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H.R. 3009 — Andean Trade Promotion and Drug Eradication Act (with Trade Promotion Authority and Other Trade Provisions)

Calendar No. 295

H.R. 3009, the Andean Trade Preference Expansion Act, was reported from the Finance Committee on December 14, 2001, by voice vote, with an amendment in the nature of a substitute. S. Rept. 107-126.

NOTEWORTHY

- The Majority Leader is expected this week to ask unanimous consent to proceed to H.R. 3009, the Andean Trade Promotion and Drug Eradication Act. If there is objection, he is expected to file cloture on a motion to proceed to the bill.
- Once the Senate begins floor consideration, a managers' amendment in the nature of a substitute is expected. At press time, the language of the managers' amendment was not yet available. Besides extension of the **Andean Trade** Preference Expansion Act, the substitute is expected to include titles (1) renewing the President's Trade Promotion Authority (**TPA**), (2) extending Trade Adjustment Assistance (**TAA**), and (3) extending the Generalized Systems of Preferences (**GSP**). (At press time, it appeared the President's request for extending permanent normal trade relations (NTR) with Russia might be offered as a separate amendment.)
- H.R. 3009, the **Andean trade** bill, extends and expands a trade preference program (which expired in December 2001) for four beneficiary countries: Bolivia, Colombia, Ecuador, and Peru.
- The **TPA** title of the expected managers' amendment would renew the president's authority (which expired in 1994) to proclaim changes in U.S. tariff schedules resulting from the negotiation of reciprocal trade agreements. This title would also renew congressional procedures for implementing any changes to U.S. law required by an international trade agreement achieving the objectives established by Congress. These provisions were previously known as "fast track" procedures. Provisions in the manager's amendment are expected to be very similar to the Senate Finance Committee-reported version of the TPA bill (H.R. 3005); the House of Representatives approved a similar version on December 6, 2001, by a vote of 215 to 214.
- The **TAA** title reauthorizes programs including (1) trade adjustment assistance for workers displaced by import competition, (2) trade adjustment assistance for firms facing a significant adjustment due to

increased import competition, and (3) trade adjustment assistance programs established in conjunction with the North American Free Trade Agreement (NAFTA). The TAA programs expired in September 2001. A new health coverage benefit for TAA-eligible workers is also expected to be included in the managers' substitute.

- The **GSP** title extends the program (which provides preferential tariff treatment to certain products that are imported from designated developing countries) for two years.

BACKGROUND

The following are brief background explanations of the titles of H.R. 3009 as modified by the expected managers' amendment:

Andean Trade

H.R. 3009 extends and expands a trade preference program for four beneficiary countries (Bolivia, Colombia, Ecuador and Peru) established in 1991 but which expired on December 4, 2001. The reauthorization of the Andean Trade Preference Act (ATPA) provides duty-free treatment for most products that are the growth, product, or manufacture of any of the four ATPA beneficiary countries and that are imported directly into the customs territory of the United States. H.R. 3009 extends ATPA through February 28, 2006, and expands the program by giving duty-free or reduced-duty treatment to most products currently excluded from ATPA.

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

Trade Promotion Authority (TPA)

Article I, section 8, clause 2 of the Constitution gives Congress the power to regulate foreign commerce. Congress historically has exercised that power through legislation regulating imports of goods, services, and investment into the United States.

Beginning with the Reciprocal Trade Agreements Act of 1934, Congress delegated authority to the President to proclaim changes in U.S. tariffs, within prescribed limits, based on the results of mutually beneficial trade agreements concluded with our foreign trading partners. Congress set the overall objectives

of the negotiation but offered the President and our trading partners the assurance that, if the agreement reached were consistent with the objectives and conditions set by Congress, the agreement would be implemented in U.S. law. The results were significant reductions in both foreign and U.S. tariffs. As tariff levels fell, particularly after the Kennedy Round of tariff negotiations concluded in 1967, it became clear that future rounds of trade talks would focus on the panoply of nontariff measures (for example, tax and regulatory practices) that our trading partners used to bar or inhibit U.S. exports from reaching their markets.

Accordingly, Congress introduced in the Trade Act of 1974 provisions previously known as the “fast track” procedures for implementing trade agreements, and now generally called “trade promotion authority” (TPA) procedures. These procedures are designed to preserve Congress’s constitutional role in the regulation of foreign commerce while offering the President and our trading partners the assurance that a trade agreement requiring changes in U.S. law would receive an up-or-down vote within a time certain when brought before Congress.

Consistent with the approach established by the 1934 Act, Congress set the President’s negotiating objectives in the 1974 Act. It obliged the President to notify Congress prior to entry into any trade agreement, consult on the nature and scope of the accord, and submit the President’s findings as to how the pact met the objectives set by Congress, together with legislation needed to implement the agreement in U.S. law.

