.

The Conferees agree to section 2103(c)(3)(B) of the Senate amendment, which requires the ITC to submit a report to Congress by May 1, 2005 (if the President seeks extension of TPA until June 2, 2007) analyzing the economic impact on the United States of all trade agreements implemented between enactment and the extension request.

SECTION 2104: CONSULTATIONS AND ASSESSMENT

Present/expired law

Section 102 of the Trade Act of 1974 and sections 1102(d) and 1103 of the 1988 Act set forth the fast track requirements. These provisions required the President, before entering into any trade agreement, to consult with Congress as to the nature of the agreement, how and to what extent the agreement will achieve applicable purposes, policies, and objectives, and all matters relating to agreement implementation. In addition, before entering into an agreement, the President was required to give Congress at least 90 calendar days advance notice of his intent. The purpose of this period was to

provide the Congressional Committees of jurisdiction an opportunity to review the proposed agreement before it was signed.

Section 135(e) of the Trade Act of 1974 required that the Advisory Committee for Trade Policy and Negotiations meet at the conclusion of negotiations for each trade agreement and provide a report as to whether and to what extent the agreement promotes the economic interests of the United States and achieves the applicable overall and principal negotiating objectives of section 1101 of the 1988 Act. The report was due not later than the date on which the President notified Congress of his intent to enter into an agreement. With regard to the Uruguay Round, the report was due 30 days after the date of notification.

House Amendment

Section 2104 of the House amendment to H.R. 3009 would establish a number of requirements that the President consult with Congress. Specifically, section 2104(a)(1) would require the President to provide written notice and consult with the relevant committees at least 90 calendar days prior to entering into negotiations. Section 2104(a)(c) also provides that President shall meet with the Congressional Oversight Group established under section 2107 upon a request of a majority of its members. Trade promotion authority would not apply to an implementing bill if both Houses separately agree to a procedural disapproval resolution within any 60-day period stating that the Administration has failed to notify or consult with Congress.

Section 2104(b)(1) would establish a special consultation requirement for agriculture. Specifically, before initiating negotiations concerning tariff reductions in agriculture, the President is to assess whether U.S. tariffs on agriculture products that were bound under the Uruguay Round Agreements are lower than the tariffs bound by that country. In his assessment, the President would also be required to consider whether the tariff levels bound and applied throughout the world with respect to imports from the United States are higher than U.S. tariffs and whether the negotiation provides an opportunity to address any such disparity. The President would be required to consult with the Committees on Ways and Means and Agriculture of the House and the Committees on Finance and Agriculture, Nutrition and Forestry of the Senate concerning the results of this assessment and whether it is appropriate for the United States to agree to further tariff reductions under such circumstances and how all applicable negotiating objectives would be met.

Section 2104(b)(2) provides special consultations on import sensitive agriculture products. Specifically, before initiating negotiations on agriculture and as soon as practicable with respect to the Free Trade Area of the Americas and WTO negotiations, USTR is to identify import sensitive agriculture products and consult with the Committees on Ways & Means and Agriculture of the House and the Committees on

Finance and Agriculture,. Nutrition, and Forestry in the Senate concerning whether any further tariff reduction should be appropriate, and whether the identified products face unjustified sanitary or phytosanitary barriers. USTR is also to request that the International Trade Commission prepare an assessment of the probable economic effects of any such tariff reduction on the U.S. industry producing the product and on the U.S. economy as a whole. USTR is to then notify the Committees of those products for which it intends to seek tariff liberalization as well as the reasons. If USTR commences negotiations and then identifies additional import sensitive agriculture products, or a party to the negotiations requests tariff reductions on such a product, then USTR shall notify the Committees as soon as practicable of those products and the reasons for seeking tariff reductions.

Section 2104(c) would establish a special consultation requirement for textiles. Specifically, before initiating negotiations concerning tariff reductions in textiles and apparel, the President is to assess whether U.S. tariffs on textile and apparel products that were bound under the Uruguay Round Agreements are lower than the tariffs bound by that country. In his assessment, the President would also be required to consider whether the tariff levels bound and applied throughout the world with respect to imports from the United States are higher than U.S. tariffs and whether the negotiation provides an opportunity to address any such disparity. The President would be required to consult with the Committee on Ways and Means of the House and the Committee on Finance of the Senate concerning the results of this assessment and whether it is appropriate for the United States to agree to further tariff reductions under such circumstances and how all applicable negotiating objectives would be met.

In addition, section 2104(d) would require the President, before entering into any trade agreement, to consult with the relevant Committees concerning the nature of the agreement, how and to what extent the agreement will achieve the applicable purposes, policies, and objectives set forth in the House amendment to H.R. 3009 and all matters relating to implementation under section 2105, including the general effect of the agreement on U.S. laws.

Section 2104(e) would require that the report of the Advisory Committee for Trade Policy and Negotiations under section 135(e)(1) of the Trade Act of 1974 be provided not later than 30 days after the date on which the President notifies Congress of his intent to enter into the agreement under section 2105(a)(1)(A).

Finally, section 2104(f) would require the President, at least 90 days before entering into a trade agreement, to ask the International Trade Commission to assess the agreement, including the likely impact of the agreement on the U.S. economy as a whole, specific industry sectors, and U.S. consumers. That report would be due 90 days from the date after the President enters into the agreement.

Senate Amendment

The Senate Amendment is substantially similar to the House bill, with the following exceptions:

Consultations on export subsidies and distorting policies. Section 2104(b)(2)(A)(ii)(III) requires consultations on whether nations producing identified products maintain export subsidies or distorting policies that distort trade and impact of policies on U.S. producers.

Consultations relating to fishing trade. Section 2104(b)(3) requires that for negotiations relating to fishing trade, the Administration will keep fully apprised and on timely basis consult with the House Resources Committee and the Senate Commerce Committee.

Special reporting requirements on U.S. trade remedy laws. Section 2104(d) provides that the President, at least 90 calendar days before the President enters into a trade agreement, shall notify the House Ways and Means Committee and the Senate Finance Committee in writing any amendments to U.S. antidumping and countervailing duty laws (title VII of the Tariff Act of 1930) or U.S. safeguard provisions (chapter 1 of title II of the Trade Act of 1974) that the President proposes to include in the implementing legislation. On the date that the President transmits the notification, the President must also transmit to the Committees a report explaining his reasons for believing that amendments to these trade remedy laws are necessary to implement the trade agreement and his reasons for believing that such amendments are consistent with the negotiating objective on this issue. Not later than 60 calendar days after the date on which the President transmits notification to the relevant committees, the Chairman and ranking members of the House Ways and Means Committee and the Senate Finance Committees shall issue reports stating whether the proposed amendments described in the President's notification are consistent with the negotiating objectives on trade laws.

