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## **The Andean Trade Preference Act: A Comparison of House and Senate Versions of H.R. 3009**

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# The Andean Trade Preference Act: A Comparison of House and Senate Versions of H.R. 3009

## Summary

In 1991, the 102<sup>nd</sup> Congress passed the Andean Trade Preference Act (ATPA), which provided for preferential treatment of selected U.S. imports from Bolivia, Colombia, Ecuador, and Peru as part of an incentive system to encourage legal trade as an alternative to illicit drug production. ATPA expired in December 2001 and reauthorization legislation is being considered in the 107<sup>th</sup> Congress. This report compares two versions of H.R. 3009, the House-passed *Andean Trade Promotion and Drug Eradication Act* and the *Andean Trade Preference Expansion Act*, which was passed by the Senate as Title XXXI of the Trade Act of 2002. The Senate action was controversial because it adopted the ATPA provisions by agreeing to S.Amdt. 3401, a substitute amendment for H.R. 3009, which also included a broader trade legislation package covering trade promotion authority (TPA), trade adjustment assistance (TAA), and the Generalized System of Preferences (GSP), among others. On June 26, 2002, following a heated debate, the House voted 216 to 215 to agree to the Senate amendment with an amendment incorporating House versions of the broader provisions added in the Senate, and requested a conference.

Although broadly similar, Andean trade provisions of the two bills differ in how they would amend ATPA. Proposed changes in tariff treatment address eight categories of goods that were excepted from preferential treatment under the original act. To summarize: 1) duty-free treatment is extended to carefully defined groups of apparel articles in both bills; 2) footwear (not eligible under the GSP preferences) is given duty-free treatment under the House and equal treatment under the Senate, but with a few specific exceptions; 3) tuna shipped in airtight containers would enter duty free under the House, but the amount would be capped under the Senate; 4) petroleum products would enter duty free under both bills; 5) watches that do not include material from HTS column two countries would enter duty free under both bills; 6) selected leather goods would enter duty free under the House and given reduced-duty treatment under the Senate; 7) sugars, syrups, and sugar products would be excepted from preferential treatment under both bills; and 8) rum and tafia would enter duty-free under the Senate bill, but would be excepted from duty-free treatment under the House bill.

With the House passage of H.Res 450, the rule sending the ATPA reauthorization legislation to conference, new language affecting textile provisions was included. It changed the House bill to clarify that all ATPA apparel imports using U.S. fabric should have the dyeing and finishing of all such fabric done in the United States. At issue for the textile debate is that caps on U.S. imports of ATPA apparel articles using regional fabrics may exceed total exports from the region, making the provision requiring “dyeing and finishing” of U.S. fabric inoperative.

For a detailed side-by-side comparison of the Trade Promotion Authority bills, see: CRS Report RL31445, *Trade Promotion (Fast-Track) Authority: A Comparison of Bills Approved by the House (H.R. 3005) and the Senate (Title XXI of H.R. 3009)*, by (name redacted) and (name redacted).

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# The Andean Trade Preference Act: A Comparison of House and Senate Versions of H.R. 3009

## Introduction

The Andean Trade Preference Act (ATPA), providing preferential treatment of selected U.S. imports from Bolivia, Colombia, Ecuador, and Peru, expired in December 2001 and reauthorization legislation is being considered in the 107<sup>th</sup> Congress. In the House, H.R. 3009, the Andean Trade Promotion and Drug Eradication Act (ATPDEA), was introduced on October 3, 2001. An amended version was passed by voice vote on November 16, 2001. In the Senate, S. 525, the Andean Trade Preference Expansion Act (ATPEA) was introduced on March 12, 2000, and its text was offered as an amendment in the nature of a substitute for H.R. 3009 during committee markup on November 29, 2001. On May 23, 2002, the Senate agreed to a substitute amendment for H.R. 3009 (S.Amdt. 3401), which included a broader trade legislation package with provisions covering trade promotion authority (TPA), trade adjustment assistance (TAA), and the Generalized System of Preferences (GSP), among others. On June 26, 2002, the House voted 216 to 215 to agree to the Senate amendment with an amendment incorporating House versions of the broader provisions added in the Senate, and requested a conference.