Congress has preserved the basic structure of the 1974 Act each time it has renewed the trade agreement approval procedures. The procedures were renewed once for eight years by the Trade Agreements Act of 1979, and a second time for five years in the Omnibus Trade and Competitiveness Act of 1988. The authority granted by the 1988 Act was extended in 1993 for an additional six months in order to complete the Uruguay Round of multilateral trade negotiations under the General Agreement on Tariffs and Trade (GATT). It has not been renewed since it expired in early 1994.

Trade Adjustment Authority (TAA)

This title extends the authorization of three Trade Adjustment Assistance (TAA) programs through September 30, 2003. (All three programs expired on September 30, 2001.) These three programs were authorized in Title II of the Trade Act of 1974, as amended, for the purpose of providing assistance to individual workers and firms that are adversely affected by the reduction of barriers to foreign trade. Those programs are:

- The general TAA program for workers, which provides training and income support for workers adversely affected by import competition;
- The TAA program for firms, which provides technical assistance to qualifying firms; and
- The NAFTA program for workers (established by the North American Free Trade Agreement Implementation Act of 1993), which provides training and income support for workers adversely affected by trade with, or production shifts to, Canada and/or Mexico.

The managers’ amendment is expected to include a new health coverage benefit for workers displaced by foreign trade in the form of a tax credit covering a percentage (under negotiation) of the cost of the worker’s COBRA coverage or other group coverage. Part of the 1986 Consolidated Omnibus Budget

Reconciliation Act (COBRA) was a provision to extend employer-provided health insurance benefits to people who have lost their coverage. These so-called “COBRA benefits” allow terminated employees – or those who have lost their health care coverage due to reduced work hours – to continue their group coverage for a limited time. Under COBRA, qualified persons have 60 days from the time they are fired, quit, retire, etc., to elect to continue coverage under their employer-sponsored health plan. Most former employees are allowed an extra 18 months of coverage before they have to switch to a new plan or go without insurance. COBRA beneficiaries have to, in most cases, pay for the benefit. COBRA permits employers to charge beneficiaries up to 102 percent of the employer’s health insurance costs. While this charge is usually significantly higher than the cost to active employees, COBRA benefits are generally less expensive than enrolling in an individual plan and they allow for continued coverage of preexisting conditions. COBRA generally applies to group health plans maintained by employers with 20 or more employees. It is estimated that some 4.7 million individuals are enrolled in COBRA plans at any one time.

Generalized System of Preferences (GSP)

The Generalized System of Preferences (GSP) provides preferential tariff treatment to certain products that are imported from designated developing countries. The primary purpose of the program, which the United States and other industrial countries initiated in the 1970s, is to promote economic growth in developing countries and countries in transition by stimulating their exports. It authorizes the President to provide duty-free treatment for any eligible product from any beneficiary developing country (BDC) and spells out criteria for designating eligible countries and products.

Currently about 4,600 products from over 140 BDCs are eligible for duty-free treatment under GSP. In 2001, the United States imported \$15.8 billion in products under the program. Petroleum products, automobile parts, jewelry, and furniture were among the leading imports. The program was reauthorized by the 106th Congress, retroactively from July 1, 1999 through September 30, 2001. The GSP title in the managers’ amendment would extend the current GSP program to December 31, 2003, retroactive to September 30, 2001.

BILL PROVISIONS

H.R. 3009, as modified by the managers’ amendment expected to be offered, will contain the following major provisions:

Andean Trade

H.R. 3009 extends the Andean Trade Preference Act (ATPA) through February 28, 2006, and expands the program by giving duty-free or reduced-duty treatment to most products currently excluded from ATPA.

Additionally, the title contains three miscellaneous provisions. The first establishes a procedure for importers of certain wool products to obtain refunds of duties paid in calendar year 1999. The second

waives quantitative restrictions on ceiling fans imported from Thailand eligible for duty-free treatment under the Generalized System of Preferences. The third provides duty-free treatment for steam or other vapor-generating boilers used in nuclear facilities, imported into the United States from January 1, 2002, through December 31, 2006.

Trade Promotion Authority (TPA)

This title extends tariff proclamation authority and expedited procedures for congressional consideration of trade agreements (see Background, above). This title is expected to be identical to the text of H.R. 3005 as reported by the Senate Finance Committee (S. Rept. 107-139). The major provisions are as follows:

Section 2. Trade negotiating objectives.

This section sets forth the objectives, policies, and priorities of the United States in negotiating trade agreements over the next five years. In order for legislation implementing a trade agreement to qualify for consideration under the special trade authorities procedures set forth in section 3 of the title, the President must state that the agreement makes progress in achieving the applicable purposes, policies, priorities, and objectives of the bill. Further, these purposes, policies, priorities, and objectives should serve as the basis for consultations between the President and Congress during the course of an agreement's negotiation.