Conference Agreement

The Senate recedes to the House with several modifications. The Conferees agree to section 2104(b)(2)(A)(ii)(III) of the Senate amendment, which requires consultations on whether other nations producing identified products maintain export subsidies or distorting policies that distort trade and impact of policies on U.S. producers. In addition, the Conferees agree to section 2104(b)(3) of the Senate amendment, which requires that for negotiations relating to fishing trade, the Administration will keep fully apprised and on timely basis consult with the House Resources Committee and the Senate Commerce Committee.

Finally, the Conferees agree to include the notification and report on changes to

trade remedy laws in sections 2104(d)(3)(A) and (B) in the Senate amendment with modifications. Given the priority that Conferees attach to keeping U.S. trade remedy laws strong and ensuring that they remain fully enforceable, the Conference agreement puts in place a process requiring special scrutiny of any impact that trade agreements may have on these laws. The process requires the President, at least 180 calendar days before the day on which he enters into a trade agreement, to report to the Committees on Ways and Means and the Committee on Finance the range of proposals advanced in trade negotiations and may be in the final agreement that could require amendments to title VII of the Tariff Act of 1930 or to chapter 1 of title II of the Trade Act of 1974; and how these proposals relate to the objectives described in section 2102(b)(14).

The Conference agreement also provides a mechanism for any Member in the House or Senate to introduce at any time after the President's report is issued a nonbinding resolution which states "that the _____ finds that the proposed changes to U.S. trade remedy laws contained in the report of the President transmitted to the Congress on _____ under section 2104(d)(3) of the Bipartisan Trade Promotion Authority Act of 2002 with respect to _____, are inconsistent with the negotiating objectives described in section 2102(b)(14) of that Act.", with the first blank space being filled in with either the "House of Representatives" or the "Senate", as the case may be, the second blank space filled in with the appropriate date of the report, and the third blank space being filled in with the name of the country or countries involved.

The resolution is referred to the Ways and Means and Rules Committees in the House and the Finance Committee in the Senate, and is privileged on the floor if it is reported by the Committees. The Conference agreement allows only one resolution (either a nonbinding resolution or a disapproval resolution) per agreement to be eligible for the trade promotion authority procedures contained in sections 152 (d) and (e) of the Trade Act of 1974. The one resolution quota is satisfied for the House only after the Ways and Means Committee reports a resolution, and for the Senate only after the Finance Committee reports a resolution.

The Conference agreement states that, with respect to agreements entered into with Chile and Singapore, the report referenced in section 2104(d)(3)(A) shall be submitted by the President at least 90 calendar days before the day on which the President enters into a trade agreement with either country.

SECTION 2105: IMPLEMENTATION OF TRADE AGREEMENTS

Present/expired law

Before entering into the draft agreement, the President was required to give Congress 90 days advance notice (120 days for the Uruguay Round) to provide an opportunity for revision before signature. After entering into the agreement, the President

was required to submit formally the draft agreement, implementing legislation, and a statement of administrative action. Once the bill was formally introduced, there was no opportunity to amend any portion of the bill -- whether on the floor or in committee. Consequently, before the formal introduction took place, the committees of jurisdiction would hold hearings, “unofficial” or “informal” mark-up sessions and a "mock conference" with the Senate committees of jurisdiction in order to develop a draft implementing bill together with the Administration and to make their concerns known to the Administration before it introduced the legislation formally.

After formal introduction of the implementing bill, the House committees of jurisdiction had 45 legislative days to report the bill, and the House was required to vote on the bill within 15 legislative days after the measure was reported or discharged from the committees. Fifteen additional days were provided for Senate committee consideration (assuming the implementing bill was a revenue bill), and the Senate floor action was required within 15 additional days. Accordingly, the maximum period for Congressional consideration of an implementing bill from the date of introduction was 90 legislative days. Amendments to the legislation were not permitted once the bill was introduced; the committee and floor actions consisted of "up or down" votes on the bill as introduced.

Finally, section 1103(d) of the 1988 Act specified that the fast track rules were enacted as an exercise of the rulemaking power of the House and the Senate, with the recognition of the right of either House to change the rules at any time.

House Amendment

Under Section 2105 of the House amendment to H.R. 3009, the President would be required, at least 90 days before entering into an agreement, to notify Congress of his intent to enter into the agreement. Section 2105(a) also would establish a new requirement that the President, within 60 days of signing an agreement, submit to Congress a preliminary list of existing laws that he considers would be required to bring the United States into compliance with agreement.

Section 2105(b) would provide that trade promotion authority would not apply if both Houses separately agree to a procedural disapproval resolution within any 60-day period stating that the Administration failed to notify or consult with Congress, which is defined as failing or refusing to consult in accordance with section 2104 or 2105, failing to develop or meet guidelines under section 2107(b), failure to meet with the Congressional Oversight Group, or the agreement fails to make progress in achieving the purposes, policies, priorities, and objectives of the Act. In a change from the expired law, such a resolution may be introduced by any Member of the House or Senate. Only one such privileged resolution would be permitted to be considered per trade agreement per

Congress.

Most of the remaining provisions are identical to the expired law. Specifically, section 2105(a) would require the President, after entering into agreement, to submit formally the draft agreement, the implementing legislation, and a statement of administrative action to Congress, and there would be no time limit to do so, but with the new requirement that the submission be made on a date on which both Houses are in session. The procedures of section 151 of the Trade Act of 1974 would then apply. Specifically, on the same day as the President formally submits the legislation, the bill would be introduced (by request) by the Majority Leaders of the House and the Senate. After formal introduction of the legislation, the House Committees of jurisdiction would have 45 legislative days to report the bill. The House would be required to vote on the bill within 15 legislative days after the measure was reported or discharged from the Committees. Fifteen additional days would be provided for Senate Committee consideration (assuming the implementing bill was a revenue bill), and Senate floor action would be required within 15 additional days. Accordingly, the maximum period for Congressional consideration of the implementing bill from the date of introduction would be 90 legislative days.

As with the expired provisions, once the bill has been formally introduced, no amendments would be permitted either in Committee or floor action, and a straight "up or down" vote would be required. Of course, before formal introduction, the bill could be developed by the Committees of jurisdiction together with the Administration during the informal Committee mark-up process.

Finally, as with the expired provision, section 2105(c) specifies that sections 2105(b) and 3(c) are enacted as an exercise of the rulemaking power of the House and the Senate, with the recognition of the right of either House to change the rules at any time.

Senate Amendment

The Senate Amendment is substantially similar to the House Bill, with the following exception:

Reporting requirements. Section 2105(a)(1)(A)(ii) requires the President to transmit to the House Ways and Means Committee and the Senate Finance Committee the notification and report described in section 2104(d)(3)(A) regarding changes to U.S. trade remedy laws.