New in this House amendment to the Senate amendment to H.R. 3009 related to ATPA reauthorization is language changing the House bill to clarify that all ATPA apparel imports using U.S. fabric should have the dyeing and finishing of all such fabric done in the United States. At issue for the textile debate are provisions placing caps on the use of regional fabrics. The caps on U.S. imports of ATPA apparel articles using regional fabrics may exceed total exports from the region, making the provision requiring “dyeing and finishing” of U.S. fabric effectively inoperative.

The following is a side-by-side comparison of the provisions reauthorizing ATPA in the House and Senate versions of H.R. 3009 that went to conference. The summary excludes the program’s broader policy issues, which may be found elsewhere, but instead provides a section-by-section comparison.<sup>1</sup> Although it is customary to identify subsections by a new bill’s numbering, because each bill was effectively treated as an amendment to an entire section of the original legislation, there are few subheadings with which to refer. Therefore, for purposes of cross referencing the summary below with the two bill texts, subsections of the amended version of the existing law are used, as listed in each of the two bills.

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<sup>1</sup> See: CRS Report RL30790. *The Andean Trade Preference Act: Background and Issues for Reauthorization*, by (name redacted).

<h2 style="text-align: center;">Section 1. Short Title and Findings</h2>	
<p style="text-align: center;">H.R. 3009 (House)</p>	<p style="text-align: center;">H.R. 3009 (Senate)</p>
<p>1) Title: “Andean Trade Promotion and Drug Eradication Act.” (ATPDEA)</p> <p>2) Congress finds that: 1) ATPA has had a positive impact on trade and jobs in the U.S., Bolivia, Colombia, Ecuador, and Peru; 2) ATPA has been a key element in the U.S. counternarcotics strategy; 3) the Andean region remains vulnerable to consequences of the drug war and global competition; 4) continuing instability in the Andean region is a threat to the United States; 5) ATPA is a tangible commitment by the United States to promote prosperity, stability, and democracy in the beneficiary countries; 6) renewal of ATPA will bolster confidence of investors in the economic prospects of the region; 7) each of the ATPA countries is committed to completing the Free Trade Area of the Americas (FTAA), and; 8) temporarily enhancing trade benefits for ATPA countries will promote economic opportunity in these countries.</p>	<p>1) Title: “The Andean Trade Preference Expansion Act.” (ATPEA)</p> <p>2) Identical provisions.</p>

<b>Section 2. Import Sensitive Articles</b>	
H.R. 3009 (House)	H.R. 3009 (Senate)
<p>1) Unless defined elsewhere, the President may proclaim duty-free treatment for any article listed below that is a product of an ATPDEA beneficiary country and that meets the requirements of this section, if the President determines that the article is not import-sensitive. The list includes: footwear not designated eligible for preferential treatment under the Generalized System of Preferences (GSP); petroleum products; watches and parts that do not contain any material from HTS column 2 country; and certain leather goods. Sec. 204(b)(1)</p> <p>2) Except as defined elsewhere in this act (see sections 2 and 3 of this report), the following articles are excluded from duty-free treatment: textiles and apparel articles; sugars, syrups, and sugar-containing products subject to over-quota duty rates, and rum and tafia. Tuna packed in airtight containers, previously excluded under ATPA, would become immediately eligible for duty-free treatment. Sec. 204(b)(2)</p>	<p>1) Except as defined elsewhere in this act (see sections 2 and 3 of this report), the following articles are not eligible for duty-free treatment provided under this title: textile and apparel articles; footwear not designated eligible for preferential treatment under the GSP; tuna prepared or preserved in airtight containers; petroleum products, watches and parts that include materials from HTS column 2 countries, certain leather goods; sugars, syrups, and sugar containing products subject to tariff-rate quotas, and rum and tafia. Sec. 204(b)(1)</p>