Section 2 is organized into three subsections. Subsection 2(a) addresses eight overall objectives or goals that cut across sectors and issue areas. These are:

1. Obtaining more open, equitable, and reciprocal market access;
2. Obtaining the reduction or elimination of trade barriers and other trade-distorting policies and practices;
3. Further strengthening the system of international trading disciplines and procedures, including dispute settlement;
4. Fostering economic growth, raising living standards, and promoting full employment in the United States, and enhancing the global economy;
5. 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;
6. Promoting respect for worker rights and the rights of children, consistent with core labor standards as defined in section 13(2) of the title;
7. Seeking commitments by trade agreement partners to strive not to weaken or reduce protections afforded in domestic environmental or labor laws in order to gain trade advantages; and

8. Ensuring that trade agreements afford small businesses equal access to international markets, equitable trade benefits, and expanded export opportunities, and provide for the elimination of barriers that affect small businesses disproportionately.

Subsection 2(b) addresses 14 objectives that are specific to particular sectors, such as services and agriculture, and particular issue areas. These are:

1. **Trade barriers and distortion:** To expand competitive opportunities for U.S. exports and to obtain reciprocal tariff and nontariff barrier elimination agreements;
2. **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 service suppliers.
3. **Foreign investment:** To seek agreements protecting rights of U.S. investors abroad and ensuring the existence of an investor-state dispute settlement mechanism.
4. **Intellectual property:** (a) to ensure accelerated and full implementation of the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (the “TRIPs Agreement”), especially with respect to enforcement obligations; (b) to ensure that trade agreements reflect a standard of protection of intellectual property rights similar to that found in U.S. law; (c) to provide strong protection for new and emerging technologies and new methods of transmitting and distributing products embodying intellectual property; (d) to prevent discrimination regarding the availability, acquisition, scope, maintenance, use, and enforcement of intellectual property rights; (e) to ensure that standards of protection and enforcement keep pace with technological developments and, in particular, that rights are adequately protected and enforced with respect to intellectual property conveyed via the Internet and other global communications media; (f) to provide strong enforcement of intellectual property rights, including through accessible, expeditious, and effective civil, administrative and criminal enforcement mechanisms; and (g) to secure fair, equitable and non-discriminatory market access opportunities for U.S. persons who rely on intellectual property protection.
5. **Transparency:** (a) to increase timely public access to information regarding trade issues as well as the activities of international trade institutions; (b) 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 (c) to increase timely public access to notifications made by WTO Members with the supporting documents.
6. **Anti-corruption:** (a) to obtain high standards and appropriate domestic enforcement mechanisms to prevent and deter the use of money or other things of value to influence acts, decisions, or omissions of foreign governments, and (b) to ensure that anti-corruption standards do not put United States persons at a competitive disadvantage.
7. **Improvement of the WTO and multilateral trade agreements:** (a) to achieve full implementation of the existing agreements and to expand their coverage to products, sectors, and trade conditions not currently covered, and (b) to enhance and expand participation in the Information Technology Agreement and other trade agreements.

8. **Regulatory practices:** (a) to seek increased transparency and opportunity for public participation in foreign country processes for developing regulations; (b) to require that proposed regulations be based on sound science, cost-benefit analysis, risk assessment, or other objective evidence; (c) to establish consultative mechanisms among trade agreement parties to promote increased transparency in developing laws, rules, regulations, and guidelines; and (d) to eliminate regulatory practices, such as price controls and reference pricing, that operate as market access barriers.
9. **Electronic commerce:** (a) to ensure that current obligations, rules, disciplines, and commitments under the WTO apply to electronic commerce; (b) to ensure that electronically delivered goods and services receive no less favorable treatment than like products delivered in physical form, and that the classification of such goods and services ensures the most liberal trade treatment possible; (c) to ensure that governments refrain from implementing trade-related measures that impede electronic commerce; (d) to obtain commitments that any regulations affecting electronic commerce are the least trade restrictive necessary to achieve legitimate policy objectives, nondiscriminatory, transparent, and supportive of an open market environment; and (e) to extend the WTO moratorium on duties on electronic transmissions.
10. **Reciprocal trade in agriculture:** (a) to ensure that U.S. trade negotiators duly recognize the importance of agricultural issues; (b) 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 more equitable and more open conditions of trade in bulk, specialty crop and value-added commodities; (c) to reduce or eliminate, by a date certain, tariffs or other charges that decrease market opportunities for U.S. exports; to reduce or eliminate trade-distorting export subsidies, while maintaining legitimate food assistance, export credit, and market development programs; (d) to enhance disciplines on production subsidies; (e) to impose disciplines on the operations of state-trading enterprises or similar administrative mechanisms; (f) to eliminate unjustified restrictions, including labeling, that adversely affect products of new technology, including biotechnology; (g) to eliminate sanitary or phytosanitary restrictions that contravene the Uruguay Round Agreements; (h) to eliminate unjustified technical barriers to trade; and (i) to improve import relief mechanisms to accommodate the unique aspects of perishable and cyclical agriculture.