Disclosure Requirements. Section 2105(a)(4) of the Senate bill specifies that any trade agreement or understanding with a foreign government (oral or written) not disclosed to Congress will not be considered part of trade agreement approved by

Congress and shall have no effect under U.S. law or in any dispute settlement body.

Senate Procedures. Section 2105(b)(1)(C)(i)(II) provides that any Member of the Senate may introduce a procedural disapproval resolution, and that that resolution will be referred to the Senate Finance Committee. Section 2105(b)(1)(C)(iv) provides that the Senate may not consider a disapproval resolution that has not been reported by the Senate Finance Committee.

Conference Agreement

The Senate recedes to the House amendment with several modifications. The Conferees agree to section 2105(a)(4) of the Senate amendment, which specifies that any trade agreement or understanding with a foreign government (oral or written) not disclosed to Congress will not be considered part of trade agreement approved by Congress and shall have no effect under U.S. law or in any dispute settlement body. The Conferees also agree to sections 2105(b)(1)(C)(i)(II) and (b)(1)(C)(iv) of the Senate amendment, which applies the same procedures for consideration of bills in the Senate as for the House.

Finally, the Conferees agree to section 2105(b)(2) of the Senate amendment with modifications, which requires the Secretary of Commerce, in consultation with the Secretaries of State and Treasury, the Attorney General, and the United States Trade Representative, to transmit to Congress a report setting forth the strategy of the executive branch to address concerns of Congress regarding whether dispute settlement panels and the Appellate Body of the WTO have added to obligations or diminished rights of the United States, as described in section 2101(b)(3). Trade authorities procedures shall not apply to any implementing bill with respect to an agreement negotiated under the auspices of the WTO unless the Secretary of Commerce has issued such report prior to December 31, 2002.

SECTION 2106: TREATMENT OF CERTAIN TRADE AGREEMENTS

Present/expired law

No provision.

House Amendment

Section 2106 of the House amendment to H.R. 3009 exempts agreements resulting from ongoing negotiations with Chile or Singapore, an agreement establishing a Free Trade Area of the Americas, and agreements concluded under the auspices of the WTO from prenegotiation consultation requirements of section 2104(a) only. However, upon enactment of H.R. 3009, the Administration is required to consult as to those elements set forth in section 2104(a) as soon as feasible.

Senate Amendment

Section 2106 of the Senate amendment is substantially similar to the House bill.

Conference Agreement

The Conference agreement follows the House amendment and the Senate amendment.

SECTION 2107: CONGRESSIONAL OVERSIGHT GROUP

Present/expired law

No provision.

House Amendment

Section 2107 of the House amendment to H.R. 3009 would require the Chairman of the Committee on Ways and Means and the Chairman of the Committee on Finance to chair and convene, sixty days after the effective date of this Act, the Congressional Oversight Group. The Group would be comprised of the following Members of the House: the Chairman and Ranking Member of the Committee on Ways and Means and

three additional members of the Committee (not more than two of whom are from the same party), and the Chairman and Ranking Member of the Committees which would have, under the Rules of the House, jurisdiction over provisions of law affected by a trade negotiation. The Group would be comprised of the following Members of the Senate: the Chairman and Ranking Member of the Committee on Finance and three additional members of the Committee (not more than two of whom are from the same party), and the Chairman and Ranking Member of the Committees which would have, under the Rules of the Senate, jurisdiction over provisions of law affected by a trade negotiation.

Members are to be accredited as official advisors to the U.S. delegation in the negotiations. USTR is to develop guidelines to facilitate the useful and timely exchange of information between USTR and the Group, including regular briefings, access to pertinent documents, and the closest possible coordination at all critical periods during the negotiations, including at negotiation sites.

Finally, section 2107(c) provides that upon the request of a majority of the Congressional Oversight Group, the President shall meet with the Group before initiating negotiations or an any other time concerning the negotiations.

Senate Amendment

Section 2107 of the Senate amendment is identical to the House amendment to H.R. 3009.

Conference Agreement

The Conference agreement follows the House amendment and the Senate amendment.

SECTION 2108: ADDITIONAL IMPLEMENTATION AND ENFORCEMENT REQUIREMENTS

Present/expired law

No provision.

House Amendment

Section 2108 of the House amendment to H.R. 3009 would require the President to submit to the Congress a plan for implementing and enforcing any trade agreement resulting from this Act. The report is to be submitted simultaneously with the text of the agreement and is to include a review of the Executive Branch personnel needed to enforce the agreement as well as an assessment of any U.S. Customs Service infrastructure improvements required. The range of personnel to be addressed in the report is very comprehensive, including U.S. Customs and Department of Agriculture border inspectors, and monitoring and implementing personnel at USTR, the Departments of Agriculture, Commerce, and the Treasury, and any other agencies as may be required.

Senate Amendment

Section 2108 of the Senate amendment is identical to the House amendment to H.R. 3009.

Conference Agreement

The Conference agreement follows the House amendment and the Senate amendment.

SECTION 2109: COMMITTEE STAFF

Present/expired law

No provision.

House Amendment

Section 2109 of the House amendment to H.R. 3009 states that the grant of trade promotion authority is likely to increase the activities of the primary committees of jurisdiction and the creation of the Congressional Oversight Group under section 2107 will increase the participation of a broader Members of Congress in the formulation of U.S. trade policy and oversight of the U.S. trade agenda. The provision specifies that the primary committees of jurisdiction should have adequate staff to accommodate these increases in activities.

Senate Amendment

Section 2109 of the Senate amendment is identical to the House amendment to H.R. 3009.

Conference Agreement

The Conference agreement follows the House amendment and the Senate amendment.

SECTION 2111: REPORT ON THE IMPACT OF TRADE PROMOTION AUTHORITY

Present/expired law

No provision.

House Amendment

No provision.

Senate Amendment

Section 2111 requires the International Trade Commission, within one year following enactment of this Act, to issue a report regarding the economic impact of the following trade agreements: (1) The U.S.-Israel Free Trade Agreement; (2) the U.S.-Canada Free Trade Agreement; (3) the North American Free Trade Agreement (NAFTA); (4) The Uruguay Round Agreements, which established the World Trade Organization; and (5) The Tokyo Round of Multilateral Trade Negotiations.

Conference Agreement

The House recedes to the Senate amendment.

SECTION 2112: SMALL BUSINESS

Present/expired law

No provision.

House Amendment

No provision.

Senate Amendment

WTO small business advocate. Section 2112(a) provides that the U.S. Trade Representative shall pursue identification of a small business advocate at the World Trade Organization Secretariat to examine the impact of WTO agreements on the interests of small businesses, address the concerns of small businesses, and recommend ways to address those interests in trade negotiations involving the WTO.