## Section 3. Textile and Apparel Articles

H.R. 3009 (House)	H.R. 3009 (Senate)
<p>1) In general – apparel articles that are imported from an ATPDEA country shall enter the U.S. free of duty and quantitative restrictions if they meet the following criteria: Sec. 204(b)(3)(A)</p> <p>a) Apparel articles assembled from products of the U.S. or an ATPDEA country, or products not available in commercial quantities – articles sewn or otherwise assembled exclusively from any one or any combination of the following: Sec. 204(b)(3)(B)(i)</p> <ul style="list-style-type: none"> <li>• fabrics or components formed or knit-to-shape in the U.S., from yarns formed in the U.S. or an ATPDEA country, (including felt and nonwovens if formed in the U.S.)</li> <li>• fabrics or components formed or knit-to-shape in an ATPDEA country from yarns formed in an ATPDEA country, if such fabrics (including felt and nonwovens if formed in the an ATPDEA country) are in chief weight of llama or alpaca.</li> <li>• fabrics or yarn that is not formed in the U.S. or an ATPDEA country, 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 NAFTA (Rules of Origin).</li> <li>• No similar provision.</li> </ul> <p>b) Additional Textiles: at the request of any party, the President may proclaim addition fabrics and yarns eligible for preferential treatment under a) above if: Sec. 204(b)(3)(B)(ii)</p> <ul style="list-style-type: none"> <li>• such fabrics or yarns cannot be supplied by the domestic industry in commercial quantities in a timely manner;</li> <li>• the President has been properly advised by a committee established under section</li> </ul>	<p>1) Transition period treatment of certain textile and apparel articles: provides duty-free treatment for the following articles. Sec. 204(b)(2)(A) and (B)</p> <p>a) Identical provisions. Sec. 204(b)(2)(A)(i)</p> <ul style="list-style-type: none"> <li>• fabric or components formed or knit-to-shape in the U.S., from yarns wholly formed in the U.S. (including felt and nonwovens if formed in the U.S.), <i>provided</i>, the articles are sewn or assembled with thread formed in the U.S.</li> <li>• fabric components knit-to-shape in the U.S. from yarns wholly formed in the U.S. and components knit-to-shape in an ATPEA country from yarns wholly formed in the U.S.</li> <li>• Identical provision.</li> <li>• fabrics and yarns that are not formed in the U.S. or an ATPEA country, to the extent such fabrics and yarns are considered not to be widely available in commercial quantities for purposes of determining the eligibility of such apparel articles for preferential treatment under Annex 401 of NAFTA (Rules of Origin).</li> <li>• Apparel articles knit-to-shape, other than socks provided for in heading 6115 of the HTS (panty hose, tights, stockings, and other hosiery), in an ATPEA country from yarns wholly formed in the United States. Sec. 204(b)(2)(A)(ii)</li> </ul> <p>b) Identical provision. Sec. 204(b)(2)(A)(v)</p>

## Section 3. Textile and Apparel Articles

H.R. 3009 (House)	H.R. 3009 (Senate)
<p>135 of the Trade Act of 1974 and the USITC;</p> <ul style="list-style-type: none"> <li>• within 60 days of the request, the President has submitted a report to the House Committee on Ways and Means and the Senate Finance Committee stating intent and advice from a committee in the paragraph above, and;</li> <li>• the President has consulted with the congressional committees within 60 days.</li> </ul> <p>c) Regional Fabrics: apparel articles assembled in an ATPDEA country from regional fabrics or regional components if: Sec. 204(b)(3)(B)(iii)</p> <ul style="list-style-type: none"> <li>• they are sewn or otherwise assembled in an ATPDEA country from fabrics or components formed or knit-to-shape in an ATPDEA country, from yarns formed in the U.S. or an ATPDEA country, including felt and nonwovens, whether or not the apparel articles are also made from any of the fabrics or components formed or knit-to-shape described in a) above.</li> <li>• preferential treatment to begin December 1, 2001 for a limited quantity equal to 3% (measured in square meter equivalents) of all apparel articles imported into the United States during the previous 12 months. This percentage increases to 6% over the next five years in equal increments.</li> </ul> <p>d) No similar provision.</p>	<p>c) Regional Fabrics: knit apparel articles wholly assembled in an ATPEA country exclusively from fabric formed, or fabric components formed, or components knit-to-shape or any combination thereof, in an ATPEA country from yarns wholly formed in the U.S., in an amount limited to 70,000,000 square meter equivalents during the 1-year period beginning March 1, 2002, increased by 16 percent, compounded annually, in each succeeding 1-year period through February 28, 2006. Sec. 204(b)(2)(A)(vii)</p> <p>d) Certain Other Apparel Articles: Any apparel article classifiable under HTS subheading 6212.10 (brassieres), if the article is both cut and sewn or otherwise assembled in the U.S., or one or more of the ATPEA countries, or both. Sec. 204(b)(2)(A)(iv)</p> <ul style="list-style-type: none"> <li>• During the 1-year period beginning March 1, 2002, and during each of the 2 succeeding 1-year periods, such apparel articles of a producer or entity shall be eligible for preferential treatment only if the aggregate cost of the fabric components formed in the U.S. that are used in the production of all such articles of the producer or entity that are entered during the preceding 1-year period is at least 75 percent of the aggregate declared customs value of the fabric contained in all such articles of that producer or entity that are entered during the preceding 1-year period.</li> </ul>