In addition, the principal negotiating objectives on agriculture require negotiators to take into account certain key factors, including: (a) whether a country has failed to adhere to (or has circumvented) obligations under existing agreements with the United States; (b) whether a product is subject to market distortions by reason of other countries' failure to adhere to existing obligations; (c) the impact that existing agreements to which the United States is a party is having on U.S. agriculture; and (d) the impact that simultaneous negotiations in several fora may have on import-sensitive agricultural products.

11. **Labor and the environment:** (a) 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; (b) to recognize that a party to a trade agreement is effectively enforcing its laws if a course of action or inaction reflects a reasonable exercise of discretion or results from a bona fide decision regarding allocation of resources, and that 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; (c) 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; (d) to reduce or eliminate government practices or policies that unduly threaten sustainable development; (e) to seek market access for U.S. environmental technologies, goods, and services; and (f) 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.

12. **Dispute settlement and enforcement:** (a) 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; (b) to seek to strengthen the capacity of the WTO Trade Policy Review Mechanism to review compliance; (c) to seek improved adherence by WTO dispute settlement panels and the Appellate Body to the standard of review in applicable WTO Agreements, including greater deference to the fact finding and technical expertise of national investigating authorities; (d) to seek provisions encouraging the early identification and settlement of disputes through consultations; (e) to seek provisions encouraging trade-expanding compensation; (f) to 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 (g) to 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.
13. **Border taxes:** to seek a revision of WTO rules that will eliminate the current disadvantage to countries, such as the United States, that rely primarily on direct taxes (such as income taxes), rather than indirect taxes (such as sales and value-added taxes), and that tax income on a worldwide rather than a territorial basis.
14. **WTO extended negotiations:** to meet two objectives previously set forth in the Uruguay Round Agreements Act (URAA), specifically (a) concerning objectives for extended negotiations on trade in civil aircraft, and (b) conclusion of a WTO agreement on harmonization of rules of origin.

Subsection 2(c) addresses priorities that are not necessarily negotiating objectives themselves but that should inform trade negotiations or be pursued parallel to trade negotiations. For example, one priority requires the conduct of environmental reviews in conjunction with new trade negotiations. Another priority directs the President to seek the establishment of consultative mechanisms among trade agreement partners to strengthen their capacity to promote respect for core labor standards.

Section 3. Trade agreements authority.

Section 3 provides that the President may enter into trade agreements subject to the trade authorities procedures prescribed in the present title before June 1, 2005 or, if such procedures are extended as provided in section 3(c), before June 1, 2007. Section 3 contains two different procedures for implementing trade agreements, one for implementing certain results of tariff negotiations, and one for implementing all other results of tariff negotiations, as well as other changes to U.S. law required by trade agreements:

- **Tariff proclamation authority.** Section 3(a) contains the first of these two procedures, commonly referred to as “tariff proclamation authority.” Tariff proclamation authority permits the President to

proclaim the results of certain tariff negotiations directly into U.S. law, without need for separate legislation. Section 3(a) puts limits on the President's tariff proclamation authority.

- **Agreements on tariff and non-tariff barriers.** Section 3(b) contains the second procedure for implementing trade agreements, which is commonly referred to as “trade authorities procedures” or “fast track.” Section 3(b)(1) authorizes the President to enter into a trade agreement with a foreign country whenever he determines 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 that the imposition of any such barrier or distortion is likely to result in such a burden, restriction, or effect, and that entering into such agreement will promote the purposes, policies, priorities and objectives of this bill. 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. Unlike prior fast track legislation, no distinction would be made between bilateral and multilateral agreements. Section 3(b)(2) provides that the trade agreement approval procedures may be used only if the agreement makes progress in meeting the applicable objectives set forth in sections 2(a) and (b) (Overall and Principal Trade Negotiating Objectives), and the President satisfies the requirements set forth in section 4 (Consultations).
- **Bills qualifying for trade authorities procedures.** Section 3(b)(3) provides that bills implementing trade agreements qualify for trade authorities procedures only if those bills consist solely of provisions approving the trade agreement and any statement of administrative action accompanying the agreement, and provisions necessary or appropriate to implement the trade agreement. If the foregoing conditions are met, then the trade authorities procedures described in section 151 of the Trade Act of 1974 apply to the implementing bill. Section 151 of that Act sets forth a timetable for consideration of implementing bills in the committees of jurisdiction and on the floor of each house of Congress. Ordinarily, the maximum time for consideration in both chambers will be 90 legislative days. Section 151 also prohibits amendments to implementing bills and limits the time for debate on the floor of each house to 20 hours (subject to further limitation).
- **Time period.** Sections 3(a)(1)(A) and 3(b)(1)(C) grant trade promotion authority for 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 3(c).
- **Extension procedures.** Section 3(c) outlines a process for extending the tariff proclamation authority of section 3(a) and the trade authorities procedures of section 3(b). Under this process, the President must request the extension from Congress and provide his reasons for that request, along with an explanation of the trade agreements for which he expects to need fast track authority, and a description of the progress he has made to date toward achieving the purposes, policies, priorities, and objectives of the present bill. He must also make certain specified notifications. Consistent with prior law, the President's request for an extension through June 1, 2007 will be granted, unless either house of Congress passes a “resolution of disapproval.” Any Member of Congress may introduce such a resolution in the member's respective house of Congress. Such a resolution will be referred, in the Senate, to the Committee on Finance, and in the House, jointly to the Committees on Rules and Ways and Means. Floor action on such a resolution will not be in order unless the resolution is reported by the aforementioned committees. In the event the Committee on Finance reports an extension disapproval resolution, the resolution will be considered on the Senate floor under the fast track procedures set forth in section 152(e) of the Trade Act of 1974. In the event the Committee on