Assistant USTR responsible for small businesses. Section 2112(b) provides that the Assistant United States Trade Representative for Industry and Telecommunications shall be responsible for ensuring that the interests of small businesses are considered in trade negotiations.

Conference Agreement

The Senate recedes to the House amendment with a modification. The Conferees agree to section 2112(b) of the Senate amendment, which provides that the Assistant USTR for Industry and Telecommunications will be responsible for ensuring that the interests of small business are considered in trade negotiations.

DIVISION C - ANDEAN TRADE PREFERENCE ACT
TITLE XXXI - ANDEAN TRADE PREFERENCE

SECTION 3101: SHORT TITLE

Present Law

No provision.

House Amendment

Section 3101 of H.R. 3009, as amended, provides that the Act may be cited as the "Andean Trade Promotion and Drug Eradication Act."

Senate Amendment

Section 3101 provides that the Act may be cited as the ``Andean Trade Preference Expansion Act."

Conference Agreement

The Senate recedes.

SECTION 3102: FINDINGS

Present Law

No provision.

House Amendment

Section 1302 contains findings of Congress that:

(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 counter narcotics strategy in the Andean region, promoting export diversification and

broad-based economic development that provide 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 Congress 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.

Senate Amendment

Section 3101 is identical.

Conference Agreement

The conference agreement follows the House amendment and the Senate amendment.

SECTION 3103: ARTICLES ELIGIBLE FOR PREFERENTIAL TREATMENT

Articles (Except Apparel) Eligible for Preferential Treatment

Present Law

The Andean Trade Preference Act (ATPA), enacted on December 4, 1991 as title II of Public Law 102-182, authorizes preferential trade benefits for the Andean nations of Bolivia, Colombia, Ecuador, and Peru, similar to those benefits granted to beneficiaries under the Caribbean Basin Initiative program. The ATPA authorizes the President to proclaim duty-free treatment for all eligible articles from Bolivia, Colombia, Ecuador, Peru. This authority applies only to normal column 1 rates of duty in the Harmonized Tariff Schedule of the United States (HTS); any additional duties imposed under U.S. unfair trade practice laws, such as the antidumping or countervailing duty laws, are not affected by this authority.

The ATPA contains a list of products that are ineligible for duty-free treatment. More specifically, ATPA duty-free treatment does not apply to textile and apparel articles that are subject to textile agreements; petroleum and petroleum products; footwear not eligible for duty-free treatment under the Generalized System of Preferences; certain watches and watch parts; certain leather products; and sugar, syrups and molasses subject to over-quota rates of duty.

House Amendment

Section 3103 (a) amends the Andean Trade Preference Act to authorize the President to proclaim duty-free treatment for any of the following articles which were previously excluded from duty-free treatment under the ATPA, if the President determines that the article is not import-sensitive in the context of imports from beneficiary countries:

(1) Footwear not designated at the time of the effective date of this Act as eligible for the purposes of the Generalized System of Preferences under title V of the Trade Act of 1974;

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

(3) 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;

(4) Handbags, luggage, flat goods, work gloves, and leather wearing apparel that--(i) are the product of any beneficiary country; and (ii) were not designated on August 5, 1983, as eligible articles for purposes of the Generalized System of Preferences under title V of the Trade Act of 1974.

Under H.R. 3009, textiles subject to textile agreements; sugar, syrups and molasses subject to over-quota tariffs; and rum and tafia classified in subheading 2208.40.00 of the HTS would continue to be ineligible for duty-free treatment, as would apparel products other than those specifically described below. Imports of tuna, prepared or preserved in any manner, in airtight containers would receive immediate duty-free treatment.

Senate Amendment

Section 3102 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." 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.

Footwear not eligible for duty-free treatment under GSP receives the same tariff treatment as like products from Mexico, except that duties on articles in particular tariff subheadings are to be reduced by 1/15 per year.

The Senate Amendment provides special treatment for rum and tafia, allowing them to receive the same tariff treatment as like products from Mexico. The bill also allows certain handbags, luggage, flat goods, work gloves, and leather wearing apparel to receive the same tariff treatment as like products from Mexico.

Under the bill, the President is authorized to proclaim duty-free treatment for tuna that is harvested by United States or ATPEA vessels, subject to a quantitative yearly cap of 20 percent of the domestic United states tuna pack in the preceding year.

Conference Agreement

Senate recedes on the authority of President to proclaim duty-free treatment for particular articles which were previously excluded from duty-free treatment under the ATPA, if the President determines that the article is not import-sensitive in the context of imports from beneficiary countries.

Textiles subject to textile agreements; sugar, syrups and molasses subject to over-quota tariffs; and rum and tafia classified in subheading 2208.40.00 of the HTS would continue to be ineligible for duty-free treatment, as would apparel products other than those specifically described below.

House recedes on the treatment of tuna with an amendment to: 1) retain U.S. or Andean flagged vessel rule of origin requirement in Senate amendment; 2) authorize the President to grant duty-free treatment for Andean exports of tuna packed in flexible (e.g., foil), airtight containers weighing with their contents not more than 6.8 kg each; and 3) update **c**alculation of current MFN tariff-rate quota to be an amount based on 4.8 percent of apparent domestic consumption of tuna in airtight containers rather than domestic production.

Eligible Apparel Articles

Present Law

Under the ATPA, apparel articles are on the list of products excluded from eligibility for duty-free treatment.

House Amendment

Under Section 3103, the President may proclaim duty-free and quota-free treatment for apparel articles sewn or otherwise assembled in one or more beneficiary countries exclusively from any one or any combination of the following:

1) Fabrics or fabric components formed, or components knit-to-shape, 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).

2) Fabrics or fabric components formed, or components knit-to-shape, in one or more beneficiary countries, from yarns formed in one or more 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 one or more beneficiary countries) are in chief weight of llama, or alpaca.

3) Fabrics or yarn not produced in the United States or in the region, to the extent that apparel articles of such fabrics or yarn would be eligible for preferential treatment, without regard to the source of the fabrics or yarn, under Annex 401 of the NAFTA (short supply provisions). Any interested party may request the President to consider such treatment for additional fabrics and yarns on the basis that they cannot be supplied by the domestic industry in commercial quantities in a timely manner, and the President must make a determination within 60 calendar days of receiving the request from the interested party.

4) Apparel articles sewn or otherwise assembled in one or more beneficiary countries from fabrics or fabric components formed or components knit-to-shape, in one or more beneficiary countries, from yarns formed in the United States or in one or more beneficiary countries (including fabrics not formed from yarns, if such fabrics are classifiable under heading 5602 or 5603 of the HTS and are formed in one or more beneficiary countries), whether or not the apparel articles are also made from any of the fabrics, fabric components formed, or components knit-to-shape in the United States described in paragraph 1. Imports of apparel made from regional fabric and regional yarn would be capped at 3% of U.S. imports growing to 6% of U.S. imports in 2006, measured in square meter equivalents.