<b>Section 3. Textile and Apparel Articles</b>	
H.R. 3009 (House)	H.R. 3009 (Senate)
<p>e) Handloomed, handmade, and folklore articles – if certified as such by the ATPDEA country in consultation with the U.S. Sec. 204(b)(3)(B)(iv) and Sec. 204(b)(3)(C)</p> <p>f) Special Rules: Sec. 204(b)(3)(B)(v)</p> <ul style="list-style-type: none"> <li>• Findings and Trimmings: an article otherwise eligible for preferential treatment shall not be considered ineligible so long as findings and trimmings (buttons, zippers, lace, etc.) of foreign origin do not exceed 25% of the cost of the components.</li> <li>• Interlinings: identical rule as above for articles that contain interlinings of foreign origin, which may be terminated if the President determines that such interlinings are made in commercial quantity in the U.S.</li> <li>• De Minimis Rule: an article that otherwise would be ineligible for preferential treatment because it contains fabrics and yarns not wholly formed in the United States or an ATPDEA country shall not be ineligible if the total weight of such fibers and yarns do not exceed 7% of the total weight of the good.</li> <li>• No similar provision</li> </ul> <p>• No similar provision</p>	<ul style="list-style-type: none"> <li>• The U.S. Customs Service must develop methods to ensure compliance with entities found in noncompliance made ineligible for preferential treatment until that producer raises the aggregate cost of fabric components formed in the U.S. used in the production of such articles of that producer or entity is at least 85 percent of the aggregate declared customs values of the fabric contained in all such articles entered.</li> </ul> <p>e) Identical provisions. Sec. 204(b)(2)(A)(iv) and Sec. 204(b)(2)(C)</p> <p>f) Special Rules: Sec. 204(b)(2)(A)(vii)</p> <ul style="list-style-type: none"> <li>• Identical language, but adds: Elastic strips are considered findings or trimmings only if they are each less than 1 inch in width and are used in the production of brassieres, and that sewing thread shall not be treated as findings and trimmings under this subclause.</li> <li>• Identical language.</li> <li>• Similar language, but applies only to “yarns” and stipulates that an apparel article containing elastomeric yarns shall be eligible for preferential treatment under this paragraph only if such yarns are wholly formed in the U.S.</li> <li>• Special Origin Rule: articles otherwise eligible for preferential treatment shall not be ineligible because the articles contains nylon filament yarn (other than elastomeric yarn) that is classifiable under various HTS 5402 subheadings (synthetic filament yarn) duty-free from a country that is a party to an agreement with the U.S. establishing a free trade area entered into force on January 1, 1995.</li> <li>• Clarification of Certain Knit Apparel: notwithstanding any other provision of law, an article otherwise eligible for</li> </ul>