Ways and Means and the Committee on Rules report an extension disapproval resolution, the resolution will be considered on the House floor under the fast track procedures set forth in section 152(d) of that Act.

Section 4. Consultations and assessment.

This title revises and strengthens the legislative-executive trade consultation procedures. To this end, section 4 establishes a number of new requirements to help ensure close coordination and consultation at every stage of trade agreement negotiation. Specifically, section 4(a)(1) requires the President to provide written notice to Congress at least 90 calendar days prior to entering into negotiations. In the notice, the President must set forth the date on which he intends to initiate negotiations, the specific objectives for the negotiations, and whether the President intends to seek a new agreement, or to change an existing agreement. Failure to provide notice may trigger the introduction and consideration of a “procedural disapproval resolution” under the provisions of section 5(b). If a disapproval resolution were adopted, it would withdraw trade authorities procedures for legislation implementing the agreement at issue. Section 4(a)(2) requires the President to consult with relevant committees regarding the negotiations before and after formal submission of the notice of intention to negotiate. Section 4(a)(3) requires the President, upon the request of a majority of the members of the Congressional Oversight Group (an entity established in section 7 of this bill), to meet with the Congressional Oversight Group before initiating negotiations or at any other time concerning the negotiations.

Section 4(b) establishes a special consultation requirement for agriculture and the fishing industry. Before initiating negotiations with a country concerning tariff reductions in agriculture, the President is to assess whether U.S. tariffs on agricultural products that were bound under the Uruguay Round Agreements are lower than the tariffs bound by that country. In his assessment, the President is also 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 on like products, and whether the negotiation provides an opportunity to address any such disparity.

Section 4(b)(2) sets forth special consultation procedures for import-sensitive agricultural products.

Section 4(b)(3) requires the President, before initiating or continuing negotiations directly related to fish or shellfish trade, to consult with relevant committees.

Section 4(c) sets forth a special consultation requirement for negotiations regarding textiles.

Section 4(d) requires the President, before entering into any trade agreement, to consult with the relevant committees and the Congressional Oversight Group 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 title, as amended, and all matters relating to implementation under section 5, including the general effect of the agreement on U.S. laws.

Section 4(e) concerns the timing of certain reports to be prepared by the Advisory Committee on Trade Policy and Negotiations (ACTPN) and sectoral or functional advisory committees at the conclusion of trade agreement negotiations. The ACTPN is an entity that Congress directed the President to establish in section 135 of the Trade Act of 1974. It consists of up to 45 members, appointed by the President on the recommendation of the U.S. Trade Representative for two-year terms, and includes representatives from

non-Federal governments, labor, industry, agriculture, small business, service industries, retailers, nongovernmental environmental and conservation organizations, and consumer interests. The ACTPN's mandate is to provide overall policy advice on trade negotiations, the operation of trade agreements in force, and other trade policy matters.

Section 5. Implementation of trade agreements.

Section 5 of the title describes the procedures to be followed for a trade agreement to enter into force with respect to the United States. It sets forth the documentation that the President must transmit to Congress to enable Congress to make a fully informed decision as to whether to approve a trade agreement. It then sets forth certain conditions under which a trade agreement implementing bill's eligibility for consideration under trade authorities procedures may be withdrawn. Finally, it affirms that the provisions for withdrawal of trade authorities procedures contained here and elsewhere in the bill are adopted pursuant to the constitutional authority of each house of Congress to determine the rules of its proceedings.

Section 6. Treatment of trade agreements for which negotiations already underway.

Section 6 provides that the requirements (set forth in section 4(a)) that the President notify and consult with committees of jurisdiction in Congress before initiating trade agreement negotiations do not apply to certain negotiations already underway at date of enactment. Specifically, the pre-negotiation notice and consultation requirements do not apply to negotiations commenced before enactment of the present bill (1) under the auspices of the WTO; (2) to establish a free trade agreement with Chile; (3) to establish a free trade agreement with Singapore; and (4) to establish a Free Trade Area for the Americas. Since the foregoing negotiations already have commenced, the absence of the formal notification and consultation that ordinarily would be required before initiating negotiations will not preclude trade authorities procedures from being applied with respect to these agreements.