Senate Amendment

Paragraph (2) of section 204(b) of the ATPA as amended by section 3102 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 or alpaca 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.

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

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 Senate bill is brassieres that are cut or sewn, or otherwise 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.

A fifth category of textile and apparel eligible for duty-free treatment is handloomed, handmade, and folklore articles.

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.

Conference Agreement

In general the conferees agreed to follow the House amendment on apparel provisions with the exception that the House receded to the Senate on the treatment of textile luggage. With respect to category 2 in the House bill relating to fabrics or fabric components formed, or components knit-to-shape, in one or more beneficiary countries, from yarns formed in one or more beneficiary countries, if such fabrics are in chief weight of llama, or alpaca, conferees agreed to include vicuna and calculate product eligibility based on chief value instead of chief weight. Also, conferees agreed to cap imports of apparel made from regional fabric and regional yarn (category 4 in the House bill) at 2% of U.S. imports growing to 5% of U.S. imports in 2006, measured in square meter equivalents.

It is the intention of the conferees that in cases where fabrics or yarns determined by the President to be in short supply impart the essential character to an article, the remaining textile components may be constructed of fabrics or yarns regardless of origin, as in Annex 401 of the NAFTA. In cases where the fabrics or yarns determined by the President to be in short supply do not impart the essential character of the article, the article shall not be ineligible for preferential treatment under this Act because the article contains the short supply fabric or yarn.

Special Origin Rule for Nylon Filament Yarn

House Amendment

No provision

Senate Amendment

Articles otherwise eligible for duty-free treatment and quota free treatment under the bill are not ineligible because they contain certain nylon filament yarn (other than elastomeric yarn) from a country that had an FTA with the U.S. in force prior to January 1, 1995.

Conference Agreement

House recedes.

Dyeing, Finishing and Printing Requirement

House Amendment

New requirement that apparel made of U.S. knit or woven fabric assembled in CBTPA country qualifies for benefits only if the U.S. knit or woven fabric is dyed and finished in the United States. Apparel made of U.S. knit or woven fabric assembled in an Andean beneficiary country qualifies for benefits only if the U.S. knit or woven fabric is dyed and finished in the United States.

Senate Provision

No provision

Conference Agreement

Senate recedes.

Penalties for Transshipment

Present Law

The Tariff Act of 1930, as amended, provides for civil monetary penalties for unlawful transshipment. These include penalties under 19 U.S.C.1592 for up to a maximum of the domestic value of the imported merchandise or eight times the loss of revenue, as well as denial of entry, redelivery or liquidated damages for failure to redeliver the merchandise determined to be inaccurately represented. In addition, an importer may be liable for criminal penalties, including imprisonment for up to five years, under section 1001 of title 18 of the United States Code for making false statements on import documentation.

Under the North American Free Trade Agreement (NAFTA), Parties to the Agreement must observe Customs procedures and documentation requirements, which are established in Chapter 5 of NAFTA. Requirements regarding Certificates of Origin for

imports receiving preferential tariffs are detailed in Article 502.1 of NAFTA**.**

House Amendment

Section 3103 requires that importers comply with requirements similar in all material respects to the requirements regarding Certificates of Origin contained in Article 502.1 of the North American Free Trade Agreement (NAFTA) for a similar importation from Mexico.

In addition, if an exporter is determined under the laws of the United States to have engaged in illegal transshipment of apparel products from an Andean country, then the President shall deny all benefits under the bill to such exporter, and to any successors of such exporter, for a period of two years.

In cases where the President has requested a beneficiary country to take action to prevent transshipment and the country has failed to do so, the President shall reduce the quantities of textile and apparel articles that may be imported into the United States from that country by three times the quantity of articles transshipped, to the extent that such action is consistent with World Trade Organization (WTO) rules.

Senate Amendment

In amending section 204(b) of the ATPA, section 3102 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.

Conference Agreement

Conference agreement follows House and Senate bill.

Import Relief Actions

Present Law

The import relief procedures and authorities under sections 201-204 of the Trade Act of 1974 apply to imports from ATPA beneficiary countries, as they do to imports from other countries. If ATPA imports cause serious injury, or threat of such injury, to the domestic industry producing a like or directly competitive article, section 204(d) of the ATPA authorizes the President to suspend ATPA duty-free treatment and proclaim a rate of duty or other relief measures.

Under NAFTA, the United States may invoke a special safeguard provision at any time during the tariff phase-out period if a NAFTA-origin textile or apparel good is being imported in such increased quantities and under such conditions as to cause "serious damage, or actual threat thereof," to a domestic industry producing a like or directly competitive good. The President is authorized to either suspend further duty reductions or increase the rate of duty to the NTR rate for up to three years.

House Amendment

Under Section 3103 normal safeguard authorities under ATPA would apply to imports of all products except textiles and apparel. A NAFTA equivalent safeguard authorities would apply to imports of apparel products from ATPA countries, except that, United States, if it applied a safeguard action, would not be obligated to provide equivalent trade liberalizing compensation to the exporting country.

Senate Amendment

The bill establishes similar textile and apparel safeguard provisions based on the NAFTA textile and apparel safeguard provision.

Conference Agreement

Conference Agreement follows House and Senate bill.

Designation Criteria

Present Law

In determining whether to designate any country as an ATPA beneficiary country, the President must take into account seven mandatory and 12 discretionary criteria, which are listed in section 203 of the ATPA.

Under Section 203 of the ATPA, the President shall not designate any country a ATPA beneficiary country if:

1) the country is a Communist country;

2) the country has nationalized, expropriated, imposed taxes or other exactions or otherwise seized ownership or control of U.S. property (including intellectual property), unless he determines that prompt, adequate, and effective compensation has been or is being made, or good faith negotiations to provide such compensation are in progress, or the country is otherwise taking steps to discharge its international obligations, or a dispute over compensation has been submitted to arbitration;

3) the country fails to act in good faith in recognizing as binding or in enforcing arbitral awards in favor of U.S. citizens;

4) the country affords "reverse" preferences to developed countries and whether such treatment has or is likely to have a significant adverse effect on U.S. commerce;

5) a government-owned entity in the country engages in the broadcast of copyrighted material belonging to U.S. copyright owners without their express consent or the country fails to work toward the provision of adequate and effective intellectual property rights;

6) the country is not a signatory to an agreement regarding the extradition of U.S. citizens;

7) if the country has not or is not taking steps to afford internationally recognized worker rights to workers in the country;