<b>Section 3. Textile and Apparel Articles</b>	
H.R. 3009 (House)	H.R. 3009 (Senate)
<p>g) No similar provision</p> <p>2) Penalties for Transshipment: Sec. 204(b)(3)(D)</p> <ul style="list-style-type: none"> <li>• Exporters found to be engaging in transshipment of apparel articles from an ATPDEA country will be denied benefits of this act for 2 years.</li> <li>• If the ATPDEA country involved does not take appropriate actions to halt transshipment activities, the President may reduce the amount of apparel imported from that country by three times the amount of apparel found to be transhipped from that country.</li> </ul> <p>3) Bilateral Emergency Actions: the President may take bilateral emergency tariff actions similar to those in section 4 of Annex 300-B of NAFTA (limited safeguard actions in cases where serious damage or threat thereof to a domestic industry producing like or directly competitive goods can be shown.) Sec. 204(b)(3)(E)</p>	<p>preferential treatment under the regional fabrics general rule – clause (iii)(I), shall not be ineligible because the article, or a component thereof, contains fabric formed in the U.S. from yarns wholly formed in the U.S.</p> <p>g) Textile Luggage: assembled in an ATPEA country from fabric wholly formed and cut in the U.S. from yarns wholly formed in the U.S., that is entered under Subheading 9802.80 of the HTS (Mexico production sharing provisions or maquiladoras) or assembled from fabric cut in an ATPEA country from fabric wholly formed in the U.S. from yarns wholly formed in the U.S. Sec. 204(b)(2)(A)(viii)</p> <ul style="list-style-type: none"> <li>• Identical provisions. Sec. 204(b)(2)(D)</li> <li>• Identical provisions. Sec. 204(b)(2)(E)</li> </ul>

## Section 4. Other Articles

H.R. 3009 (House)	H.R. 3009 (Senate)
<p>1) No similar language referring to transition period. Specific treatment of non-apparel articles set forth in section 204(b)(1) and (2).</p> <p>a) Footwear, petroleum, certain watches and parts, and certain leather goods would be given duty-free treatment, provided the President determines that they are not import-sensitive goods. The exception is rum and tafia, which would not receive duty-free treatment in the House bill. Sec. 204(b)(1) and Sec. 204(b)(2)</p> <p>b) No similar provision.</p> <p>c) No similar restriction, footwear would enter duty free. Sec. 204(b)(1)(A)</p> <p>d) Special Rule for Sugars: duty-free treatment shall not be extended to sugars, syrups, and sugar-containing products subject to over-quota duty rates under applicable tariff-rate quotas. Sec. 204(b)(2)(C)</p> <p>e) Tuna packed in airtight containers would receive immediate duty-free treatment by virtue of being eliminated from the list of exceptions. Sec. 204(b)(1)</p>	<p>1) Transition period treatment of certain other articles originating in beneficiary countries: Sec. 204(b)(3)</p> <p>a) Except as noted elsewhere, footwear, petroleum, certain watches and parts, certain leather goods, and rum and tafia would be given NAFTA-equivalent treatment (or better if available under another agreement). In effect, these goods would be subject to the same tariff phase-out schedule as defined in Annex 302.2 of NAFTA for an equivalent article entering from Mexico, as defined by the eight-digit HTS subheading. To the extent that the NAFTA equivalent duty rate is zero, the Senate version would result in identical treatment as the House. Sec. 204(b)(3)(A)(i)</p> <p>b) Exception: the above does not apply to any article accorded duty-free treatment under U.S. Note 2(b) to subchapter II of chapter 98 of the HTS—referring to various constraints on articles assembled of fabricated components or of ingredients other than water that are of the United States, in a beneficiary country and neither the fabricated components, materials or ingredients, after exportation from the U.S. nor the article itself, before importation into the U.S., enters the commerce of any foreign country other than a beneficiary country. Sec. 204(b)(3)(A)(ii)</p> <p>c) Exception—Certain Footwear: duties on selected footwear from ATPEA countries identified by eight-digit HTS subheading shall be reduced by 1/15 a year beginning on the date of enactment of this Act. Sec. 204(b)(3)(A)(iii)</p> <p>d) Identical provision. Sec. 204(b)(3)(C)</p> <p>e) Special Rule for Certain Tuna: the President may proclaim duty-free treatment for an amount of tuna harvested by U.S. or ATPEA vessels and is preserved in airtight containers of an amount not to exceed 20 percent of the domestic U.S. tuna pack (production) in the preceding calendar year. Sec. 204(b)(3)(D)</p>