Section 7. Congressional Oversight Group.

Section 7 establishes a Congressional Oversight Group to consult with and provide advice to the U.S. Trade Representative on negotiating objectives, strategies, and positions, and on compliance with and enforcement of agreements in force. This Group will be a point of contact between Congress and the USTR, in addition to the committees of jurisdiction and the congressional trade advisers designated under section 161 of the Trade Act of 1974.

Section 8. Additional implementation and enforcement requirements.

Section 8 requires the President to submit to Congress a plan for implementing and enforcing any trade agreement concluded under the present title. The plan 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.

Section 9. Committee staff.

Section 9 expresses the view that increased staff should be provided to the committees with primary jurisdiction over trade matters to accommodate the increase in trade negotiations and related activities expected to flow from enactment of the present bill. Also, the establishment of the Congressional Oversight Group under section 7 will bring more Members of Congress into the

oversight of and consultation on trade negotiations which, in turn, will increase the demands on staff.

Section 10. Conforming amendments.

Section 10 of the bill makes certain technical changes to the Trade Act of 1974 to conform to the changes described above.

Section 11. Report on impact of trade promotion authority.

Section 11 requires the International Trade Commission to report to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives on the impact of past trade agreements which have been entered into by the United States using trade authorities procedures. The trade agreements to be reviewed are: the United States-Israel Free Trade Agreement; the United States-Canada Free Trade Agreement; the North American Free Trade Agreement; the Uruguay Round Agreements; and the Tokyo Round of Multilateral Trade Negotiations. The purpose of this provision is to provide the U.S. Congress and the public with a broader context in which to view future trade agreements which Congress may implement using trade authorities procedures.

Section 12. Identification of small business advocate at WTO.

Section 12(a) requires the U.S. Trade Representative to pursue the identification of a small business advocate at the World Trade Organization Secretariat. The advocate would examine the impact of WTO agreements on the interests of small- and medium-sized enterprises, serve as a contact source for these businesses, and make recommendations on ways to address their interests in WTO negotiations. Section 12(b) designates an individual within the Office of the United States Trade Representative, currently, the Assistant USTR for Industry and Telecommunications, to be responsible for the interests of small business in trade negotiations.

Section 13. Definitions.

Section 13 defines terms used in this title, including Agreement on Agriculture, Core Labor Standards, GATT 1994, ILO, Uruguay Round Agreements, World Trade Organization, and WTO Agreement.

Trade Adjustment Authority (TAA)

TAA Reauthorization.

This title reauthorizes, expands, and consolidates three programs established in Title II of the Trade Act of 1974, as amended, for the purpose of providing assistance to individual workers and firms that are adversely affected by the reduction of barriers to foreign trade. Those programs are:

- The general TAA program for workers, which provides training and income support for workers adversely affected by import competition;
- The TAA program for firms, which provides technical assistance to qualifying firms; and

- The NAFTA program for workers (established by the North American Free Trade Agreement Implementation Act of 1993), which provides training and income support for workers adversely affected by trade with, or production shifts to, Canada and/or Mexico.

Extension of TAA benefits.

Other provisions provide for:

- An increase from 104 to 130 in the maximum number of weeks an adversely affected worker who requires a program of remedial education may receive trade readjustment allowances; and
- A reduction from 60 to 40 days for the time within which the Secretary of Labor must respond to petitions for certification of eligibility to apply for adjustment assistance.

Greater TAA information access.

A provision expresses the sense of Congress that the Secretary of Labor, in conjunction with the States, should provide workers with more specific information about benefits, training, and other employment services, and procedures for obtaining them, under the trade adjustment assistance program.

Health Coverage.

At press time, Senators Baucus and Grassley were still negotiating provisions to provide continued health coverage to TAA-eligible workers. Reports indicate the Senators were considering a refundable, advanceable tax credit for TAA-eligible workers. The credit would cover from 60 percent to 73 percent (under negotiation) of the cost of the worker's COBRA coverage or other group coverage, but could not be applied to coverage purchased in the individual market. Also under consideration are federal subsidies for existing and newly-created state "high-risk pools" and other purchasing pools, including private pools.

Authorization of Appropriations.

Authorizes appropriations of \$2 billion for FY 2002 and 2003.

Generalized System of Preferences (GSP)

The GSP title in the expected managers' amendment would amend Section 505 of the Trade Act of 1974 (19 U.S.C. 2465(a)) by striking the expiration date of September 30, 2001, and replacing it with December 31, 2003. It also provides for retroactive treatment of GSP-eligible goods to September 30, 2001.