In determining whether to designate a country as eligible for ATPA benefits, the President shall take into account (discretionary criteria):

1) an expression by the country of its desire to be designated;

2) the economic conditions in the country, its living standards, and any other appropriate economic factors;

3) the extent to which the country has assured the United States it will provide equitable and reasonable access to its markets and basic commodity resources;

4) the degree to which the country follows accepted rules of international trade under the World Trade Organization;

5) the degree to which the country uses export subsidies or imposes export performance or local content requirements which distort international trade;

6) the degree to which the trade policies of the country are contributing to the revitalization of the region;

7) the degree to which the country is undertaking self-help measures to protect its own economic development;

8) whether or not the country has taken or is taking steps to afford to workers in that country (including any designated zone in that country) internationally recognized workers rights;

9) the extent to which the country provides under its law adequate and effective means for foreign nationals to secure, exercise, and enforce exclusive intellectual property rights;

10) the extent to which the country prohibits its nationals from engaging in the broadcast of copyrighted material belonging to U.S. copyright owners without their express consent;

11) whether such country has met the narcotics cooperation certification criteria of the Foreign Assistance Act of 1961 for eligibility for U.S. assistance; and

12) the extent to which the country is prepared to cooperate with the United States in the administration of the Act.

Under the ATPA the President is prohibited from designating a country a beneficiary country if any of criteria (1)-(7) apply to that country, subject to waiver if the President determines that country designation will be in the U.S. national economic or security interest. The waiver does not apply to criteria (4) and (6). Under the ATPA criteria on (7) is included as both mandatory and discretionary.

The President may withdraw or suspend beneficiary country status or duty-free treatment on any article if he determines the country should be barred from designation as a result of changed circumstances. The President must submit a triennial report to the Congress on the operation of the program. The report shall include any evidence that the crop eradication and crop substitution efforts of the beneficiary country are directly related to the effects of the legislation

House Amendment

The House amendment provides that the President, in designating a country as eligible for the enhanced ATPDEA benefits, shall take into account the existing eligibility criteria established under ATPA described above, as well as other appropriate criteria,

including: whether a country has demonstrated a commitment to undertake its WTO obligations and participate in negotiations toward the completion of the FTAA or comparable trade agreement; the extent to which the country provides intellectual property protection consistent with or greater than that afforded under the Agreement on Trade-Related Aspects of Intellectual Property Rights; the extent to which the country provides internationally recognized worker rights; whether the country has implemented its commitments to eliminate the worst forms of child labor; the extent to which a country has taken steps to become a party to and implement the Inter-American Convention Against Corruption; and the extent to which the country applies transparent, nondiscriminatory and competitive procedures in government procurement equivalent to those included in the WTO Agreement on Government Procurement and otherwise contributes to efforts in international fora to develop and implement international rules in transparency in government procurement.

Senate Amendment

Section 3102(5) contains identical provisions.

Conference Agreement

Conference Agreement follows the House and Senate amendments. In evaluating a potential beneficiary's compliance with its WTO obligations, the conferees expect the President to take into account the extent to which the country follows the rules on customs valuation set forth in the WTO Customs Valuation Agreement. With respect to intellectual property protection, it is the Conferees intent that the President will also take into account the extent to which potential beneficiary countries are providing or taking steps to provide protection of intellectual property rights comparable to the protections provided to the United States in bilateral intellectual property agreements.

Since April 1995, Colombia has applied a variable import duty system, known as the "price band" system, on fourteen basic agriculture products such as wheat, corn, and soybean oil. An additional 147 commodities, considered substitutes or related products, are subject to the price band system which establishes ceiling, floor, and reference prices on imports. The Conferees's view is that the price band system is non-transparent and easily manipulated as a protectionist device. In early 2000, the United States reached agreement with Colombia in the WTO that Colombia would delink wet pet food, the only finished product in this system, from the price band system. In implementing the eligibility criteria relating to market access and implementation of WTO commitments, it is the Conferees intent that USTR insist that Colombia implement its WTO commitment to remove pet food from the price band tariff system and to apply the 20% common external tariff to imported pet food.

With respect to whether beneficiary countries are following established WTO rules, the Conferees believe it is important for Andean governments to provide transparent and non-discriminatory regulatory procedures. Unfortunately, the Conferees know of instances where regulatory policies in Andean countries are opaque, unpredictable, and arbritarily applied. As such, its is the Conferees'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 mere 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.

House Amendment

Section 3102(b) amends section 203(e) of the ATPA to provide that President may withdraw or suspend ATPA designation, or withdraw, suspend or limit benefits is a country's performance under eligibility criteria are no longer satisfactory.

Senate Amendment

Identical.

Conference agreement

Conference agreement follows the House amendment and Senate amendment.

Reporting Requirements

Present Law

Provides for : 1) an annual report by the International Trade Commission on the economic impact of the bill and; 2) an annual report by the Secretary of Labor on the impact of the bill with respect to U.S. labor. Also under present law, USTR is required to report triannually on operation of the program.

House Amendment

Retains current law on reports.

Senate Amendment

Senate bill requires same ITC and Labor reports as well as an annual report by the Customs Service on compliance and anti-circumvention on the part of beneficiary countries in the area of textile and apparel trade. It also requires USTR to report biannually on operation of the program.

Conference Agreement

House recedes.

Petitions for Review

Present Law

No provision.

House Amendment

No provision.

Senate Amendment

Section 3102(e) of the bill directs the President to promulgate regulations regarding the review of eligibility of articles and countries under the ATPA. Such regulations are to be similar to regulations governing the Generalized System of Preferences petition process.

Conference Agreement

House recedes.

SECTION 3104: TERMINATION OF DUTY-FREE TREATMENT

Present Law

Duty-free treatment under the ATPA expires on December 4, 2001.

House Amendment

Duty-free treatment terminates under the Act on December 31, 2006.

Senate Amendment

Section 3103 of the bill amends section 208(b) of the ATPA to provide for a termination date of February 28, 2006. Basic ATPA benefits apply retroactively to December 4, 2001.

Conference Agreement

House recedes on retroactivity for basic ATPA benefits; Senate recedes on termination.

SECTION 3106. TRADE BENEFITS UNDER THE CARIBBEAN BASIN TRADE PARTNERSHIP ACT (CBTPA) AND THE AFRICA GROWTH AND OPPORTUNITY ACT (AGOA)

Knit-to-shape Apparel

Present Law

Draft regulations issued by Customs to implement P.L. 106-200 stipulate that knit-to-shape garments, because technically they do not go through the fabric stage, are not eligible for trade benefits under the act.

House Amendment

Sec. 3106 and 3107 of the House bill amends AGOA and CBTPA to clarify that preferential treatment is provided to knit-to-shape apparel articles assembled in beneficiary countries.