<b>Section 5. Customs Procedures</b>	
H.R. 3009 (House)	H.R. 3009 (Senate)
<p>1) Importers claiming ATPEA preferential treatment must comply with customs procedures similar to those required in Article 502(1) of NAFTA (certificate of origin). Sec. 204(b)(4)</p> <p>2) For a country to qualify as an ATPEA beneficiary country, the President must certify that it has implemented or is making substantial progress toward implementing specific customs requirements as defined under Chapter 5 of NAFTA.</p> <p>3) The Certificate of Origin that otherwise would be required, shall not be required if such certificate of origin would not be required under Article 503 of NAFTA, if the article were imported from Mexico.</p> <p>4) No similar requirement.</p>	<p>1) Identical language. Sec. 3102(b)(4)(A)(i)</p> <p>2) Identical language for ATPEA beneficiary countries. Sec. 3102(b) (4)(A)(ii)</p> <p>3) Identical language. Sec. 3102(b)(4)(B)</p> <p>4) The U.S. Commissioner of Customs shall conduct a study analyzing the extent to which each ATPEA beneficiary country: 1) has cooperated fully with the United States in instances of circumvention of existing quotas of imports of textile and apparel articles related to transshipment of these articles; 2) has taken appropriate measures against exporters and importers involved in false declaration related to content of textile and apparel goods; 3) has penalized those involved in any circumvention and worked with third party countries to prevent any future circumvention from reoccurring. Sec. 3102(b)(4)(C)</p>

## Section 6. Definitions and Special Rules

H.R. 3009 (House)	H.R. 3009 (Senate)
<p>1) The term “the Annex” means Annex 300-B of NAFTA (Textile and Apparel Goods). Sec. 204(b)(5)(A) and (B)</p> <p>2) The term “ATPDEA beneficiary country” means a beneficiary country that is certified by the President as meeting ATPA criteria and in addition demonstrates a commitment to: 1) undertake its obligations under the WTO; 2) participate in negotiations toward completion of the FTAA or another free trade agreement; 3) meet intellectual property rights requirements in the Uruguay Round Agreements Act; 4) meet internationally recognized worker rights including the right of association, the right to organize and bargain collectively, a prohibition on the use of any form of forced or compulsory labor, the setting of a minimum age for employment of children, and ensuring acceptable conditions for work with respect to minimum wages, hours of work and occupation safety and health; 5) implement its commitments to eliminate the worst forms of child labor as defined in section 507(6) of the Trade Act of 1974; 6) meet counternarcotics certification criteria; 7) to become a party to and implement the Inter-American Convention Against Corruption; 8) to apply transparent, nondiscriminatory, and competitive procedures in government procureures equivalent to section 101(d)(17) of the Uruguay Round Agreements Act; and 9) contribute to efforts in international fora to develop and implement international rules in transparency in government procurement. Sec. 204(b)(5)(B)</p> <p>3) No similar section.</p> <p>4) No similar wording, but makes clear that the legislation is in effect through December 31, 2006.</p> <p>5) ATPDEA means the Andean Trade Preference and Drug Eradication Act. Sec. 204(b)(5)(B)</p> <p>6) Additions to retention of designation: the President may withdraw or suspend the designation of an ATPEA country or withdraw, suspend or limit application of preferential treatment to any article if the President determines the performance of such country is not satisfactory. Sec. 203(e)(1)</p> <p>7) No similar provision.</p>	<p>1) Identical language. Sec. 204(b)(5)(A)</p> <p>2) Identical language used to define “ATPEA beneficiary country.” Sec. 204(b)(5)(B)</p> <p>3) “ATPEA originating good” means a beneficiary country good that meets NAFTA Chapter 4 rules of origin. Sec. 204(b)(5)(C)</p> <p>4) “Transition period” means the period that begins on the date of enactment and ends on the earlier of either February 28, 2006 or the date on which the FTAA or a similar free trade agreement enters into force. Sec. 204(b)(5)(D)</p> <p>5) ATPEA means the Andean Trade Preference Expansion Act. Sec. 204(b)(5)(E)</p> <p>6) Identical. Sec. 203(e)(1)</p> <p>7) Requires USTR report be done on a biennial basis.</p>

## Section 7. Termination

H.R. 3009 (House)	H.R. 3009 (Senate)
<p>1) No duty-free treatment or other preferential treatment extended to beneficiary countries under this title shall remain in effect after December 31, 2006. Sec. 208.</p> <p>2) No similar language.</p>	<p>1) No preferential duty treatment extended to beneficiary countries under this Act shall remain in effect after February 28, 2006. Sec. 208(b)</p> <p>2) Makes retroactive duty-free treatment of any ATPA-eligible article that entered the United States between the expiration of ATPA on December 4, 2001 and the enactment of this act, requiring any duties paid to be refunded.</p>

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