COST

No information on a unified cost estimate is available for H.R. 3009 as modified by the expected managers' amendment, but the following represents estimates of the various titles:

Andean Trade

S. Rept. 107-126 states that no CBO cost estimate was available at press time but that a CBO letter would be placed into the *Congressional Record* later. That letter, dated December 14, 2001, can be found at page S 13354 for December 17, 2001. The summary paragraph follows:

The Congressional Budget Office estimates that enacting the bill would reduce revenues by \$43 million in 2002, by \$218 million over the 2002-2006 period, and by the same amount over the 2002-2011 period. CBO also estimates that enacting the bill would increase direct spending by \$24 million in 2002 and by \$12 million in 2003. Because enacting H.R. 3009 would affect receipts and direct spending, pay-as-you-go procedures would apply.

Trade Promotion Authority

The Senate and House reports for H.R. 3005 include the following identical language from CBO:

H.R. 3005 would restore the President's authority to enter into multilateral and bilateral trade agreements with Congressional approval or rejection of, but not amendment to, those agreements. Enacting this legislation would not affect revenues, so pay-as-you-go procedures would not apply.

Trade Adjustment Assistance

Because the TAA provisions of the managers' amendment are a product of a late compromise, no specific cost estimate is available. However, the following is a summary from the Senate and House reports; the cost of the TAA title in the managers' amendment may be reliably considered to fall between them:

Senate bill, S. 1209, S. Rept. 107-134:

For fiscal years 2002-2011, CBO estimates that enacting the bill would increase direct spending by about \$12.4 billion and reduce revenues by \$39 million. Because the bill would affect revenues and direct spending, pay-as-you-go procedures would apply. However, the costs of extending TAA are assumed in CBO's estimates of baseline spending. Pay-as-you-go procedures would apply only to the new direct spending above the costs already assumed in baseline. Those net costs above baseline spending – as projected in CBO's May 2001 baseline – would total \$8.6 billion in outlays over the 2002-2011 period. We also estimate that implementing the bill would cost about \$3 billion, subject to appropriation of the necessary funds.

House bill, H.R. 3008, H. Rept. 107-244:

H.R. 3008 would extend the Trade Adjustment Assistance (TAA) programs for workers and for firms through fiscal year 2003. These programs expired at the end of fiscal year 2001. Relative to current law, extending those programs would cost about \$400 million a year for 2002 and 2003. However, the costs of extending TAA are assumed in CBO's estimates of

baseline spending. Thus, enacting H.R. 3008 would have no effect on direct spending relative to the baseline.

The bill also would authorize grants in 2002 and 2003 for trade adjustment assistance. Assuming appropriation of the necessary amounts, CBO estimates that making such grants would cost \$18 million over the 2002-2006 period.

Generalized System of Preferences

The following cost estimate is from H. Rept. 107-245 (H.R. 3010):

H.R. 3010 would extend the period in which preferential treatment provided to certain products of countries under the Generalized System of Preferences (GSP) is in effect. Under current law, GSP treatment expired on September 30, 2001. The bill would allow imports under the program to enter the United States free of duty until December 31, 2002. Any imports made after September 30, 2001, and before the date of enactment would be eligible for duty-free treatment and refunds of any duty paid. The Congressional Budget Office estimates that enacting the bill would reduce revenues by \$332 million in 2002 and by \$419 million over the 2002-2003 period. Because enacting H.R. 3010 would affect receipts, pay-as-you-go procedures would apply.

ADMINISTRATION POSITION

At press time, no official position on the Senate version of H.R. 3009, as modified by the managers' amendment, had been received. However, the Administration has strongly supported the component titles of H.R. 3009, as modified by the managers' amendment, particularly the provisions relating to renewal of the President's trade promotion authority. (See RPC's "Now is the Time to Renew the President's Trade Promotion Authority, 11/1/01.)

POSSIBLE AMENDMENTS

The following possible amendments to H.R. 3009, as modified by the expected managers' amendment, are organized by topic:

Trade Promotion Authority

Craig/Dayton. Provides for a point of order against provisions in trade implementation bills weakening current safeguard laws for American businesses and workers.

Unknown. Strike COBRA benefits from Trade Adjustment Assistance.

Conrad. Use Export Enhancement Program against Canada with respect to agriculture.

Graham. Agriculture: Organic Sugar = split specialty quota

Daschle. Treat livestock as a perishable agriculture commodity

Nelson (FL). Citrus: Give special consideration to products with AD order with regard to tariff reductions

Nelson (FL). Citrus: If President decides we should lower tariffs, and this will have an adverse effect on U.S. industry, President has to explain what he will do to counter the adverse effect.

Levin. Customs: To provide legal protections for officials of a foreign country stationed in the United States for pre-clearance purposes.

Levin/Stabenow. Pilot project for Joint United States-Canada Customs inspection.