Senate Amendment

No provision.

Conference Agreement

Senate recedes.

Present law

Draft regulations issued by Customs to implement P.L. 106-200 deny preferential access to garments that are cut both in the United States and beneficiary countries, on the rationale that the legislation does not specifically list this variation in processing (the so-called "hybrid cutting problem").

House Amendment

Sec. 3107 of H.R. 3009 adds new rules in CBTPA and AGOA to provide preferential treatment for apparel articles that are cut both in the United States and beneficiary countries.

Senate Amendment

No provision.

Conference Agreement

Senate recedes

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CBI Knit Cap

Present Law

P.L. 106-200 extended duty-free benefits to knit apparel made in CBI countries from regional fabric made with U.S. yarn and to knit-to-shape apparel (except socks), up to a cap of 250,000,000 square meter equivalents (SMEs), with a growth rate of 16% per year for first 3 years.

House Amendment

Sec. 3106 of H.R. 2009 would raise this cap to the following amounts: 250,000,000 SMEs for the 1-year period beginning October 1, 2001; 500,000,000 SMEs for the 1-year period beginning on October 1, 2002; 850,000,000 SMEs for the 1-year period beginning on October 1, 2003; 970,000,000 SMEs in each succeeding 1-year period through September 30, 2009.

Senate Amendment

No provision.

Conference Agreement

Senate recedes.

CBI T-shirt cap

Present Law

P.L. 106-200 extends benefits for an additional category of CBI regional knit apparel products (T-shirts) up to a cap of 4.2 million dozen, growing 16% per year for the first 3 years.

House Amendment

Section 3106 of H.R 3006 would raise this cap to the following amounts: 4,200,000 dozen during the 1-year period beginning October 1, 2001; 9,000,000 dozen for the 1-year period beginning on October 1, 2002; 10,000,00 dozen for the 1-year period beginning on October 1, 2003; 12,000,000 dozen in each succeeding 1-year period through September 30, 2009.

Senate Amendment

No provision.

Conference Agreement

Senate recedes

Present Law

Section 112(b)(3) of the AGOA provides preferential treatment for apparel made in beneficiary sub-Saharan African countries from "regional" fabric (i.e., fabric formed in one or more beneficiary countries) from yarn originating either in the United States or one or more such countries. Section 112(b)(3)(B) establishes a special rule for lesser developed beneficiary sub-Saharan African countries, which provides preferential treatment, through September 30, 2004, for apparel wholly assembled in one or more such countries regardless of the origin of the fabric used to make the articles. Section 112(b)(3)(A) establishes a quantitative limit or "cap" on the amount of apparel that may be imported under section 112(b)(3) or section 112(b)(3)(B). This "cap" is 1.5 percent of the aggregate square meter equivalents of all apparel articles imported into the United States for the year that began October 1, 2000, and increases in equal increments to 3.5 percent for the year beginning October 1, 2007.

House Amendment

Section 3107 would clarify that apparel wholly assembled in one or more beneficiary sub-Saharan African countries from components knit-to-shape in one or more such countries from U.S. or regional yarn is eligible for preferential treatment under section 112(b)(3) of AGOA. Similarly, Section 5 would clarify that apparel knit-to-shape and wholly assembled in one or more lesser developed beneficiary sub-Saharan African countries is eligible for preferential treatment, regardless of the origin of the yarn used to make such articles. The House amendment also would increase the "cap" by changing the applicable percentages from 1.5 percent to 3 percent in the year that began October 1, 2000, and from 3.5 percent to 7 percent in the year beginning October 1, 2007.

Senate Amendment

No provision.

Conference Agreement

Conference agreement follows House Amendment accept the increase in the cap is limited to apparel products made with regional or U.S. fabric and yarn. No increases in amounts of apparel made of third-country fabric over current law.

Present Law

AGOA was supposed to provide duty-free, quota-free treatment to sweaters knit in African beneficiary countries from fine merino wool yarn, regardless of where the yarn was formed. AGOA was supposed to provide duty-free, quota-free treatment to sweaters knit in African beneficiary countries from fine merino wool yarn, regardless of where the yarn was formed. However, due to a drafting problem, the wrong diameter was included, making it impossible to use the provision.

House Amendment

Section 3107 corrects the yarn diameter in the AGOA legislation so that sweaters knit to shape from merino wool of a specific diameter are eligible.

Senate Amendment

No provision.

Conference Agreement

Senate recedes.

Africa: Namibia and Botswana

Present Law

The GDBs of Botswana and Namibia exceed the LLDC limit of $1500 and therefore these countries are not eligible to use third country fabric for the transition period under the AGOA regional fabric country cap.

House Amendment

Section 5 allows Namibia and Botswana to use third country fabric for the transition period under the AGOA regional fabric country cap.

Senate Amendment

No provision.

Conference Agreement

Senate recedes.

Title XLI - EXTENSION OF GENERALIZED SYSTEM OF PREFERENCES

SEC. 4101. EXTENSION OF GENERALIZED SYSTEM OF PREFERENCES

Expired Law

Section 505 of the Trade Act of 1974, as amended, provides that no duty-free treatment under Title V (the Generalized System of Preferences) shall remain in effect after September 30, 2001.

House Bill

The House amendment to H.R. 3009 would amend section 505 of the Trade Act of 1974 to authorize an extension through December 31, 2002. It would also provide retroactive relief in that, notwithstanding section 514 of the Tariff Act of 1930 or any other provision of law, the entry of any article to which duty-free treatment under Title V of the Trade Act of 1974 would have applied if the entry had been made on September 30, 2001, and was made after September 30, 2001, and before the enactment of this Act, shall be liquidated or reliquidated as free of duty and the Secretary of Treasury shall refund any duty paid, upon proper request filed with the appropriate Customs officer, within 180 days after the date of enactment.

Senate Amendment

The Senate amendment authorizes an extension of GSP through December 31, 2006. The extension is retroactive to September 30, 2001, permitting importers to liquidate or reliquidate entries made since that date and to seek a return of duties paid on goods that would have entered the United States free of duty, but for expiration of GSP.

The Senate Amendment also amends the definition of "internationally recognized worker rights" set forth in the GSP statute (section 507(4) of the Trade Act of 1974). Specifically, it adds to that definition "a prohibition on discrimination with respect to employment and occupation" and a "prohibition of the worst forms of child labor." These two prohibitions come from the International Labor Organization's 1998 Declaration on Fundamental Principles and Rights at Work, which defines certain worker rights as "fundamental."

The GSP statute identifies certain criteria that the President must take into account in determining whether to designate a country as eligible for GSP benefits. Conversely, a country's lapse in compliance with one or more of these criteria may be grounds for

withdrawal, suspension, or limitation of benefits. Whether a country is taking steps to afford its workers internationally recognized worker rights is one of those criteria. The Senate Amendment seeks to make the concept of "internationally recognized worker rights" as defined for GSP consistent with the concept as defined by the ILO.

Finally, the Senate Amendment establishes a new eligibility criterion for GSP: "A country is ineligible for GSP if it has not taken steps to support the efforts of the United States to combat terrorism."

Conference Agreement

The Conference agreement authorizes an extension of GSP through December 31, 2006**.** Conferees approved the Senate provision to include a prohibition on the worst forms of child labor in the definition of internationally recognized worker rights in Section 507(a) of the Trade Act of 1974. Conferees declined to include the Senate provision on discrimination with respect to employment in the definition of "international recognized worker rights under Sec. 507 (a) of the Trade Act of 1974. Agreement follows the House and the Senate bill with respect to providing retroactive relief.

DIVISION E – MISCELLANEOUS PROVISIONS

TITLE L - MISCELLANEOUS TRADE BENEFITS

Subtitle A - Wool Provisions

SEC. 5101– WOOL MANUFACTURER PAYMENT CLARIFICATION AND TECHNICAL CORRECTIONS ACT

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 mens' suits). 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. 106-2000, §505.

House Amendment

No provision.

Senate Amendment

The Senate bill amends section 505 of the Trade and Development Act of 2000 to simplify 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 for importing manufacturers will be distributed in three installments – the first and second on or before the date that is 45 days after the date of enactment of the Wool Manufacturer Payment and Clarification and Technical Corrections Act, and the third on or before April 15, 2003. Refunds for nonimporting manufacturers will be distributed in two installments – the first on or before the date that is 120 days after the date of enactment of the Wool Manufacturer Payment Clarification and Technical Corrections Act, and the second on or before 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.

Conference Agreement

The House recedes to the Senate.

SEC. 5102 – DUTY SUSPENSION ON WOOL

Present Law

Sections 501(a) and (b) of the Trade and Development Act of 2000 provide temporary duty reductions for certain worsted wool fabrics through 2003.

Section 501(d) limits the aggregate quantity of worsted wool fabrics entered under heading 9902.51.11 from January 1 to December 31 of each year, inclusive, to 2,500,000 square meter equivalents, or such other quantity proclaimed by the President pursuant to section 504(b)(3) of the Trade and Development Act. Further, the section limits the aggregate quantity of worsted wool fabrics entered under heading 9902.51.12 from January 1 to December 31 of each year, inclusive, to 1,500,000 square meter equivalents, or such other quantity proclaimed by the President pursuant to section 504(b)(3) of the Trade and Development Act.

House Amendment

No provision.

Senate Bill

The Senate bill extends the temporary duty reductions on fabrics of worsted wool from 2003 to 2005. The provision increases the limitation on the quantity of imports of worsted wool fabrics entered under heading 9902.51.11 to 3,500,000 square meter equivalents in calendar year 2002, and 4,500,000 square meter equivalents in calendar year 2003. Imports of worsted wool fabrics entered under heading 9902.51.12 are increased to 2,500,000 square meter equivalents in calendar year 2002, and 3,500,000 square meter equivalents in calendar year 2003.

The bill extends the payments made to manufacturers under section 505 of the Trade and Development Act of 2000 and requires an affidavit that the manufacturer will remain a manufacturer in the United States as of January 1 of the year of payment. The two additional payments will occur as follows: the first to be made after January 1, 2004, but on or before April 15, 2004, and the second after January 1, 2005, but on or before April 15, 2005.

Finally, the bill extends the "Wool Research Trust Fund" for two years through 2006.

Conference Agreement

The House recedes to the Senate.

Subtitle B - Other Provisions

SEC. 5201 – FUND FOR WTO DISPUTE SETTLEMENT

Present Law

No applicable section.

House Amendment

The provision authorizes a settlement fund within the United States Trade Representative's Office in the amount of $50 million for the use in settling disputes that occur related to the World Trade Organization. The Trade Representative must certify to the Secretary of the Treasury that the settlement is in the best interest of the United States in cases of not more than $10 million. For cases above $10 million, the Trade Representative must make the same certification to the United States Congress.

Senate Bill

No provision.

Conference Agreement

The Senate recedes to the House.

SEC. 5202 – 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.

House Amendment

No provision.

Senate Amendment

Section 203 of the Senate amendment 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. The provision was intended to lower the cost of inputs into the operation of nuclear facilities and thereby lower the cost of energy to consumers.

Committee Agreement

The House recedes to the Senate.

SEC. 5203 – SUGAR TARIFF RATE QUOTA CIRCUMVENTION

Present Law

No applicable section.

House Amendment

No provision.

Senate Amendment

The Senate bill establishes a sugar anti-circumvention program which requires the Secretary of Agriculture to identify imports of articles that are circumventing tariff-rate quotas on sugars, syrups, or sugar-containing products imposed under chapters 17, 18, 19, and 21 of the Harmonized Tariff Schedule. The Secretary shall then report to the President articles found to be circumventing such tariff-rate quotas. Upon receiving the Secretary's report, the President shall, by proclamation, include any identified article in the appropriate tariff-rate quota provision of the Harmonized Tariff Schedule.

Conference Agreement

Conferees agreed to a provision directing the Secretary of Agriculture and the Commissioner of Customs shall monitor for sugar circumvention and shall report and make recommendations to Congress and the President.

This provision amends the Harmonized Tariff Schedule of the United States ("HTSUS") to make clear in the statute an important element of the ruling of the Court of Appeals for the Federal Circuit in Heartland By-Products, Inc. v. United States, 264 F. 3rd 1126 (Fed. Cir. 2001), i.e., that molasses is one of the foreign substances that must be excluded when calculating the percentage of soluble non-sugar solids under subheading 1702.90.40.

The provision requires the Secretary of Agriculture and the Commissioner of Customs to establish a monitoring program to identify existing or likely circumvention of the tariff-rate quotas in Chapters 17, 18, 19 and 21 of the HTSUS. The Secretary and the Commissioner shall report the results of their monitoring to Congress and the President every six months, together with data and a description of developments and trends in the composition of trade provided for in such chapters. This report will be made public. The report will discuss any indications that imports of articles not subject to the tariff-rate quotas are being used for commercial extraction of sugar in the United States. Imports of so-called "high-test molasses" currently classified under subheading 1703.10.30 will be examined particularly closely for such indications.

Finally, the Secretary and the Commissioner will include in the report their recommendations for ending circumvention, including their recommendations for legislation. The Managers emphasize that rapid action to stop circumvention is the best way to prevent a problem form developing and that quick administrative or legislative action is preferable to protracted procedures and litigation, as occurred in the Heartland case.