Conrad. Prevent devaluation exchange rate, reviews and reporting requirements.

Conrad. To require Committee approval of new Free Trade Agreement negotiations.

Boxer. Create gender advisory committee on trade.

Kerry. To ensure that foreign investors have no greater rights than domestic investors.

Torricelli. To upgrade definition of core labor standards.

Harkin. Regarding child labor.

Conrad. To require affirmative vote before any new negotiations begin.

Durbin. Changes to trade laws not be subject to fast track procedures.

Kennedy. With respect to TRIPs and Health – “Nothing in this bill is intended to undermine the DOHA declaration.”

Dayton. Regarding milk protein concentrate.

Unknown. Nicaraguan peanuts carve out portion of unassigned quota.

Kennedy/DeWine. Insert text of S. 1335 - “Linking Educators and Developing Entrepreneurs for Reaching Success Act of 2001,” to support business incubation in academic settings.

Unknown. To broaden Congressional oversight group.

Unknown. Regarding customs inspector salaries.

Unknown. Regarding debt relief.

Unknown. Regarding export-led growth.

Wellstone. To ban illegally traded forest products.

Feingold. Regarding “international right to know.”

Unknown. Strike investor-state dispute resolution.

Unknown. Regarding investment exception for capital controls.

Unknown. General exception for all CLS (like GATT Article XX).

Unknown. General exception for actions pursuant to ILO recommendations.

Unknown. WTO working party on labor rights.

Torricelli. To ensure that new trade laws do not lower worker conditions.

Torricelli. Ban on the export of convict-made goods.

Torricelli. Move labor and trade law language to principal negotiating objectives.

Unknown. To improve labor impact assessment of trade agreements in section 2(c)(5).

Harkin. Burma import ban (S. 926).

Unknown. Disapproval resolution opportunity for each trade agreement.

Unknown. Procurement: Exception for labor & human rights procurement policies.

Rockefeller. Protect “Buy America Law.”

Unknown. Transparency: Release draft texts and submitted negotiating proposals to the public.

Unknown. Trade remedies: Make Super 301 permanent.

Unknown. Make deadline for submitting Super 301 report a date no later than 30 days after transmittal of notification.

Trade Adjustment Assistance

Bayh. Require industry-wide certification after ITC finding of injury.

Edwards. Industry-wide certification for textiles and apparel.

- Bayh. S. 1193 - Community Workforce Partnerships.
- Rockefeller. Retroactive TAA health benefits for steelworkers/trade laws priority negotiating objective.
- Johnson. Extend shellfish labeling provisions to include meat.

Generalized System of Preferences

- Baucus. Require regular reviews of labor practices.
- Unknown. To amend labor criterion to be subject to an “extent to which” standard rather than a “taking steps” standard.
- Boxer. Add gender discrimination to GSP.

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- Levin. To limit asparagus imports to 30 percent of domestic market.
- Inouye. To exclude tuna from ATPA.
- Durbin. To modify dates for refunds of wool tariffs and to extend Wool Trust Fund.
- Baucus. To make accession to ITA a factor in determining whether to designate country as ATPEA beneficiary country.
- Unknown. Textiles: Make sure the term “wholly formed” is used consistently when referring to origin of yarns or fabrics (as opposed to “formed”).
- Unknown. Consider dealing with “partially oriented yarn” in definition of “wholly formed” yarn. Where definition refers to extrusion, should add “including all texturing operations.”
- Unknown. Textiles: Amend section 204(b) to include an “imported directly” requirement as per House bill.
- Unknown. Textiles: Clarify the extent to which woven components may be included in a “knit apparel article” for that article to retain its “knit apparel” classification. (See sec. 204(b)(2)(A)(iii), as amended by the bill.)
- Unknown. Textiles: Adjust start date for determining amount of regional cap. (Also, USCS urges that cap growth occur on a calendar year basis.) Also, adjust end date for the entire program. (The original end date of 2/28/06 was based upon an assumption that the bill would be enacted sooner than it now can be enacted.)
- Unknown. Textiles: Eliminate inconsistent treatment of socks: Sec. 204(b)(2)(A)(ii) provides duty-free, quota-free treatment for KTS articles other than socks. However, sec. 204(b)(2)(A)(iii) provides duty-free treatment to knit apparel articles made from KTS components, with no exclusion for socks but with a quota. This could be interpreted as inconsistent. (However,

one might argue that there is a difference between KTS articles and knit articles made from KTS components. Socks probably fall in the former but not the latter category. In any event, clarification probably is in order.)

Unknown. Tuna: Make clear that imports that enter duty-free from ATPA should not go towards filling the MFN quota.

Miscellaneous

Wellstone. Strike all titles except Trade Adjustment Assistance.

Unknown. To permanently remove Russia from the provisions of the 1974 Jackson-Vanik amendment (regarding freedom of emigration from communist countries) and extend normal trade relations (see S. 1861).

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